



Department
for Education

Free schools

**Pre-opening proposer group guidance
for: mainstream, special, alternative
provision and 16-19 free schools**

September 2014

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1. Introduction

Free schools programme: the pre-opening phase

1.1. If the Secretary of State for Education has agreed your free school application, then you will enter the 'pre-opening' phase. This is the implementation period between the approval of your application and when your free school opens.

1.2. We have produced this guidance to help you navigate the pre-opening phase and to open your school successfully. It contains information and supporting materials needed to complete the critical tasks required to open a successful free school.

1.3. We have reviewed the previous guidance and reflected the feedback we have received from proposer groups in this version.

1.4. Setting up your school will be challenging and will require commitment and determination from all members of your group, but it will also be rewarding, especially when you welcome the first pupils to your new school.

1.5. Free schools have more autonomy than local authority maintained schools and we encourage you to make full use of the freedoms and flexibilities available to secure excellent educational standards in your school.

1.6. There are a number of things to think about straight away to get your project up and running; these are set out in the section '[Managing your project](#)'.

Working with the department

1.7. During pre-opening you will be assigned a lead contact in the department's Free Schools Group (FSG). The lead contact's main role is to act as facilitator working with the proposers to successfully open the school and to act for the department to ensure that all the legal requirements are met and the project remains faithful to the aims of the free school programme.

1.8. Your lead contact will set up a kick-off meeting and schedule further meetings as necessary. These meetings will be used to discuss progress on your project. This is explained in more detail in the [Who does what? - roles & responsibilities](#) section.

1.9. You will receive specialised support to help you secure your site and buildings for your free school (this will be covered in more detail in the [Site and buildings](#) section). Some projects will receive additional educational support, depending on the needs of the project. This is covered in the [staffing, education plans and policies](#) section of this guidance.

How to use this guide

1.10. This document includes more detailed guidance on each of the key tasks you will need to undertake, including: an explanation of the task and why it is important, including

any legal requirements; the main activities required to complete each task; how the department will work with you; and a checklist confirming what you need to do and by when.

1.11. Please note that unlike previous years we will not be adhering rigidly to a pre-determined timetable of checkpoint meetings. Instead, your lead contact will discuss and agree with you when meetings should be scheduled depending on the progress of the project and the experience of your group.

1.12. Unlike previous years where most of the tasks were linked to a pre-determined checkpoint cycle, we have introduced phases during which specific activities should happen. The phases are based on the opening date of your school rather than when the project entered the pre-opening process.

1.13. There are 5 phases in pre-opening, which act as a countdown to when the schools opens. An explanation of each phase is shown below:

- Phase 1: 12 months or more before the school opens
- Phase 2: 8-11 months before the school opens
- Phase 3: 5-7 months before the school opens
- Phase 4: 3-4 months before the school opens
- Phase 5: 2 months or less before the school opens

1.14. Each phase includes a set of tasks that should be completed. Further details are shown in the [phases timetable](#) at the end of this document. We have also included a [project task checklist](#), which provides more detailed information on the tasks to be completed.

1.15. The completion of these tasks is critical to ensuring your school will open successfully. Ministers will defer or cancel a project if they see a genuine risk of a school not opening on time, not recruiting enough pupils to be financially viable, evidence of poor leadership and/or governance or not delivering a good standard of education.

1.16. You may have been set specific conditions that need to be met in order for your project to progress successfully through the pre-opening phase. Additional conditions may also be set during pre-opening. Any project specific deadlines set for these conditions to be satisfied will supersede the dates in this guidance.

A note on terminology

1.17. Every free school is run by an academy trust: a charitable company limited by guarantee. Trusts are owned by their members, who appoint the board of trustees. Trustees run the school and act as the academy trust's directors and governors.

1.18. In every academy trust, the trustees are also the governors and the company directors. The department's preferred term is 'trustee' which is used throughout this document.

Regional Schools Commissioners

1.19. As the number of academies and free schools grows, we have considered how the system should respond. Within government and the education sector there is a growing consensus that decisions about the academy school system – including free schools – should be taken closer to the ground, and that education leaders should have a stronger influence on those decisions. We think the best people to do this are outstanding leaders and heads in each region. Local heads know their areas best and know what is right for academies and free schools locally.

1.20. With that in mind, eight Regional Schools Commissioners (RSCs) have been appointed across eight regions of the country (see table below). They started work in September 2014. The RSCs will be advised by a board of around six headteachers of outstanding academies or experienced educational leaders, elected to the position by their peers. The RSCs will perform functions on behalf of the Secretary of State, within an agreed national framework. Information on RSCs can be found on GOV.UK.

1.21. RSCs' general responsibilities include:

- monitoring the performance of the academies in their area
- taking action when an academy is underperforming
- deciding on the creation of new academies
- make recommendations to ministers about free school applications
- encouraging organisations to become academy sponsors
- approving changes to open academies, including:
 - changes to age ranges
 - mergers between academies
 - changes to multi-academy trust arrangements

1.22. The key responsibilities in relation to free schools, UTCs and studio schools are advising on (and from June 2015 deciding) which free school applications (including mainstream, 16 to 19, special and alternative provision) to approve; advising on (and from March 2015 deciding) whether to cancel, defer or enter into funding agreements with free school projects; and tackling educational underperformance in open free schools, UTCs and studio schools in advance of their first Ofsted inspection.

1.23. From September 2014 to March 2015, RSCs will make recommendations to ministers about actions to take on free school projects at the pre-opening stage, with ministers making the final decisions. RSCs can also provide views on actions to take on UTC and studio school projects in the pre-opening phase; ministers will however make the final decisions.

1.24. From March 2015 onwards, RSCs will make decisions on free schools in the pre-opening stage, and ministers will not normally be directly involved. For UTC and studio schools in pre-opening, RSCs can provide a view but do not have a formal role in the process; ministers will continue to make the final decisions.

RSCs and RSC regions

More information about which areas are covered by the regions is available on GOV.UK.

Regional Schools Commissioner	Region
Janet Renou	The North
Jenny Bexon-Smith	East Midlands & Humber
Dr Tim Coulson	North East London & East of England
Dominic Herrington	South London & South East
Martin Post	North West London & South Central
Sir David Carter	South West
Pank Patel	West Midlands
Paul Smith	Lancashire & West Yorkshire

2. Managing your project

2.1. It is vital that your project benefits, from the very beginning, from good leadership, strong capacity and capability, sound governance and a robust project plan.

2.2. You will also need to put in place quickly, and act on, an effective marketing strategy to engage with parents, the community and key stakeholders. Effective marketing will be vital to recruiting pupils.

Things to think about early on

Capacity and capability

2.3. You will need to consider the capacity and capability within your proposer group and governance structure to undertake all the tasks required. You will have provided some details already in your application, but as you enter pre-opening you should as a group challenge yourselves to ensure you have the skills, experience and time to complete all the tasks needed to open a successful free school. You will be asked to supply information on this to the department.

2.4. You must have access to appropriate educational and financial expertise, either within your group or externally, but you are likely to need people with other skills and expertise. You will receive a project development grant, which may be used to buy in additional expertise. There is more information about the [funding](#) you will receive in section 6.

Project planning and management

2.5. It is critical that you put in place robust planning and project management arrangements immediately because the timetable for opening a free school is very demanding.

2.6. You will want a named person responsible for managing your project, bringing together the various strands of activity, tracking progress and managing risks. You may use the project development grant to buy in project management support. More information about the [procurement of additional project management support](#) is provided in section 3.

Good governance

2.7. You will need to put in place sufficiently strong governance arrangements to manage your project through its pre-opening phase and to manage the school, once it opens. Your trustees will take the lead in both phases, so ensure you recruit trustees who are committed and have the experience and skills to drive the project, ensure the proper running of the company (the trust) and to hold the school's leadership to account.

2.8. Your governance structure is important: you will need to ensure that trustees' roles and lines of accountability are clear, and that every trustee carries out their responsibilities unimpeded by conflicts of interest.

2.9. The number of trustees may vary according to the nature of your free school, but we would recommend avoiding large boards of trustees -as a guide, more than 12 trustees - because large groups can find it harder to make decisions quickly and effectively. More information on developing strong [governance](#) arrangements for your school is provided in section 4.

Marketing and stakeholder engagement

2.10. Educational and financial viability depends on recruiting enough pupils, so a strong marketing plan is essential. You will need to keep pupils, parents, the community and key stakeholders up to date on the progress of your project, including reaching out to new parents and keeping in touch with those who have already expressed an interest. You will find guidance on [marketing](#) in section 8.

- Before opening your school, your academy trust will be required by law to consult publicly on whether to enter into a funding agreement with the Secretary of State, to open your proposed free school. The statutory consultation is explained in more detail at section 10.

Links to further information

View the [Table 3 Managing your project: checklist of activities](#)

3. Procurement and additional support

Purchasing additional support and services

3.1. Free school trusts are classed as public bodies and must comply with public procurement regulations. It is important that you understand the requirements when you are planning any purchase. Essentially, the rules are about using a fair and open procurement process to help ensure that you achieve the best outcomes for your free school and best value for money.

Summary of the key tasks

3.2. You will need to make sure that you understand the rules and regulations on governing public spending and decide early on how you will make any spending decisions. As a general guide, the higher the value of the purchase and the more public money you're spending, the more regard you should have to the procurement rules.

3.3. It is a good idea to set out the trust's approach to procurement within your financial management policy. This means thinking about how you will approve and review your expenditure; and how any financial powers will be delegated so that it is clear who is responsible for what.

3.4. You will need to be clear about how best to use your project development grant. You should review your group's capacity and capability to decide what you can deliver for no cost; and to estimate the total value of what you need to buy. Remember that value for money is not always about the lowest price but is about getting the right balance between quality and cost. Think about how you will measure both of these when you specify and evaluate your purchase. You are spending public money and need to be able to show that you are using it well. It is always useful to ask yourself if your procurement decisions can be satisfactorily defended in public. There is more detail on typical areas of project expenditure in section 6 [funding](#).

3.5. Having a good range of expertise in your group can help you to decide when you need to buy in support - what you can do for yourselves at no cost and when you will need to buy in support, because your capacity and/or capability is likely to be stretched. It will also help you to negotiate and push back on costs to get a better deal.

3.6. Good procurement decisions will help you get the right support and achieve value for money. Conversely, if you don't follow a fair and transparent process and apply criteria consistently, you are less likely to identify the best proposals from potential suppliers. Poor procurement decisions risk wasting time and money and slowing down progress. They also risk reputational damage if potential suppliers think you are not playing fair, and if people think you are not using public money properly. If you have not followed the requirements of public procurement law you could be open to legal challenges from suppliers. If challenges are successful, this can lead to contracts being

cancelled, competitions having to be re-held and financial penalties incurred (compensation).

Procurement regulations

3.7. All public sector procurement must comply with the Public Procurement Regulations, which incorporate the requirements of the European Procurement Directive. These regulations are designed to safeguard fair competition principles and are legally binding on anyone with responsibility for spending public funds. More information on EU financial limits is provided below from paragraph 3.22, on [open procurement](#).

3.8. Remember, buying in services and/or goods is not just about processes. You need to ensure that you secure the right services at good value for money and use an approach that is proportionate to the estimated value of the contract you plan to let.

3.9. You must manage potential conflicts of interest. When using public money to award contracts you need to demonstrate the highest standards of propriety. In particular, you need to have considered the scope for conflicts of interest, and taken steps to manage them. This means that no members or trustees of the trust should be involved in any decision over awarding a contract if they or any of their relatives, friends or business associates are involved with or employed by any of the companies bidding.

