

# Guidance

## Due diligence: best practice guide for maintained schools, local authorities and academy trusts

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## 1. Introduction

Due diligence can be defined as the process of ensuring that all stakeholders understand the relevant information, including costs, risks, benefits, assets and liabilities, enabling them to make fully informed decisions about transferring a school into a new academy trust.

The importance of rigorous due diligence was highlighted in the Public Accounts Committee's report on converting schools to academies, published on 4 July 2018.

## 2. What it does

The due diligence process is an important element of the risk management of any conversion or transfer, with the findings of the work informing the decision making process of respective stakeholders: the incoming school, the incoming trust and the Department for Education (DfE). Due diligence is usually undertaken by any potential incoming organisations in advance of a formal decision to sponsor or allow a school to become part of a multi-academy trust (MAT). It is also part of the process to successfully negotiate a commercial transfer agreement (CTA) between both parties.

The CTA is the legally binding document that enables the transfer of school level assets and liabilities. Our [model CTA](#) must be used by trusts in academy conversions and can be adapted for academy transfers. It is important for both parties to obtain legal advice to ensure the CTA is tailored to the particular needs of the transfer.

We are in the process of developing a CTA for use in transfer cases and this will be made available to trusts.

## 3. What should be identified

Due diligence is often considered to be purely an information gathering exercise but it is important that it is used to identify issues and consider costed solutions. The due diligence must provide the trust board with the necessary information about the incoming school to understand the current educational, financial and premises position. It is only by identifying risks, mitigation and the associated costs that an incoming trust can make a fully informed decision on whether to proceed.

Due diligence should identify key risks and issues and assist in enhancing each stakeholder's understanding of:

- critical success requirements
- the legal and operational frameworks coming together
- the current financial performance and prospects of the organisations, identifying key risks and sensitivities and how each stakeholder will deal with these
- any post-transfer integration required to support the delivery of planned benefits.

## 4. Who should complete due diligence

Any trust considering joining another single or multi-academy trust or taking a school or academy into the trust should complete its own due diligence to provide assurance that the school and the trust are a suitable match.

The Department for Education does not pay for schools, sponsors or trusts to carry out due diligence.

It is important to remember that due diligence is a two-way process and that an individual school should gather information about any multi-academy trust it is considering joining.

The extent of due diligence should be considered on a case-by-case basis and it is for the incoming trust board to fully assure itself that sufficient due diligence has been carried out.

## 5. Timing

The process should be completed in two stages. Stage 1 can often be completed using information available in the public domain and is usually desk-based. This should be undertaken before agreeing to accept the academy into your trust or be named as sponsor for an academy. Stage 2 will be a more detailed review of the unpublished information relating to the school and will require the local authority, school or current trust to provide information to the incoming trust.

### 5.1 Stage 1 due diligence

The incoming trust should complete an initial desk-based assessment of the readily available information relating to the school. This provides an overview of the school's educational performance and the financial position of the current trust and the school. The information will be presented to the incoming trust board for a preliminary decision and should highlight any areas of concern so that the board can begin to consider how the trust would address the issues. Factors that are often considered include but are not limited to:

- educational performance
- Ofsted reports
- financial information
- admissions
- capacity, pupil numbers and school demographics, pupil premium.

Financial information about an academy trust is available in the financial statements submitted to Companies House. A comprehensive check of the annual accounts should be completed to identify the movement in reserves and in-year position in order to identify any trends or concerns about changes to surplus/deficits. The notes to the accounts may help identify any areas that may be cause for concern to the incoming trust. Other key information in the annual accounts may include pension liabilities, information about pay rates and numbers of key staff members.

For maintained schools, this information is not available on Companies House but the local authority or the school will be able to supply management accounts and budget forecasts.

Linked to financial performance, it is also important to understand the pupil related information.

School capacity and number on roll are published at [get information about schools](#). [Statistics: school capacity](#) has the numbers of filled and unfilled primary and secondary school places in England, including forecasts of pupil numbers by planning area.

[Benchmarking financial benchmarking data](#) is available for both academy and maintained schools. This can provide useful information about staffing numbers and average costs, giving a comparison with similar schools.

When deciding whether to join a multi-academy trust, schools may want to consider how the culture and ethos of the incoming trust fits with that of the school. It is also important to review the existing scheme of delegation of the importing trust.

Before taking a school into a trust, potential importing trusts may decide they wish to take the work to a more detailed stage, dependent on the risks and issues found at Stage 1 and the complexity of the project overall. In most cases where Stage 1 due diligence means the trust is considering taking the school, more detailed Stage 2 due diligence will be necessary.

Annex 1 provides a suggested [stage 1 due diligence template](#) to use for this stage.

### 5.2 Stage 2 due diligence

Stage 2 due diligence is an opportunity to gather detailed information about the issues facing the school and to develop plans to address these issues. It is important that Stage 2 due diligence identifies solutions to issues and the associated risks, enabling a fully informed decision as to whether to take the school into the trust.

Although auditors can have a useful part to play in this process, it is important that representatives of the trust speak to key personnel in the school to understand the issues they face and ensure that they can work together. Carrying out your own due diligence saves money and ensures that you get a full understanding of the information.