3.10. It also means that if a member or trustee of the trust successfully bids for work, there must be arrangements in place to enable the trust to hold that individual or their company to account for the delivery of the contract.

3.11. When spending money you should also check that your plans comply with your articles of association as these will include specific conditions on who can be employed by the trust or enter into a contract for the supply of goods or services to the trust.

3.12. The Education Funding Agency (EFA) guidance '[Academies Financial Handbook](#)' (paragraph 3.1), sets out a number of rules governing financial transactions using public money.

3.13. If you decide you need to buy in additional support using your project development grant, you have a number of options:

- using an established procurement framework such as the department's Project Management and Educational Services framework - known as the PMES framework;
- open tendering whereby the trust agrees and issues a specification for the required services and appoints a supplier based on an evaluation of the bids received; and
- in-house, whereby the trust has and uses its own employees to deliver specified services on an 'at cost' basis.

3.14. You can use any combination of these options to buy any or all of the additional support and services you need. More detail on each of these options is provided below.

3.15. On 1 September 2014 a revised version of the [Academies Financial Handbook](#) (AFH) came into force. A copy is available on the website, alongside a factsheet detailing each of the revisions. Free schools in pre-opening, as academy trusts, are expected to abide by the principles in the AFH.

3.16. The new handbook has been drafted to be much clearer about our expectations around delivery of services to academies and free schools from anyone with a governing relationship to said school. To summarise:

- All those with a governing relationship, including individual members and trustees and bodies related to them, as well as sponsors and sponsor related bodies, are required to bid for and deliver services to their academies and free schools at cost.
- It has always been the case that open, fair and proportionate procurement processes must be followed whenever outsourcing services from the academy trust - including if sourcing such services from the sponsor.
- The definition of “at cost” has been amended from our previous definition in the tripartite agreement to a full cost definition, to ensure at cost delivery is sustainable for the supplier in the long term.

3.17. As these requirements are now included in the AFH it is the responsibility of the academy trust to ensure that they are met, and that audit trails are kept. The AFH includes a requirement for academy trusts to secure a statement of assurance and open book arrangement with restricted suppliers, but beyond this it is up to the academy trust to decide how best to meet the requirements.

Project Management and Educational Services (PMES) framework

3.18. A framework is an agreement with a list of suppliers that sets out the terms and conditions under which specific purchases can be made from those suppliers throughout the life of the agreement. You can use a framework to buy some or all of the services on offer.

3.19. To select a supplier you will need to run a tender - a mini competition - amongst the suppliers on the framework list. This involves preparing an invitation to tender specifying the work required and issuing it to all the companies on the framework. You must then assess all the bids received and issue a contract award letter. Once you have appointed a supplier, you will be responsible for the on-going contract management and payment processes.

3.20. The department has an established PMES framework which gives you access to a group of suppliers with relevant experience. All the suppliers on the list have been appointed through a competitive process. Selecting a supplier via the PMES framework

can take less than three weeks, which is generally significantly quicker than running a new procurement competition of your own.

3.21. If you use the department's framework, it means that you can only ask the suppliers on the framework to bid for the work on the list of agreed services. Detailed guidance on [how to use the department's PMES framework](#) and a list of the agreed services is available on the gov.uk website.

Open procurement

3.22. Under this option you can invite any third-party supplier, including those on the department's PMES framework, to bid for your work by tendering. You will need to specify what it is you want to buy, and what criteria you will use to assess the tenders.

3.23. If a member of the applicant group wants to bid for any work the trust must make sure that it complies with its articles of association and follows the guidance in the Academies Financial Handbook. The trust will also need to ensure that it has put in place robust arrangements to manage any potential conflicts of interest. More information on procurement regulations is available from paragraph 3.7.

3.24. The procurement approach you use should be proportionate to the estimated value of the contract you plan to let. The greater the value, the more you need to demonstrate to all potential bidders that the competition is open and fair. Your trust will need to decide the approach it will take at different contract values.

3.25. It is up to the trust to decide its procurement thresholds but typical values might be:

- Low value - below £10,000
- Medium - between £10,000 and £40,000
- High - over £40,000 but below the EU threshold

3.26. At lower values the procurement process could be very simple - such as getting two or three telephone quotes to help you check that you are getting a fair market rate. We provide some further [guidance](#) on low-value procurement on our website which sets out what you need to think about when writing a statement of requirement. This need not be a complicated document: a paragraph might suffice.

3.27. Not every purchase will require a competitive process. For example, if you are advertising in the local press, you may have only one option. In these cases the expectation is that the trust will negotiate the best deal that it can within the market and keep a record of its spending decisions.

3.28. More detailed guidance is given in the [procurement advice](#) section available on gov.uk.

3.29. EU limits: under the EU Directive, there are set financial limits which apply to all public sector procurement across the European Union. This means that where the value

of a specific procurement is likely to go over the thresholds for goods, services or works, the procurement process has to comply with the EU Directive.

3.30. The current thresholds (revised January 2012) are: goods or services - £173,934; building works - £4,348,350. You cannot artificially 'split' contracts in an attempt to avoid these rules. It is unlikely that many purchases during the pre-opening phase will exceed the EU thresholds but should you need it, more information and guidance on the process is available on gov.uk: [procurement advice](#).

In-house delivery

3.31. In-house delivery is where the trust uses its own employees to deliver specified services, using the project development grant to cover the employment costs of the staff involved. This arrangement can include staff brought in through a secondment or a fixed-term contract of employment, as long as they are not appointed as a way of circumventing public procurement rules.

3.32. In choosing this option the trust needs to be sure that it has the experience and capacity in place to undertake these tasks and that the services it provides through the in-house route and the costs quoted offer good value for money.

3.33. Where a trust uses its own employees, the salary levels must be set at reasonable levels that are appropriate to the skills, qualifications and experience of the jobholder, and are in line with what similar employees in similar jobs would be paid in the local area. Employees may also receive reasonable actual costs for their incidental travel expenses and (if required) accommodation and essential subsistence where they need to travel to fulfil their duties for the trust. Remember that the trust will also have to budget for national insurance, pension, essential training and other directly employee-related costs. Salary levels for employees should normally be significantly lower than the day rates charged by consultants and other contractors. A definition of 'at cost' is included in your project development grant letter.

3.34. It is up to you as the trust to ensure you comply with existing legislation in respect of employment and have the appropriate employment contracts in place. Where a secondment is put in place, you should ensure that there is agreement on the services that will be delivered. HMRC provides [guidance](#) on its website.

How we will work with you

3.35. Trusts are accountable for their decisions and expenditure. If you are unable to resolve your procurement question using the toolkits and guidance provided, your lead contact should be able to help.

3.36. Your lead contact will monitor the progress of the project and check that expenditure returns are received and appropriate.

Other helpful sources of information

Support from open free schools

3.37. You may find that working with an existing free school is a good way to access some of the skills and expertise you need. Using your project development grant to cover the backfill expenses of any school you work with can be an appropriate use of your funding. Details of the open free schools that are interested in working with new groups, together with the type of skills and expertise they have to offer can be found on the NSN Service Provider Directory. You will need to log into your NSN account at the top of the page to access the full details. If you do not have an [NSN account](#) you can sign up for one.

Support from other organisations

3.38. There are a range of other organisations that are willing to provide paid or unpaid support to free schools. For example, the Government Procurement Service (GPS) offers a range of support on procurement to help free schools during pre-opening and post-opening stages. You can find information on some of these organisations and how to contact them on the following page: [Free Schools: Information and resources](#).

3.39. Please note that neither NSN nor the department endorse any particular provider of services.

Links to further information

View the [Table 4 Procurement and additional support: checklist of activities](#)

- Academies Financial Handbook
- PMES framework
- Low to medium-value quotes - schools
- Procurement essentials guide
- HMRC guidance on employing staff
- NSN Service Provider Directory (NSN account required)
- Information and resources available to free schools

4. Governance

Good governance

4.1. You need to put in place strong governance arrangements during pre-opening, to deliver your school and ensure your trustees are ready to manage your free school effectively once it opens.

4.2. Every free school is run by an academy trust: a charitable company limited by guarantee. Trusts are owned by their members, who appoint the trustees. Trustees run the school and act as the academy trust's directors and governors.

4.3. In every academy trust, the trustees are also the governors and the company directors. To avoid confusion, the preferred terminology we use is 'trustee'.

4.4. Members are akin to shareholders in a company. They have a role in ensuring the governance arrangements of a trust, as detailed in the trust's articles of association, are robust and fit for purpose. Trusts must be established with at least 3 members, though it should be noted that trusts can have more should they choose to. The department would suggest trusts consider establishing themselves with at least five members to ensure that the trust has enough members to take decisions via special resolution (75% of members agree) without requiring unanimity while minimising circumstances in which a split membership prevents decisions being taken by ordinary resolution (at least 51% of the members are in favour).

4.5. Trustees are responsible for setting the strategic priorities for the school, holding the senior leadership team to account for the school's educational performance and improvement, and running the trust properly. They should not get involved in the day to day running of the school. This is the principal designate's role.

4.6. The role requires commitment as well as the right experience and skills.

4.7. The number of trustees you need should be determined by the experience and skills needed to run your particular free school. Large boards of trustees - as a guide, more than 12 trustees - should be avoided because large groups can find it harder to make decisions quickly and effectively.

4.8. Trustees' roles and lines of accountability must be clear, and trusts must put in place arrangements to ensure members and trustees avoid conflicts of interest. Every company member and trustee will need to submit a Section 1 form and apply for an enhanced Disclosure and Barring Service (DBS) check to provide assurance on individual suitability. There is more information about [due diligence](#) in section 5.

4.9. While individuals who are members can also be trustees, retaining some distinction between the two layers ensures there are members independent of the trustees who can provide oversight and challenge to the trustees to ensure they are effectively delivering their core functions. This is especially important in multi-academy trusts in which trustees are responsible for a number of academies.

Summary of the key tasks

Making sure you have established your academy trust properly

4.10. The academy trust will be the signatory to the funding agreement, and the legal owner of the school's site and other assets. Setting up your academy trust allows you to open a company bank account, into which the department will pay your pre-opening grant (see section 6 on [funding](#)). You should have set up your trust before submitting your application.

4.11. The Articles of Association describe your trust's constitution and establish the framework of your governance arrangements. The department's model articles have been designed to follow best practice in corporate, charitable and school governance. This is why we expect you to use our model articles to establish your academy trust, or to move from single to multi-academy arrangements, if your group is opening a second academy.

4.12. Groups moving to the department's model multi-academy articles will also be expected to move to the department's new model master and supplementary funding agreements when the time comes to sign the funding agreement for their new free school.

4.13. The model articles are flexible enough to accommodate most governance models adopted by free school proposers. The line-by-line guide to the articles confirms the flexibilities¹ built into the articles, where proposers can make amendments without seeking permission from the department. We do not expect to negotiate further amendments with proposers, beyond those approved by the guide. Your lead contact will need to see your articles and be satisfied that they are in line with our model before recommending that ministers enter into a funding agreement to open your free school.

4.14. Your lead contact will ask to see a governance plan to examine structure, see pen portraits of governors recruited and look at any skills gaps and vacancies. They will ask you throughout the pre-opening process how trustees are managing the transition from pre to post- opening.

Size of your board of trustees

4.15. Between six and twelve high-calibre trustees ought to be sufficient to manage your trust effectively. Any specialist knowledge can be provided as and when required by committees or advisory bodies, or other experts such as the clerk to the trustees or the trust's legal advisers.

¹ For example, to clarify the powers of a sponsor to appoint trustees.

4.16. You will have indicated the size of your board of trustees in your articles. They require you to specify: how many trustees will be appointed by the members; how many additional trustees the board of trustees will be able to appoint themselves using the co-opted trustee provisions; that you have or will appoint a minimum of two parent trustees, plus the principal designate and any other type of trustee.

4.17. You should expect your lead contact to challenge you if the number of trustees set out in your articles is greater than twelve. Your lead contact will want to be assured that any larger body is justified, according to the likely demands of running your free school. They may suggest that you ask some individuals to stand down if it is not clear that they will bring essential skills to the board of trustees, or if they judge the size of the group to be unwieldy.

4.18. The model multi-academy trust articles also require the appointment of two parent trustees (referred to in the model articles as parent directors) unless a local governing body with elected parent representatives is created for each academy. In establishing a local governing body you should ask yourself the same questions about size, skills and structures as you would when setting up a board of trustees for a single academy trust.

Ensuring you are recruiting the right people as trustees

4.19. You need to ensure that the people you recruit as trustees understand the requirements of the role and have the commitment, experience and skills to be effective. As a free school trustee, they will need to:

- use attainment and other data (in particular the Ofsted [dashboard](#) and [RAISE](#) online) to assess the school's progress, strengths and weaknesses.
- build a productive and supportive relationship with the principal and senior leadership team, and have the confidence to hold them to account for the school's performance. Depending on when trustees are appointed they may also be responsible for selecting and appointing the free school's first principal designate.
- be independent of mind, with the confidence and experience to drive through change, for example in making the case for, and helping to embed, academy freedoms on the curriculum and the school day.
- use financial and workforce data to inform decision-making about the trust's spending commitments, to ensure appropriate and effective use of public money. Recruiting at least one trustee who holds an accountancy qualification is recommended.
- maintain the highest professional standards as a trustee, exemplifying the [seven principles of public life](#) as set out by the Nolan Committee.

4.20. These attributes will be particularly important for the person you recruit as your chair of trustees. The chair's relationships with the principal and the trust members are

key to effective accountability between the trustees and the school, and between the trust members and the board of trustees. The department and National Governors Association guidance 'Leading governors: the role of the chair of governors in schools and academies' will provide a useful guide to the skills you need to look for in a chair, and help them settle into the role, on appointment. You can find this guide via the National Archive.

4.21. Parent trustees are elected by other parents, not the trust², but they take on the same responsibilities as every other trustee so it is vital that you do what you can to ensure that candidates understand the role and have the necessary skills and commitment (the term of office is four years). This will help to avoid disruption caused by parents (or for that matter any other trustee) stepping down early because they had not appreciated the demands of the role. Although you can also specify in your articles any other types of trustee who will join the board of trustees, such as staff or community trustees, you should take care to avoid creating an unwieldy board of trustees.

4.22. Most free school proposers dedicate some of their pre-opening grant to trustee training. We strongly recommend that you follow suit. You will want to consider signing your chair of trustees up to the [leadership development programme](#) for new chairs, run by the National College for Teaching and Leadership. The programme is delivered by licensed providers in every region, with enrolment on a termly basis and courses taking around a year to complete. It can, therefore, be started by a new chair during pre-opening. The cost of the course is £399 per person.

Finding trustees

4.23. SGOSS (formerly known as the school governors' one-stop-shop) helps schools find governors (trustees) in their area, including volunteers from Barclays Bank. The bank has made a commitment to provide free leadership and business skills to support free schools and academies, including by encouraging their staff to volunteer as free school trustees. You can register with [SGOSS](#) and read more information on the [Barclays programmes](#).

4.24. However, when you recruit your board of trustees you should aim to have recruited a capable chair and identified the majority of your trustees at least six months before your school's proposed opening date (i.e. by Easter 2015 for schools planning to open in September 2015). This does not include staff or parent trustees, who you can appoint during the first term post-opening. Your lead contact will challenge you on progress on trustee appointments throughout the pre-opening period and governance will be a key focus at your readiness to open meeting, where the chair will be expected to play a full part in the discussion, alongside the principal.

² Unless too few parents stand for election, in which case the trustees can appoint as many parent trustees as they require to fill the places on the board of trustees.

4.25. You may be tempted to appoint, as trustees, individuals who make a strong contribution to the pre-opening project team. This can be appropriate but only if you are confident that an individual will make a full contribution as a trustee in the longer term, based on the skills and experience outlined above. If not, there are other ways to involve supporters and give people a say over the running of the school, for example as non-trustee members of committees, or on informal working groups reporting to the trustees.

Trustees' commitments, post-opening

4.26. As a guide, trustees have in the past tended to commit between 10 and 20 days each year; three full board of trustees' meetings each year, plus committee meetings, which individual trustees may attend. This picture is changing rapidly though, as academies, free schools and an increasing number of maintained schools reconfigure their governance arrangements, in many cases requiring more frequent meetings of the board of trustees.

4.27. The burden on individual trustees can be lessened through effective use of committees and working groups. They can work on behalf of the trustees to explore specific areas of interest, make recommendations to the board of trustees, or take decisions on the board of trustees' behalf (see below).

The transition from pre- to post-opening

4.28. During pre-opening many trustees take on additional responsibilities as part of the project team, which can mean leading on the development of operational policies. This contribution can be vital and is welcomed, but you must ensure that trustees understand the need to take a more strategic role as the free school moves toward opening.

4.29. Taking a strategic role is not just about handing over plans to the principal designate and senior leaders. A key task for your trustees during pre-opening will be to think about how they will monitor and assess the school's strengths, weaknesses and progress, and how they will support and challenge the principal designate and senior leadership team. The process of defining the trustees' role should be led by your chair, working with other trustees and the principal designate.

4.30. To help your trustees begin to define their role as strategic leaders, we recommend focusing first on the [Ofsted inspection framework](#). Ofsted will use these measures to assess the effectiveness of your board of trustees, so they should be central to your trustees' thinking about their role and priorities. The National Governors Association has published [a list of twenty questions for a governing body to ask itself](#), covering membership and skills, focus and activities. Some questions will be more appropriate as a prompt for review and continuous improvement, once the school opens, but most will be useful in helping you to plan during pre-opening. For more detailed guidance you should consult the department's [Governors' Handbook](#), which describes the role and duties of governors in maintained schools and trustees in academies.

Other appointments

Accounting Officer

4.31. Each free school must designate a named individual as its accounting officer. The individual must be a fit and suitable person for the role. In single free schools this should be the principal. If a free school is joining a multi academy trust it should be the chief executive or executive principal of the multi academy trust.

4.32. The role of the accounting officer includes a personal responsibility to the EFA's accounting officer and to Parliament for the financial resources under the free school's control. The free school's accounting officer must be able to assure the EFA's accounting officer, Parliament and the public of high standards of probity in the management of public funds. This requires the free school's accounting officer to have appropriate oversight, alongside the board of trustees for:

- The establishment, maintenance and monitoring of the free school's internal control arrangements;
- Ensuring the free school's assets and property are under proper control;
- Reducing the risk of fraud or irregularity; and
- Keeping full and accurate accounting records to ensure ongoing viability.
- The free school's accounting officer is also required to sign the following:
- A statement on regularity, propriety and compliance which is included in the free school's audited annual accounts; and
- An annual value for money statement explaining and demonstrating with examples how the free school has secured value for money.

4.33. It is, therefore, very important that the trustees of the free school establish robust internal control arrangements leading to the efficient clearance of these documents.

4.34. More detail on the role of the accounting officer and how this can be discharged can be found on NASBM's website.

Chief finance officer

4.35. Free schools must demonstrate a capacity in their governance and financial management structures to safeguard public funds. An integral element is that free schools must appoint a chief finance officer (CFO) who will act as the trust's finance director, business manager or equivalent, to lead on financial matters. However, in smaller free schools it may not be possible to justify the salary of a CFO. Trustees can elect to have this position filled by employing staff or contractors with relevant skills or knowledge at the appropriate time, provided effective governance and robust financial management is preserved. More detail on the role of the CFO can be found on [NASBM's website](#).

Responsible Officer

4.36. The trustees of a free school are responsible for establishing internal controls that recognises public expectations about governance, financial management and financial probity, and expectations on the stewardship of public funds by the EFA's accounting officer and Parliament. Free schools have a number of options to check that their financial and other controls are operating effectively, one of which includes the appointment of a responsible officer. The responsible officer is a non-employed trustee with an appropriate level of qualifications and/or experience, who neither charges, nor is paid for their work by the free school. The appointment of a responsible officer is not mandatory, but is a frequent way free schools conduct their internal scrutiny checks. More information on the role of the responsible officer can be found in the [Academies Financial Handbook](#).

4.37. You are strongly encouraged to appoint a clerk to the trustees who will administer board of trustees' meetings and ensure that all the necessary legal procedures are followed. Each meeting of the board of trustees must be formally recorded so that it is clear what matters were discussed and what action was approved. There may also need to be formal documents produced and circulated before or after the meeting. All of these duties are performed by the clerk. More information on [the role of the clerk and how to appoint a clerk](#) can be found on the gov.uk website.

4.38. Multi-academy trusts usually appoint a Chief Executive as a trustee of the trust. This is often an experienced principal designate, whose role includes challenging and mentoring other principals, as well as managing the trust's operation. Such individuals are usually referred to as the Executive Principal, rather than Chief Executive.

Structures

4.39. During pre-opening you will need to determine how your board of trustees will be structured. A key consideration will be how to make most effective use of sub-committees and/or advisory bodies (working groups). Boards of trustees are expected to have a finance committee, but can set up other committees covering other areas of business, for example curriculum and attainment.

4.40. Trustees can formally delegate decision-making powers to a committee, in accordance with the trust's articles, allowing it to make decisions on behalf of the board of trustees. Other committees will focus on issues and make recommendations to the trustees. Non-trustees can be co-opted onto committees and can vote on that committee, although the majority of committee members must be trustees. Committees can therefore be a helpful way to bring additional expertise to support the trustees. Your decision on whether to establish a committee should be made solely on the needs of your school and the skills of your trustees. It is also important to remember that the board of trustees retains overall accountability, regardless of what powers it delegates to any committee.

4.41. As an alternative to a standing committee, you could consider setting up an advisory body to offer advice to the trustees on specific issues or to give a voice to a

particular group such as parents or the community. Because of its informal nature it can be easier to stand down an advisory body once an issue has been resolved, avoiding unnecessary demands on people's time. You cannot delegate decision-making powers to an advisory body.

4.42. The department's [National Leaders of Governance](#) (NLG) programme was set up to provide governing bodies in open schools with advice, support and coaching from experienced chairs of governors. The programme is open to free schools in pre-opening, to help proposer groups put in place effective governance arrangements. NLG support is free.

4.43. The gov.uk website provides examples of the challenge and support you can expect to receive from NLG, including helping the chair to understand essential data and build a relationship with the principal, as well as more general advice on embedding effective procedures for the board of trustees and setting priorities. Ideally you will have recruited your chair of trustees before drawing down support from NLG. You should also have a plan for trustee recruitment based on an initial assessment of the skills needed to run your free school, and have given some thought to how your board of trustees will be structured.