In financial terms, it is important to understand the detail behind the figures through conversations with the accounting officer, chair of trustees and the school's finance team. Use of open questions will allow information to be gathered that may help explain the process that has led to the current situation.

Areas that should be considered as part of Stage 2 due diligence include, but are not limited to:

- leadership and governance – skills, experience and abilities, including board meeting minutes
- staffing – structure, job descriptions to understand roles, comparison with similar schools, HR contracts, local agreements and policies
- educational provision – detailed information including analysis of trends and analysis of effectiveness of school improvement strategies
- curriculum design and staffing of classes.
- staff:pupil ratios and efficient deployment of staff
- room usage analysis
- numbers in different year groups and future pupil number expectations
- key management software
- any specialist provision sited within the school
- audit and management letter information to include financial, governance, health and safety audits and 'near miss' reports
- safeguarding, fraud or financial irregularity and complaints information
- pupil number forecasts and historical trends
- finances and historic and future budget forecasts including
  - income and expenditure
  - metrics such as staff expenditure as a percentage of total income and contact ratio
  - basis of funding and comparisons with similar schools
- LGPS pension costs – it may be useful to contact an actuary for advice
- staffing information, to include rates of staff absenteeism (including those on long term sick, and those who have put in a claim to retire early on ill health), how much is spent on agency staff, details of dismissals, disciplinarys and grievances
- current contracts and end dates: including suppliers, leases, consultants, insurance and potential contingent liabilities. It is important to understand early termination costs and to check with auditors for any operating leases, that may now be classed as finance leases with the changes in guidance under FRS102
- land and buildings – historic and forecast costs, condition survey data and health and safety, any PFI or other contracts
- understanding the current insurance policy or risk protection cover for known or as yet unknown claims such as public liability, employers' liability, governors' and officers' liability, professional indemnity, fidelity guarantee, on a claims made or claims occurring basis

Through this process it should be possible to build up a picture of the issues that the school faces, outline solutions and identify resource needs. This will allow the trust to understand how the school will fit into the incoming trust; the strengths it will bring, the support it will need, how this will be provided and the potential impact on other schools in the trust.

At the end of Stage 2 due diligence there is a decision point, where the trust board will consider all information and analysis presented in the due diligence report and make a decision on whether the school should join the trust. This decision will take account of all the information gathered and the costs and risks associated with solutions to any issues that have been identified.

Under the TUPE regulations, employees of the outgoing school automatically become employees of the incoming trust. There is a legal obligation on the outgoing Trust or school to provide information to the incoming Trust when there is a TUPE transfer. Both parties will need to seek their own legal and HR advice on this matter to ensure they are fulfilling their legal obligations.

## 6. School premises regulations

Schools and trusts should refer to the School Premises Regulations 2012 and Part 5 of the Independent School Standards Regulations 2014. These regulations cover toilet and washing facilities, health, safety and welfare, acoustics, lighting, water supply and the provision of outdoor space.

The [standards for school premises](#) guidance helps responsible bodies to understand their obligations under both sets of regulations.

Understanding the necessary [health and safety requirements](#) is also a vital step.

## 7. School buildings condition

Responsible bodies need to ensure that school buildings are:

- safe – including fire safety
- weatherproof
- have sufficient space, heating, lighting and ventilation

Proposed incoming trusts should commission a detailed survey to understand the condition of the school buildings and where work is required.

The existing responsible body should resolve any health and safety issues prior to the transfer of the school to the new sponsor.

Taking on a school increases the importance of taking a strategic approach in planning and managing the overall estate and associated resources. Schools may find it helpful to refer to the [good estate management for schools guide](#) and the [self-assessment tools and checklists](#).

An assessment of energy consumption can sometimes be a useful indicator of building condition and might indicate poor insulation or other issues. This tool can be used to compare the energy consumption between schools.

You may also want to refer to the [asbestos management assurance process \(AMAP\) user guide](#). All responsible bodies are expected to complete the AMAP via the online portal. Additional guidance on managing asbestos can be found here.

### 7.1 Building condition surveys

School condition information was made available via the Condition Data Collection Programme (CDC) between March 2018 and September 2019. [Condition Data Collection Programme 2 \(CDC2\)](#) is now underway to collect information from 2021 to 2026.

These programmes gather high level, non-granular, visual condition data to compare relative need across the education estate and better inform capital funding allocations by the department. The CDC programmes are not intended to replace locally conducted surveys, which were recognised as more detailed and covered aspects the CDC was never designed to capture issues such as structural, suitability or compliance assessments.

Annex 2 provides a [land and buildings due diligence checklist](#) to use.

## 8. Further information

Many organisations provide guidance on how to carry out due diligence. Examples are:

- Academy Ambassadors [Due Diligence Checklist](#)
- ISBL - [Due Diligence \(MATs\)](#)
- ASCL - [Due Diligence and Risk Management](#)
- NGA - Staying in Control of your School's Destiny: joining a multi-academy trust
- NAHT - [Joint guidance for schools considering academy conversion](#)

You can also read information about [academy transfers](#) and related finances and liabilities.

This guide was developed in partnership with the sector.

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