4.44. Multi-academy trusts are currently required by their funding agreement to establish an advisory body for each of their academies, which must include two parents. Multi-academy articles confirm they have the option to create a local governing body (for one or all of their academies) to manage some or all of an individual school's affairs. A local governing body is classed as a committee, so the trustees can delegate powers to it. It is common, although not required, for the chair of the local governing body to be made a trustee of the multi-academy trust.

4.45. If you do establish a local governing body, we will expect you to be as rigorous in selecting its members and setting its operating arrangements as you would be in establishing a board of trustees for a single free school. If you choose not to establish a local governing body, you will need to demonstrate that your trust has the capacity to manage your new free school centrally. This might be more challenging if your trust has only run mainstream academies and is setting up a special, alternative provision or 16-19 free school, or where the free school is some distance from your centre of operations, or simply because the volume of work will increase as each new school comes on line.

Conflicts and due diligence

4.46. A conflict of interest can be defined as:

'Any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect their decision making.'

4.47. It is inevitable that conflicts of interest will arise at some time and even the perception of a conflict of interest can damage your trust's reputation. Your priority should be to ensure that your trustees understand their responsibilities for managing public

money, which are set out in detail in the [Academies Financial Handbook](#) and include putting the right mechanisms in place to identify and manage conflicts of interest.

4.48. Conflicts are most likely to arise where trustees or their relatives intend to provide goods or services to the trust, or where a trustee's personal, family or professional relationships will, could, or might be seen to compromise their ability to act solely in the interests of the trust. The latter could be caused by the appointments you make, for example a couple who take the role of chair of trustees and finance director, or where a trustee owns, is employed by or has a personal relationship with, a third party seeking to contract with the trust. Your lead contact will challenge any appointment they feel creates an unacceptably high risk of a conflict for your trust, but the responsibility is yours and we will expect you to ensure that:

- Any individual or organisation represented as a member or trustee of your academy trust, or with influence over the trust through other means, understands that they will only be able to bid for contracts from the trust on an 'at cost' basis. This is in line with the approach taken by the department with approved academy sponsors.
- Any individual or organisation expecting to provide goods or services to the trust has no role in nominating the members or trustees of your academy trust
- Trustees and members comply with the protocols set out at Articles 6, 98 and 99 of the model articles, which ensure that decisions are taken without bias and that individuals who are 'conflicted' take steps to avoid influencing a decision.
- Trustees establish and maintain a register of interests to identify and record potential areas of conflict. The register should be completed and kept up to date by all trustees and any staff with budgetary control, covering them and their family members. This will show that your trust's decisions are being made free from conflict. The register of interests should be a standing item at every meeting of the board of trustees.
- Trustees and members understand the need for all procurement to follow an open and fair competition. The gov.uk website provides guidance on procurement for free schools. The Charity Commission has also produced helpful guidance on identifying and avoiding conflicts of interest.

How we will work with you

4.49. At your first meeting with the department, your lead contact will need to confirm that your trust has been established and that your articles are in line with the department's model. Your lead contact will also check the proposed size of your board of trustees and request the governance structure. They will challenge you on any amendments not covered by the line-by-line guide, or if your proposed board of trustees looks unnecessarily large.

4.50. Your lead contact will ask you to confirm the names of any members and trustees you have already appointed. You are required to advise Companies House within 14 days of appointing a director (your trustees are your directors) and to advise the department within 14 days of any change (appointment or removal) of any trustee or member of the trust. Academy trusts are not regulated by the Charity Commission so you should not seek to register the trust with the Commission or provide them with details of your members and trustees. Your lead contact will challenge you should any concerns arise about an individual's appointment, including where the department has a concern about a potential conflict of interest.

4.51. By the beginning of phase two your lead contact will expect you to have resolved any concerns regarding the constitution or size of your board of trustees. You will have completed an initial trustee skills audit as part of your application and your lead contact will want to see evidence that you have reviewed this as new trustees are appointed and confirmed what gaps remain. They will also want to know what plans you have to recruit and train your trustees to ensure you have sufficient skills and experience in place. They will be particularly keen to understand your plans to recruit a chair. They will also ask for updates on trustee appointments, and for a pen-portrait of each new trustee, setting out their skills and track record. By the end of phase one your lead contact will also expect you to have put in place effective procedures for managing conflicts of interest, including setting up a register of interests.

4.52. Also by the end of phase one your lead contact will expect you to have drawn up plans for how your board of trustees will operate including plans for committees. They will also want to hear how your plans for recruiting a chair and other trustees are progressing.

4.53. Your lead contact will expect you to have recruited the chair of trustees by the end of phase two - who should be working with the principal designate - and have identified or appointed the majority of remaining trustees and support staff (i.e. the clerk, and a responsible officer). As a minimum, you will need to have a workable plan to fill outstanding vacancies.

4.54. You are likely to be considering entering a funding agreement around phase three. In recommending to ministers that they enter into a funding agreement, your lead contact will need to provide an assurance and evidence that your governance arrangements are appropriate and rigorous, and that you have recruited high calibre trustees (or as a minimum, have realistic plans in place to recruit them).

4.55. As the school moves towards opening, your trustees should be working with the principal designate on the board of trustees' key documents and protocols, ahead of the first board of trustees meeting. These will include the school's development and improvement plan and a scheme of delegation (the document that confirms any delegation of spending and other decision-making powers from the board of trustees to committees or employees). Many examples of academies' schemes of delegation are published online, including [this one from the Harris Academy in South Norwood](#).

4.56. Your chair of trustees will be expected to attend the [readiness to open meeting](#), and should be expected to answer questions on the education plans and trustees' priorities in the run-up to and immediately after opening.

Links to further information

View the [Table 5 Governance: checklist of activities](#)

- The role of the chair of governors
- Governors' handbook (will be updated on 11/09/14- check link works)
- Academies Financial Handbook
- Model Articles
- The role of the clerk and how to appoint a clerk
- National Leaders of Governance
- Ofsted dashboard
- RAISE online
- Seven principles of public life
- Leadership development programme
- SGOSS
- Barclay's programmes
- Ofsted inspection framework
- Twenty questions for a governing body to ask itself
- Charity Commission guidance on avoiding conflicts of interest
- Harris Academy scheme of delegation

5. Due diligence

5.1. The department will carry out a number of checks on those applying to establish a free school. These will include due diligence checks, credit checks, Disclosure and Barring Service (DBS, formerly CRB) checks and other checks necessary to ensure only those who are suitable to do so are able to set up and run a free school. There are several distinct actions for members and trustees to take as part of the due diligence process. It is important that groups engage with these requirements early and proactively in the process as failure to do so could result in delays to opening.

Summary of the key tasks

Section I Suitability and Declarations form

5.2. The department's Due Diligence Unit carries out suitability checks on all members and trustees of a company set up to run a free school. Those listed on your free school application will have been checked during the application process. You must, however, notify your lead contact of any changes to the members and trustees of your trust during pre-opening and your EFA link officer after the school has opened. All new members and trustees (and principal designates, when appointed) must complete the [Section I Suitability and Declarations form](#) and send it to the Due Diligence Unit, ensuring that all sections of the form are complete, the declaration page is signed and a passport-sized picture is enclosed. All completed forms should be sent by registered post to Due Diligence Unit, Department for Education, 4th Floor, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

5.3. New trustees will also need to register their details with Companies House by completing an [AP01](#) form (this is a legal requirement under the Companies Act 2006).

Disclosure and Barring Service (DBS) checks

5.4. As part of the checks to ensure that only suitable people are involved in establishing your free school, all members and trustees of the trust must apply for an enhanced DBS check. The only exception to this requirement is if DBS checks have been commissioned within the previous two calendar years. Please indicate that this is the case and submit a scan of your last check to the email address below. To avoid delays to your project later on, please complete all DBS checks as soon as possible after you enter the pre-opening stage by taking the following steps:

5.5. There are two stages and **two different forms** involved in commissioning and providing to the department your enhanced DBS certificate: 1) a Veri-fy form and 2) a DBS form. Both of these forms need to be submitted to the department together as one form cannot be processed without the other. Please follow the checklist below to ensure that your DBS check is submitted correctly for processing - delays on this can hold up your funding agreement.

Instructions for completing the Veri-fy form

5.6. You need to complete the Veri-fy form to have your identity verified. Once completed, this form can be signed by anyone who can sign a passport or you have the option of bringing the completed Veri-fy form into your lead contact to sign. Please click this [link to Veri-fy form](#). The list of who can sign the Veri-fy form is included below.

5.7. Once completed and signed please retain your Veri-fy form until your DBS form is complete to enable you to submit both forms at the same time

Instructions for completing the DBS form

5.8. Contact DBS by ringing 0870 9090844 and ask for an Enhanced Disclosure application form for registered body "Department for Education" - registered body reference number: 20881800002. Make it very clear you are a volunteer so you won't be charged - unless you are a paid worker in which case a cheque for £44 will need to be made payable to the DBS.

5.9. Once the DBS form has arrived, please complete the form using black ink only and ensuring all relevant boxes are completed.

5.10. Please ensure that the back page of this form is left blank as this is for the Department to complete as the Registered Body. If this section is filled out it will delay the application and in some instances will result in the application having to be re-done.

Submitting both completed forms to the department

5.11. Send **both** the Veri-fy form and the DBS form to the Due Diligence Unit, Department for Education, 4th Floor Sanctuary Buildings, Great Smith Street, London, SW1P 3BT.

5.12. The Due Diligence Unit will then send both forms to DBS to formally commission the Enhanced DBS check. DBS will not notify the department of anything that they disclose to the applicant.

5.13. Once the applicant has received their returned DBS certificate, it should then be scanned and emailed to the Due Diligence mailbox (due.diligence@education.gsi.gov.uk) along with the declaration below:

I confirm that the certificate provided is an exact duplicate of that returned to me by the Disclosure and Barring Service (DBS). I understand that any false declaration or alteration of this certificate would be a criminal offence under Section 123 of the Police Act 1997.

Full name:

Date:

Please remember that if you have had a DBS check commissioned within the previous two calendar years you will not need to go through the above process. Please inform your lead contact if this is the case and also send in a scanned copy of your DBS

certificate along with the above declaration to the due.diligence@education.gsi.gov.uk mail box. The DBS check on the Chair of Governors, however, must in all cases be sought through the department and countersigned by the Secretary of State to comply with the Independent Schools Standards.

List of people that can sign a Veri-fy form

- Solicitor
- Barrister
- Magistrate
- Judge
- Police Officer
- Headteacher (not the head of the school for which the check is being undertaken)
- Civil Servant (EO or above)

Free schools undertaking DBS checks on their own staff, such as teachers and support staff, should make their own arrangements. Free schools, like all schools, are responsible for carrying out DBS and barring checks on their employees. More information can be found on the gov.uk website: [DBS checks](#).

Working with the department

5.14. You must inform your lead contact whenever there are any changes in the members and trustees of your trust. You must also ensure that enhanced DBS checks are commissioned for new members and trustees and that they complete the department's Section I suitability and declaration form and return it to the Due Diligence Unit. Once your school is open, you must inform your EFA link officer of any changes to your members and trustees.

Links to further information

View [Table 6 Due diligence: checklist of activities](#)

- Section I Suitability and Declarations form
- Companies House appointment of director form AP01
- Link to Veri-fy form
- Gov.uk website: DBS checks

6. Funding

6.1. The funding you receive is public money, and you will need to be able to demonstrate that the way you use it meets high standards of propriety, is transparent and defensible, and secures good value for money. Your trust will need sound financial procedures, the capacity and capability to handle public money, and good governance arrangements. You must consider the potential conflicts of interest and have arrangements in place to deal with them appropriately. You will want to agree your expenditure profile from the start of the project to the opening of your free school. Your trust will need to develop robust financial plans and controls to make effective use of the project development funding and be sure that the school will be viable and well managed on opening.

6.2. The key elements of this are:

- planning and managing expenditure up to the school's opening - including meeting the terms of the project development grant;
- putting in place robust governance arrangements and accounting procedures to allow the school to manage public funding responsibly once open; and
- developing a financial plan that demonstrates the school's viability on opening within the available funding based on a realistic and evidenced number of pupils, realistic staffing requirements and an up-to-date estimate of expenditure.

Summary of the key tasks

Pre-opening funding: the project development grant (PDG)

6.3. In the run up to opening the department will provide a fixed-rate project development grant (PDG) to help cover essential non-capital costs up to the point at which the school opens. Your trust will need to develop robust financial plans and controls to make effective use of the project development funding. The rate of funding is set out in table 1 below. Your lead contact will issue a grant agreement setting out the terms under which the project development grant will be paid. You must read these terms before signing the agreement and returning it to your lead contact. Your trust will need its own bank account into which the funds can be paid. You cannot use a personal or other bank account. If your school is part of a MAT, their account may be used, but there must be systems to ensure clear separation and accounting of the expenditure and income that relate to each school.

6.4. The grant will normally be paid in four instalments, or nine instalments if the school is opening over a period of longer than one year. The dates and amounts of these payments will be set out in the grant agreement. The payments will be slightly front-loaded to ensure you have flexibility in your cash-flow. Make sure you have planned your

expenditure throughout the year before you start to spend the grant. It is likely that some of the most significant costs, for example employing the largest number of staff, will fall closest to opening.

6.5. You will need to provide regular statements of expenditure throughout the pre-opening stage. A template is provided in the grant agreement. Once you have received your first payment, and in advance of your second, you should provide a budget profile showing full details, month by month, of how you intend to spend your PDG up until the date you open. Thereafter, within 14 days of each subsequent payment, you must provide a statement detailing expenditure made up to the date of the payment. A final statement of expenditure up to the date of the school opening should be provided within four weeks of opening. These statements should be sent to your lead contact.

6.6. Future payments will be delayed or stopped at any time if the terms of the grant are not upheld, for example, by not making timely expenditure returns or through inappropriate use of public funds, or if your project does not make satisfactory progress.

6.7. If your project is cancelled before the school opens, you must not incur any further expenditure and must return any unused project development grant funding, in accordance with the conditions of grant set out in the grant agreement.

6.8. If you have any project development grant funding left over when the school opens, you should roll this over into the school's budget. The level of project development grant has been set based on previous free schools' costs in the pre-opening phase. We would not anticipate that schools will roll substantial amounts into their school's budget beyond any unspent contingency, which is likely to be small. We do not expect schools to assume that they will carry forward any funding into their funding plans for the open school.

6.9. After opening, academies can reclaim VAT on expenditure incurred during the pre-opening stage from HMRC. More information can be found on the [HMRC website](#). You should seek advice from your local tax office on reclaiming VAT once open - the DfE and your lead contact are not able to advise on tax policy. The school can also retain any VAT it recoups from HMRC on project development grant expenditure. (Note: the terms of other grants may differ. For example, schools must return any VAT reclaimed from capital grant expenditure provided by the EFA sites team, in accordance with the terms of that grant from EFA).

Project development grant (PDG) rates

6.10. The amount of PDG you receive will vary depending on whether the trust is opening a secondary, primary, AP etc. Independent schools receive a much smaller allocation, reflecting the fact that they join the programme with much of their staff and other resources in place. Trusts opening a single school in an academic year will receive the full PDG rate for the type of school they are opening. Trusts which have been approved to open more than one school in a given academic year will receive full PDG funding for the first school; however we expect there is scope to realise efficiencies in

expenditure and a reduced amount of PDG funding will therefore be received for each additional school – amounts are shown below. Areas where we might expect to see savings are project management; educational services; administration and office costs.

6.11. Where you are opening multiple schools, the amount of PDG will be determined by the school’s expected opening date, regardless of when the project was approved to pre-opening. The current rates which are payable to projects in the pre-opening stage are set out in the table below.

Type of school	(a) Project development grant funding for first school opening in a given academic year	(b) Project development grant funding for each additional school opening in the same academic year
Primary	£220,000	£150,000
Secondary and all-through	£300,000	£200,000
Special	£220,000	£150,000
AP	£220,000	£150,000
16-19	£250,000	£170,000
Independent converters	£25,000	£25,000

Table 1 Project development grant rates

6.12. The numbers of schools that a Trust is opening in a single academic year will include any schools approved to pre-opening from 2014.

6.13. Trusts which are only opening one school in any given academic year will be funded at the full PDG rate for the type of school which they are opening (see box a above). Where a Trust is opening more than one school in a single academic year, they will receive the full funding for the first school (box a) but will be funded at the reduced rate (box b) for each additional school.

How the Project Development Grant will be allocated

6.14. Where a Trust is opening a number of schools in a single academic year, only one project will receive the higher rate PDG (box a above). All subsequent projects opening in that same academic year will be funded at the lower PDG rate (box b above).

6.15. When deciding the level of PDG payable, any projects that were approved to pre-opening from January 2014 onwards, including those projects which have deferred their opening to the academic year in question, will also be taken into consideration.

6.16. Where there are **no** other schools sponsored by the Trust opening in that same academic year (including deferrals), then the project that provides the highest PDG rate,

as a result of its school type, will be considered the 'first' project and funded at the highest grant rate (box a above). All remaining projects opening in that same academic year will be funded at the lower rate according to their type (box b above).

6.17. Where the Trust has more than one school of a particular 'type' opening in the same academic year, which could attract the higher PDG rate, then the Trust will be asked to choose which school they wish to designate as their higher rate PDG project.

Where a Project defers its year of opening

6.18. Note this only applies to projects which were approved to pre-opening from January 2014 onwards. (Wave 5, 6 or 7 applications). Any projects that were approved before January 2014 and subsequently deferred their year of opening are disregarded when allocating higher or lower rate PDG.

6.19. Upon deferral, the project will retain **the current PDG grant rate** that it is already receiving (although the payment profile will be amended to reflect the longer pre-opening period):

- Where a higher PDG funded project has deferred, any new projects from subsequent applications due to open in the same academic year will be funded at the lower rate, according to their school type.
- Where a lower rate project has deferred the higher grant level will be paid to the highest earning project from a later round (if there are any).

Planning your project development grant budget

6.20. Ensure that all spending is essential to the development of the school during the pre-opening stage and provides good value for money. The department does not expect to provide any other funding to meet pre-opening costs. You should therefore think very carefully about how to allocate your budget before committing to any expenditure.

6.21. The project development grant is intended to cover all revenue costs up to the opening of the school. Capital costs to secure and develop the school's site, and ICT to support the curriculum, are provided by the EFA. Books and other curriculum materials required on opening may be purchased in the month before opening, using an advance of the materials component of the post-opening grant.

6.22. Typically projects will use their project development grant funding to pay for:

- project management (support to coordinate all work leading to the development of the school);
- educational services;
- staff recruitment (including the principal designate);

- salary costs (which often include the principal designate, finance/business manager and administrative support in advance of opening);
- marketing costs;
- consultation costs and open evening costs;
- pre-opening office costs;
- administration of admissions (including applications and appeals);
- trustee induction and support.

6.23. Many projects also use their project development grant to purchase the financial and management information system that the school requires in advance of opening. Where possible, it is good practice to maintain a contingency of about 5% in your initial financial plan to cover unexpected costs. As set out above, if any grant funding is left when the school opens it should be rolled into the school's budget.

6.24. It is up to you to decide how you allocate your project development grant spending. Requirements vary from project to project depending on the local context, the school and the wider resources available to the trust. You may want to look at these [Sample pre-opening budgets](#) for mainstream primary and secondary schools and think about the different needs of your project to develop your own budget. We cannot, of course, guarantee that you can deliver the activities for the figures shown and if some costs are higher you will need to adjust elsewhere. The New Schools Network provides [budgeting tool](#) to help free schools prepare a budget for their school once open.

Accountability

6.25. One person within the trust should have overall responsibility for managing the financial plan and project development grant expenditure. They should be accountable to the trust and the department for ensuring that funding is used properly and the budget is managed well.

6.26. The funding you receive is public money, and you will need to be able to demonstrate that the way you use it meets the highest standards of propriety, and secures good value for money. The principles of good governance described below should apply throughout the project to open the school.

6.27. Information about how the trust can procure additional project support is available in [section 3](#). This provides guidance on the different procurement options when using public money and will help to ensure that your project secures value for money as well as compliance with the relevant regulations. The key thing to remember is that you must use a fair and open process for all levels of procurement. This includes keeping an accurate record on your spending decisions. Before opening, your trust will need to put in place effective systems for managing the public funding that it receives. Putting good

governance arrangements in place at this stage will help develop a strong framework for the school on opening.

Setting up governance and accounting arrangements

6.28. You will need to ensure that the trust's spending choices and decisions are in the school's best interests and are transparent and defensible. Your trust will need sound financial procedures - the capacity to handle public money, and good governance arrangements. You must consider the potential for conflicts of interest and have an agreed policy in place setting out how you will deal with them. Your lead contact will consider the progress made towards developing effective financial governance arrangements for the open school.

6.29. You will need to agree how you will manage payments and any related decisions, such as how you will award contracts. You will also need to retain original copies of all receipts, invoices, contracts and tender documents which the department may review at any time.

6.30. On opening, the school will need to have a robust framework to manage its funding and ensure proper accountability and procedures are maintained. At the pre-opening stage, key tasks to deliver this include:

- setting out the role of the finance director or business manager as a member of the school's senior leadership team and recruiting an appropriate person;
- forming the finance committee of the governing body, agreeing its terms of reference and making sure that the committee's membership includes appropriate financial expertise;
- preparing appropriate auditing arrangements (including the appointment of a responsible officer as set out in the DfE guidance Academies Financial Handbook);
- ratifying the appointment of the accounting officer (normally the principal);
- securing formal governing body approval for the first year's budget; and
- developing policies and manuals covering procurement (including competitive tendering), delegation of responsibilities, financial procedures, internal control (including a split between purchasing, authorising and payment roles) and management of conflicts of interests.

Working with the department

6.31. Your lead contact will send you the project development grant letter shortly after the project proceeds to the pre-opening stage. The lead contact will monitor the progress of the project and check expenditure returns are received and appropriate. They will

challenge projects, where necessary, on their use of project development grant funding, and can arrange for payments to be delayed or stopped where necessary.

6.32. Lead contacts will liaise with colleagues where necessary to assess the school's financial plan before entering into a funding agreement at or around phase 3 and in advance of issuing your indicative funding letter which will set out the level of funding you should expect upon opening.

Developing a viable post opening budget for mainstream schools

6.33. Once the school is open, it will be funded by the EFA. The funding for free schools is set at an equivalent level to funding for all other state-funded schools, after taking account of functions that a free school will have to fulfil for itself rather than relying on a local authority.

6.34. Funding is largely based on a payment for each pupil who attends the school, but the detailed funding methodology may vary over time with changes to the funding of the school system as a whole. Financial, and therefore, educational viability is dependent upon you admitting sufficient pupils.

6.35. The free school financial template is updated each year to reflect the changes in national and local funding rates. When you make your application, therefore, the rates in the template you use may not be the ones for the year in which you will open. You will need to ensure that you refresh your financial plan in the spring before opening when the new rates are available. Your lead contact will keep you updated on any changes. The approval of your application to the pre-opening stage is therefore conditional on you submitting revised financial plans by phase 3 and before entering into a funding agreement when the relevant funding information is available.

6.36. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of pupils become clearer and other costs are more confidently established.

6.37. Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates will ensure staffing structures are affordable and appropriate.

6.38. The assumptions boxes on the plan should be used to set out the basis for any estimates of pupil numbers and pupil characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).

6.39. [Funding guides](#) on the gov.uk website will also contain details of how the post-opening grant - which is provided to new schools as they build up to full capacity - will be calculated.

6.40. Your lead contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and financial governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.

6.41. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan.

Developing a viable post opening budget for special free schools

6.42. Once the school is open, funding will be calculated and paid by the EFA.

6.43. Funding in special free schools is based on:

- funding from the EFA for full-time equivalent places. The fixed per-place funding will be paid for a number of places which will be subject to regular review. The detailed funding methodology may vary over time as changes are made to the school and funding systems.
- per-pupil top-up funding paid by the local authority – top-up funding agreed between the provider and commissioning local authority and paid to the provider directly by the local authority for each individual stated pupil place.
- a per-pupil basis for non-statemented pupils, based on the number of non-statemented pupils on roll. The per-pupil funding level will be based on the local level of funding for non-statemented pupils with SEN in mainstream schools.

6.44. Special free schools also receive national 16-19 formula funding for 16-19 pupils, plus an additional £6,000 for each high-needs pupil aged 16-19 that the local authority places in the free school.

6.45. You will need to ensure that you refresh your financial plan in the spring before opening when the new rates are available. Your lead contact will keep you updated on any changes. The approval of your application to the pre-opening stage is therefore conditional on you submitting revised financial plans by phase 3 and before entering into a funding agreement when the relevant funding information is available.

6.46. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of places needed become clearer and other costs are more confidently established.

6.47. Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates will ensure staffing structures are affordable and appropriate.

6.48. The assumptions boxes on the plan should be used to set out the basis for any estimates of pupil numbers and pupil characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).

6.49. [Funding guides](#) on the gov.uk website will also contain details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.

6.50. Your lead contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and financial governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.

6.51. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan.

Developing a viable post opening budget for alternative provision free schools

6.52. Once the school is open, it will be funded partly by the EFA, and partly by local authorities and others schools commissioning places and services from the free school. Alternative provision (AP) free schools will have been established in response to demand by local authorities and/or local schools. Evidence of this demand was produced to support the establishment of the schools. Local authorities are responsible for ensuring adequate AP facilities are available for pupils in their area who are not at school. Authorities often share this responsibility with their mainstream schools, which use AP for short term placements and preventative work with respect to pupils with behavioural difficulties, as well as longer term placements for excluded pupils.

6.53. Funding in AP free schools is based on:

- funding from the EFA for full-time equivalent places. The fixed per-place funding will be paid for a number of places which will be subject to regular review. The detailed funding methodology may vary over time as changes are made to the school and high needs funding systems. Per-pupil top-up funding paid by the commissioner (local authority or other school or academy) – top-up funding agreed between the provider and commissioner and paid to the provider directly by the commissioner for each individual pupil.
- any other funding received for commissioned services (e.g. outreach work in local schools).

6.54. AP free schools' continuing financial viability depends on both the ongoing support of local authorities and schools/academies, in terms of a commitment to commission placements and services, and their willingness to provide associated funding.

6.55. The approval of your application to the pre-opening stage is conditional on you submitting revised financial plans by phase 3 and before entering into a funding agreement when the relevant funding information is available.

6.56. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of places needed becomes clearer and other costs are more confidently established.

6.57. Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates will ensure staffing structures are affordable and appropriate.

6.58. The assumptions boxes on the plan should be used to set out the basis for any estimates of place numbers and, where relevant, pupil characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).

6.59. Alternative provision free schools also receive national 16-19 formula funding for each 16-19 place, plus an additional £6,000 for each high-needs pupil aged 16-19 that the local authority places in your school. After the first year, funding of 16-19 places will be based on numbers in the previous year.

6.60. [Funding guides](#) on the gov.uk website will also contain details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.

6.61. Your lead contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.

6.62. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan.

Developing a viable post opening budget for 16-19 free schools

6.63. Once the school is open, it will be funded by the EFA. 16- 19 free schools are funded on the basis of the post- 16 national funding formula.

6.64. Funding is largely based on a payment for each student who attends the school, but the detailed funding methodology may vary over time with changes to the funding of

16- 19 provision as a whole. Financial and therefore educational viability is dependent upon you admitting a sufficient number of students.

6.65. The free school financial template is updated each year to reflect the changes in funding rates. When you make your application, therefore, the rates in the template you use may not be the ones for the year in which you will open. You will need to ensure that you refresh your financial plan in the spring before opening when the new rates are available. Your lead contact will keep you updated on any changes. The approval of your application to the pre-opening stage is therefore conditional on you submitting revised financial plans by phase 3 and before entering into a funding agreement when the relevant funding information is available.

6.66. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of pupils become clearer and other costs are more confidently established.

6.67. Further updates should take account of the number of staff required to cater for these students. This may change over time and updates will ensure staffing structures are affordable and appropriate.

6.68. The assumptions boxes on the plan should be used to set out the basis for any estimates of student numbers and student characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).

6.69. [Funding guides](#) on the gov.uk website will also contain details of how post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.

6.70. At about the same time, the EFA will let trusts know if the nature of their offer means that they are eligible for a higher programme weighting. This is unlikely to be the case for many 16- 19 free schools, but may be a possibility for schools offering a curriculum which is particularly expensive to deliver, such as engineering. As a guide, a curriculum made up of A levels (whether primarily arts, sciences or humanities) would not be considered particularly expensive to deliver.

6.71. Your lead contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.

6.72. The department will not enter into a funding agreement to open a school if it is not confident that it has a viable financial plan.

Other helpful sources of information

6.73. The [Academies Financial Handbook](#) sets out the funding arrangements and financial management requirements that your school must follow. You must refer to this handbook alongside your funding agreement for information about the financial systems and controls that your school is required to have in place.

Links to further information

View the [Table 7 Funding checklist](#)

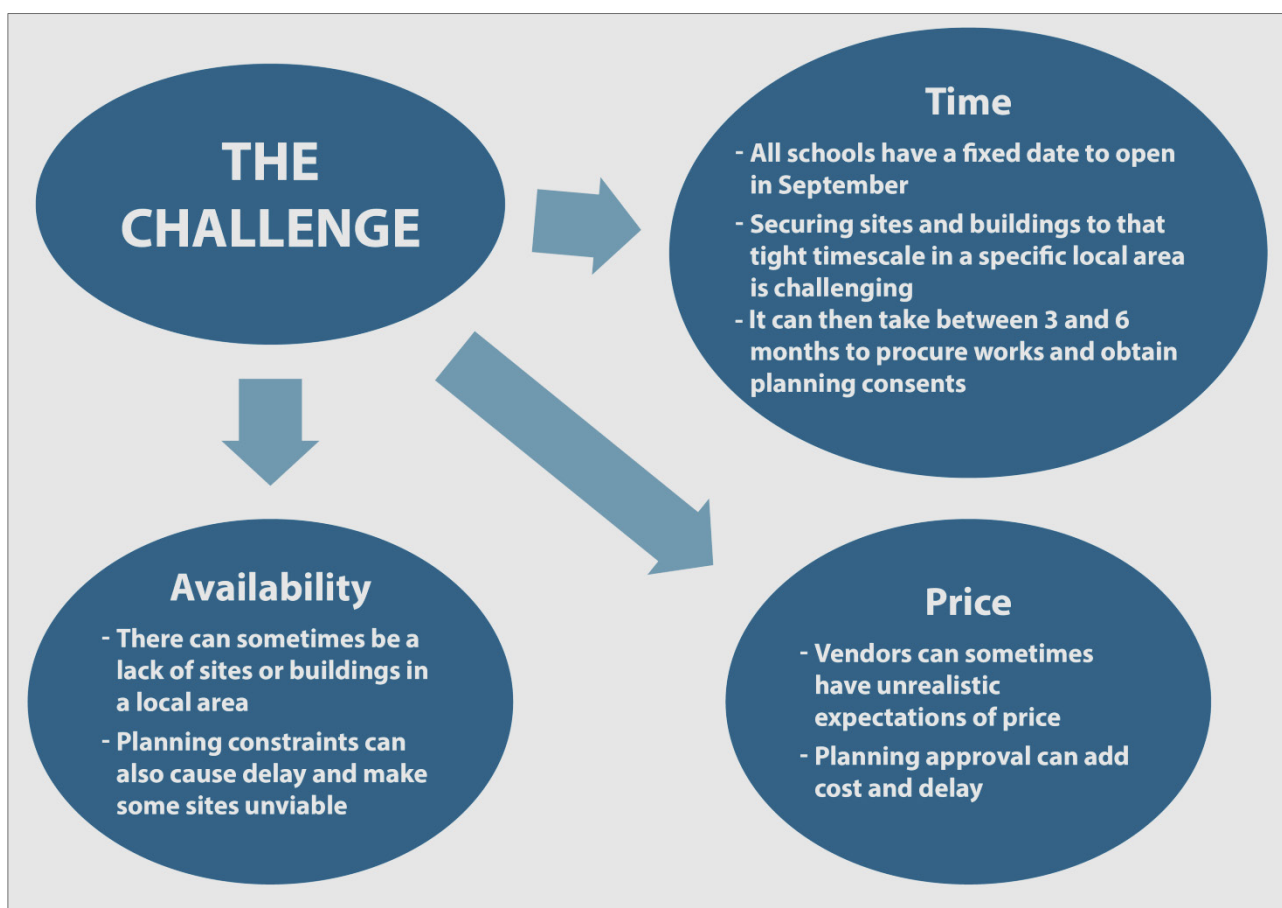
- HMRC website
- NSN budgeting tool
- Academies Financial Handbook
- Funding arrangements for free schools

7. Site and buildings

7.1. The site for your free school is very important. It can also be the most time-consuming, complex and frustrating aspect of your project.

7.2. The earlier a site is secured - i.e. relevant planning permission obtained and building works agreed - the better. Having a secured site can be very useful when marketing your school to prospective parents, pupils and staff.

7.3. The speed at which a site is secured will depend upon your requirements, the availability of local sites that meet those requirements, and the rate of progress in negotiations. Whilst it is important to secure a site that is appropriate for the school, we must also achieve value for money for the public purse.



7.4. The EFA will help you to secure a site and construct the buildings for your school. The EFA is the part of the DfE which provides expertise and technical support to ensure good value for money on capital investment. The EFA project manager and project director will work closely with you and your lead contact throughout the project. The roles and responsibilities of the EFA team are outlined below.

7.5. In addition to those roles an EFA project director oversees a team of project managers to ensure that projects are progressing. They will provide support and guidance to the EFA project manager where required but will not attend regular meetings. Their level of involvement will vary according to the risk and complexity of your

project. They will also ensure that the project manager is adhering to internal processes and will be a point of escalation if issues arise. The majority of EFA project directors will have a few years of experience on free school projects.

EFA team

Project Director

The PD should be referred to by the lead contact as a point of escalation. The PD will have a strategic overview of around 20 projects. They will ensure that the PMs are delivering their individual projects, adhering to internal EFA process and will also assist with the development of ministerial submissions and provide guidance and expertise when required. The Project Manager and Technical Adviser report to this role.

Project Manager

Will be your primary point of contact at the EFA. Your PM will coordinate the rest of the EFA team to ensure all site related activities occur. The PM may then step back post-procurement and handover to the lead Technical Adviser who will manage the project throughout the construction period. Some PMs will continue to manage the project throughout construction where a project is more complex and the PM has the correct experience to manage it effectively. The Property, ICT and Central Technical Advisers and Legal Manager report to this role.

Project Technical Adviser

Will take over the project management role once the procurement process is complete. They will manage the specialist staff required to provide expert services on your project i.e. quantity surveyors, CDM coordinator etc. The Property, ICT and Central Technical Advisers and Legal Manager also report to this role.

Property Adviser

Will carry out site searches. Will negotiate during property acquisitions and coordinate site visits.

ICT Adviser

Will discuss ICT requirements with proposers and agree a suitable solution. Will set an appropriate ICT budget, scope and specification. Provides support on procurement options available to the group.

Legal Manager

Will manage the provision of legal support for the property acquisition including inputting into the site negotiations and instructing the external lawyers through to completion.

Central Technical Adviser

Will conduct site assessments to determine whether the preferred site is viable as well as setting the works budget for the preferred site, inclusive of FFE. Will also select the procurement route most suitable for the project.

Finding a site

7.6. Free schools can be located in a wide variety of premises. They may not look like 'traditional' school buildings, and will not normally require the construction of a completely new building. In most cases, existing premises are refurbished or remodelled, and we provide funding to ensure your new school is functional and complies with all relevant legislation.

7.7. After your proposal is approved, EFA will join your project kick-off meeting with your lead contact to discuss the suitability of the proposed premises and to consider any alternative site solutions. Before this meeting, EFA will have reviewed the suitability and availability of any sites you have proposed in your application, and identified the necessary next steps. Depending on the outcome of our review, we may also have:

- undertaken site searches for, and considered, alternative sites where relevant;
- contacted the relevant local authority about planning designation; and
- considered the availability of government buildings.

7.8. We realise you may already have your heart set on a particular site. Please be aware, however, that it may not be the most feasible one. Common reasons why we often find that to be the case include:

- it may be too small or too big for the number of pupils;
- it may not actually be on the market, or available in the time needed to open your school;
- it may be too expensive to buy, lease or maintain;
- it may require too much work to be affordable;
- it may not have - and we may not be able to get - the appropriate planning consent for a school.

7.9. We would encourage you to try and keep an open mind regarding sites you are willing to consider. Please remember that just because a site doesn't look like a school now it doesn't mean it can't become one.

EFA responsibilities in finding a site

7.10. During the site search stage of the project, EFA will do the following:

- ask our property agents to conduct site searches and provide you with a shortlist of the best available sites;
- work with you to prioritise that list to a maximum of four in terms of suitability and viability;
- ask our technical advisers to visit and assess the preferred site, providing a high level view of the nature and cost of any construction works needed, planning consents required and likely running costs; and
- if that assessment shows the site is affordable and good value for money, our property adviser will start negotiations to acquire the site.

How the trust can help

7.11. We welcome any information and local knowledge you have to help with the search.

7.12. We need you to attend all the necessary site meetings to review options and agree next steps.

7.13. Find out as much as you can about properties by all means - but you **must not** enter into negotiations. We have experts who will do that for you, but more importantly this is public money, not your money and we need ministerial approval to commit public funds.

7.14. Take heed of our advice about local developments and how they affect your site options.

Securing a site

7.15. Securing a site can be complex and time-consuming. However, once we have found a suitable site for your school that can be delivered in the timescales available and that represents value for money, negotiations to acquire it will begin. The three main ways of doing that are:

- peppercorn rent lease;
- freehold purchase;
- commercial lease.

7.16. Click on the following link to find more information on the [options to acquire a site](#).

7.17. As with buying a new home, there will be sensitive negotiations around acquiring a site for your school. Site owners want to secure the best possible deal for themselves while it is our duty to secure best value for you and the tax-payer.

7.18. It is vital that you check with your EFA project manager before discussing or revealing details of the site you are seeking with anyone outside your group. These

negotiations are very commercially sensitive and public disclosure can seriously undermine our negotiating position.

7.19. Subsequent planning applications can also be affected if information about sites is released at the wrong time. Securing [planning approval](#) is of course crucial to delivering your school buildings.

7.20. We will tell you when you can publicly confirm your sites (permanent, temporary or both) - see from paragraph 7.29 below on statutory consultation.

EFA responsibilities on securing a site

7.21. The EFA property adviser will commence negotiations with the site owner or the agent representing them, and seek to agree Heads of Terms (headline terms of the deal that are not contractually binding).

7.22. We will, in parallel, estimate the total costs for the site and any building works and seek approval from ministers to complete the acquisition.

7.23. Our contracted lawyers will carry out checks on the tenure, ownership and restrictions of the property and complete the conveyancing. The time this takes will vary from property to property - it can take between six weeks and six months, depending on planning and other conditions on the property.

Interim site solutions

7.24. In some cases free schools have opened on a temporary site before being relocated to their permanent buildings. Temporary solutions can come in many forms depending on what is needed and what is available, but the most common are:

- using a building on the permanent site while other buildings are in construction;
- community buildings such as a church hall or community centre;
- part of a neighbouring school;
- portacabins on the permanent site;
- a local office building.

7.25. We only usually consider temporary sites once we have secured or are about to secure a permanent site which can't be made ready in time for September opening.

7.26. We will follow the same steps as set out in the finding and [securing a site](#) section above.

7.27. We obviously don't want to spend any more money than necessary on temporary accommodation, so will try to provide an interim solution that requires minimal alteration.

7.28. Costs associated with temporary sites will be covered within the capital allocation (i.e. rental of temporary classrooms etc.). Your rental costs can be recovered from us but you will need to claim any VAT back from HMRC.

The site and your statutory consultation

7.29. Section 10 of the Academies Act requires proposers of free schools to formally consult with those you think appropriate. This must be completed before the funding agreement can be signed.

7.30. Ideally you should do this once we have secured your permanent site, but in practice that may not always be possible.

7.31. If it isn't, you could identify a particular catchment area for the free school, e.g. a postcode, or a particular area of a city or town. At the same time you don't want to undermine any site negotiations, so we will agree with you what information you should provide.

7.32. If we then acquire your site during your consultation period, you should inform your consultees. You can also extend the consultation - but this is for you to decide.

The site and your funding agreement

7.33. For the department to enter into a funding agreement, at the very least the Heads of Terms will need to have been agreed for a temporary site with a strong prospect of securing a permanent site before the school opens.

7.34. As above, your funding agreement can only be concluded once a site has been secured. As part of that funding agreement, there will be a set of land clauses. These aim to protect our public investment in acquiring and developing the land, and to ensure you (the trust) continue to meet your legal obligations as set out in the [funding agreement](#).

7.35. Please note that:

- the land clauses in the funding agreement must reflect the relevant model drafted by the department; and
- your lead contact will advise on the land clauses and on any bespoke legal arrangements that may apply.

The capital funding

7.36. EFA will cover the capital costs of acquiring a site and refurbishing it for use as a school with the inclusion of ICT provision and standard fittings, furniture and equipment.

7.37. Although your application may have been approved - the capital budget for your school is not agreed until ministers approve the preferred site and building costs. In extreme cases a project may fall because all site options are prohibitively expensive.

7.38. We place a high priority on achieving value for money, hence, most free schools are refurbishments.

7.39. The capital costs for each free school vary considerably depending on the location, size, type and condition of the building.

7.40. All budget calculations are based on pupil numbers and the level of construction works required (e.g. new build, major refurbishment or minor refurbishment).

EFA responsibilities on capital funding

7.41. EFA will set the budget for each scheme and submit it for ministerial approval. In most cases this will be done after Heads of Terms on the permanent site are agreed. The budget for each project will not be shared with the trust until it has been agreed by ministers.

Procuring works and services

7.42. The procurement route is determined by the size, nature of the works, time available and value of the contract. We begin work based on your expected pupil numbers and associated basic area requirements of your school.

7.43. All building contract appointments must comply with [public procurement procedures for free schools](#). The most common procurement routes used are:

- EFA contractors' framework
- SCAPE framework
- LHC framework
- Yorbuild
- North West Construction Hub
- GPS Modular
- Local procurements for small-scale works

7.44. You will be expected to sign the contract for building works once the procurement has been completed and we are ready to progress with the building works.

7.45. Here you can find [information on the routes to procurement, the procurement of fittings, furniture and equipment and ICT requirements](#).

7.46. In some circumstances, you will need to purchase insurance to cover the period before the school opens, e.g. for buildings, content, public and employer's liability. This will need to be funded from your project development grant, so you will need to plan for this and you may need to draw on the contingency built into your plans.

Building works

7.47. We would ideally like the funding agreement to be signed before contracts for building works are signed. In some cases it might be necessary to sign contracts before then to make sure your school opens in time.

7.48. Although the building contract will be between the trust and the contractor, we will have strong input with deciding the best procurement route for your building works and give you advice and support throughout the works. We will:

- commission technical advisors (e.g. architects, quantity surveyors etc.);
- commission surveys of the site (as required);
- appoint legal advisors for the building works contract;
- develop, oversee and negotiate contracts for works; and
- work with the contractors involved in the site building and design process.

Opening the school you will need to:

- work with us to agree dates for Ofsted's pre-registration inspection visit to the site;
- keep staff, parents and local communities updated on progress;
- develop contingency plans just in case building works overrun;
- prepare for and attend the readiness to open meeting with the department;
- work with us to ensure the works are completed to the contract specification and formally handed over.

Ofsted pre-opening site inspection

7.49. There are a number of formalities that need to be completed before the school can open. These include an Ofsted pre-opening site inspection, planning how to operate the school and the formal handover of the site. Further details are provided below.

7.50. In order for your school to become registered with the department and officially open the site needs be inspected by Ofsted. This is explored in detail in Section 14: Ofsted inspections and registration as an independent school. The purpose of the site visit is to ensure the building is safe and complies with the Independent School Standards Regulations on premises.

7.51. In the majority of cases when Ofsted visit, the site will not be ready as building works will still be on-going. Inspectors will be aware of this but will still want a tour of the site, so that when they look at the plans and drawings they have a better understanding of how the school will fit and operate on the site.

Planning how to operate the school

7.52. In many cases, the school may need to open in temporary accommodation whilst the permanent site is being developed or secured. Construction works may also continue up to the school's opening day or beyond. We will work with the contractor to tell you and your principal designate as soon as we can when you will have access to the site. This allows you to set a date for opening to inform parents and then plan for preparing, opening and operating the school. You should also develop contingency plans in case building works are delayed or there are other complications.

Planning issues

7.53. The key reasons why new schools may need to seek planning permission are:

- change of use;
- new-build, extension and other external works;
- listed building consent.

7.54. Your EFA contact will work with you closely, taking responsibility for ensuring planning permission is applied for quickly, and dealing with any problems around planning as early as possible. Planning permission should be sought, with EFA contact in the lead, as early as possible in the process to avoid delay. Planning barriers should be proactively considered and a plan of action put in place to limit these barriers, with EFA in the lead, working with the local planning authority.

7.55. The National Planning Policy Framework provides powerful incentives for planners to avoid placing unnecessary burdens on school development. This is effectively a presumption in favour of the development of new schools, but not a guarantee.

7.56. Two new permitted development rights are in place which reduce the circumstances where planning consent is necessary, helping ensure schools open on time. Your EFA contact will be able to advise you if these changes may be of benefit to your project. The details are set out briefly below:

- a. A new one-year temporary permitted development right (PDR)

A new school is able to operate for their first academic year without needing planning permission for change of use, no matter what previous use the building had (with the exception of a very limited number of 'sui generis' sites which we are unlikely to want to use). Minor operational developments such as small extensions to existing buildings will also be allowed.

- b. A more extensive 'permanent' change of use PDR

This 'permanent' PDR allows buildings from wider classes of use to be changed into schools, without the need for planning approval. These use classes are offices (B1), hotels (C1), residential institutions (C2), secure

residential institutions (C2A) and assembly and leisure (D2). This PDR will be subject to a more light-touch 'prior approvals' regime where the local planning authority (LPA) can only consider noise and traffic impacts and must respond to the school within eight weeks.

Formal hand-over of the site

7.57. When building works on the site have been completed, there is a formal process by which the building contractor will hand over the site to the school. Until then the contractor has responsibility for the site. The formal process will include the building contractor taking your business or premises manager, or principal on a complete tour of the building, highlighting where all mechanical and electrical services are located and how they operate, handing over all warranties and certificates, e.g. fire certificates. As part of the tour, a 'snagging' list will be drawn-up with the contractor to highlight where there are still minor defects or where the refurbishment has not met the required specification. The contractor will be required to rectify these following formal handover of the building. Your EFA project director will be able to provide further information on the formal hand over process.

7.58. Once handed over it will be your responsibility in most situations to arrange for maintenance of plant and equipment. Failure to regularly maintain the equipment in accordance with the installation instructions can lead to warranties being invalid. Ask for early information on equipment and maintenance schedules so you can tender for the maintenance contract and have it in place at handover, if possible. You should prepare for this information to be provided to you at or after completion as is the case with most contractors.

Working with the department

7.59. EFA will work with the trust and your lead contact in the department to find and secure a site and construct the buildings for your school.

Checklist of activities

7.60. The activities listed below are intended to provide you with an overview of the activities, but each project is different and will have its own timetable. The timings set out below are the desirable milestones to meet in order to secure a site in good time for opening, but many free schools have opened successfully on a different timetable, including finding a site at a later point in the process. The timing of activities for your project will depend on when the site is secured.

Links to further information

View the [Table 8 Site and buildings: checklist of activities](#).

- Funding of academies to cover the costs of insurance from 2013/14.
- HMRC website
- NSN budgeting tool
- Academies Financial Handbook
- Funding arrangements for free schools
- Free School model funding agreement
- Public procurement procedures for free schools
- Independent School Standards Regulations on Premises

8. Pupil recruitment and admissions

8.1. Every free school will face different challenges, but there is no getting away from the fact that pupil recruitment is a central and essential element of the pre-opening period. We know there will be a lot of calls on your time, and many other pressing matters – whether it be recruiting a principal designate or finding a site – but attracting sufficient pupils to ensure your school is viable is essential. Pretty much everything else flows from pupil numbers: financial viability, educational planning, and staff recruitment.

In this section we:

- highlight the importance of pupil recruitment and share experience of where some proposer groups have come unstuck in the past;
- explain what your responsibilities are regarding pupil admissions;
- highlight some of the choices you have to make about how you handle your admissions process, and some of the factors you will need to think about when coming to a decision;
- explain how you are expected to consult on your arrangements; and
- provide links to useful information or templates that will help you draft your admissions policy and run a successful admissions process.

It's important to remember that as the admissions authority for your school, it is your responsibility to get things right.

Summary of the key tasks

Pupil recruitment

8.2. The most common pitfall experienced by successful free school proposers is to assume that high levels of evidence of demand for your school when you were canvassing for support will automatically equate to large numbers of applications. The second most common pitfall is to assume that when you offer places to all the parents who have applied, all those offers will be accepted. To make sure that you avoid these pitfalls, it is absolutely essential that you have an unrelenting focus on pupil recruitment.

8.3. You may have had very high levels of interest in your school, but you need to make sure that this converts into applications. Your marketing activity should, if anything, step up now, and build on the publicity and interest you have already achieved. This will show parents who have already expressed an interest that the school is moving to the next stage. It will help give them confidence in the school and encourage them to make an application. It will also give you the chance of attracting new parents who may not have paid much attention so far but who would be interested now the school is becoming a reality.

8.4. You may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts:

- some parents will have made a firm commitment, and you need to keep them engaged, even after you have offered them a place, to ensure they accept;
- some parents will have expressed interest without committing to applying, and you need to convert that interest into applications; and
- some parents will not have been particularly interested, but as you move into pre-opening, you can confidently begin to engage them as much as possible.

Marketing - what works?

8.5. Each free school project is different, and so what marketing and pupil recruitment activity that works for one group, won't necessarily work for you. There are, however, some general principles and lessons learned by previous proposer groups that should help you get the most out of your planned activity. The key is to maintain momentum, so make sure, for example, that newsletters are issued regularly; emails are answered quickly; online information is up to date; and that you publicise key milestones, such as the appointment of a principal designate or securing your site.

8.6. Understand your audience: when preparing your application you will have looked at local context such as where there is a need for places and how existing local schools are performing. You should use this information now to target your efforts.

8.7. It's a good idea to have a dedicated spokesperson, so you have a consistent profile, especially as far as local media are concerned - and they always know who to go to.

8.8. Local radio is a very powerful tool – you can book paid advertising space (though you will need to book slots well in advance), but you can also get free publicity by suggesting creative ideas for programme content - for example offering a spokesperson for an on-air debate or phone-in programme.

8.9. When dealing with the media, try and get a named contact. Find out who is the education correspondent for your local newspaper, or the relevant programme producer for local radio stations, and give them a call. Make sure they know who will be sending them information, and who in your group they can contact if they need to.

8.10. Engage with local schools if relevant (in the case of feeder schools) – offer to speak at assemblies or have a presence at school events such as parents' evenings and transition days.

8.11. If you are a faith school, make sure you make contact with and have the support of local religious bodies.

8.12. Produce regular newsletters: you can distribute printed copies locally, or via email to your contacts list. You can use an online email marketing company to send out mailshots, often at little or no cost.

8.13. If you haven't got a permanent site, you won't have a landline. Rather than use a mobile number as a contact point, which can create a sense of impermanence, there are programmes you can use to 'convert' your mobile number to a land line number - which you can then continue to use once the school is open.

8.14. Translate your leaflets and newsletters into languages which reflect the make-up of your local community.

Online

8.15. It is absolutely essential that you have comprehensive information available on your website, and that the website is updated regularly. It will help to have a dedicated member of the trust to maintain the site to keep it fresh. It is best to set up an email account using the school's name, rather than an individual – it projects a more professional image. Make sure that all enquiries are followed up quickly, and ask correspondents if they are happy to add their email addresses to your contacts list for information and updates.

8.16. Consider setting up an online forum for parents and make it easy for them to raise any questions or concerns. Many areas now have local online community forums, so start a discussion thread with some information about your school. Again, it is important to respond quickly and follow up queries. Think also about setting up a blog with regular updates on your progress.

8.17. You can also maintain your profile locally and nationally, especially with the media, by creating a Twitter account for the school. You can tweet links to important announcements on your website, and issue timely reminders about meetings or key deadlines. If you want to engage young people, for example, if your school is a secondary or post-16 school – experience shows that the most effective online medium is Facebook.

Face-to-face

8.18. Previous proposer groups tell us that face-to-face contact with parents has proved especially effective, and can build on any written/online information you have produced. It can be as simple as knocking on doors and canvassing opinion and support. Be prepared to put in time and effort to engage with the community as a whole and make your group known to people.

8.19. Events are a key feature. They provide an effective platform to showcase your school, and can also provide an opportunity for parents and pupils to meet the principal designate and teaching staff. Make sure you have application forms available at these events – take parents' details and follow-up with an email or leaflets.

8.20. Previous groups have also found that holding events with a theme can attract more people and give them a fuller flavour of what your school would be like. Mock lessons, or enrichment days which demonstrate the school's pedagogy, for example, creative writing sessions; fun science experiments; dancing and singing or creating a performance, have all proved popular.

Links to further information

View the [Table 9 Admissions: checklist of activities](#).

- School Admissions Code
- School Admission Appeals Code
- Free Schools Admissions Guidance
- Alternative provision statutory guidance

Mainstream free schools

Timing

8.21. It's also important to consider timing of activity, and there are some key dates when you will need to increase your efforts:

- during your S10 consultation – make sure you tell people what your school is about and what you are trying to achieve;
- leading up to application deadlines – these are crucial times for parents, and they will be looking for information;
- in advance of national offer days (around 1 March for secondary; 16 April for primary) – and you need to make sure your school is first in parents' minds if they don't get their choice of school.

8.22. Even if you are not able to offer a child a place at your school, do not stop engaging with their parents: experience to date shows that around 30% of applicants who are offered a place will not accept, and you cannot afford empty places.

8.23. Working with your local authority can also help here. Making sure your school is included in their online prospectus is a way of reaching all parents who are applying for a place, see paragraphs on [local authority co-ordination](#).

How admissions make your vision a reality

8.24. You have set out the vision for your school, which may be to improve standards in a particular area, for particular groups – and your admissions arrangements can help you make that a reality. For example, you may intend to provide places for children from disadvantaged families, and you can achieve this by giving priority in your arrangements

to children eligible for the pupil premium. This can include children who are or have been eligible for free school meals; or children of services personnel. Similarly, if your school will have a religious designation, you can award up to 50% of places 'with reference to faith'. Your admissions will also inform your staffing plans, so you can ensure you recruit the staff you need to meet pupils' needs.

Admissions: your responsibilities

8.25. As an academy trust, you are the admissions authority for your school. This means you are responsible for:

- making sure your admissions arrangements comply with the '[School Admissions Code](#)' and the '[School Admission Appeals Code](#)' including the overall spirit that the arrangements should be fair, clear and objective, as well as abiding by individual requirements;
- consulting on your proposed admissions arrangements as part of the consultation you will carry out under Section 10 of the Academies Act 2010;
- consulting on and determining (or finalising) the new arrangements if you want to change your admissions arrangements when the school has opened;
- managing applications to the school, either directly (in the first year) or through the local authority's co-ordinated process (see paragraphs 8.31 to 8.40 below);
- organising an independent admission appeals panel in compliance with the School Admission Appeals Code.

8.26. If your school is post-16 only, your school is not covered by the Code; however, your arrangements do need to be fair, clear and objective. Parents and young people still need a clear understanding of how and when places are offered. If your school is a secondary school with Years 12 and 13, then your admissions arrangements for those years will still have to meet the requirements of the School Admissions Code.

8.27. Every free school also needs to operate within the local Fair Access Protocol. The protocol is operated by your local authority, but must be agreed with the majority of local schools. It's the mechanism for ensuring children who are hard to place are allocated a school place quickly. Schools can be required to admit such children over and above their admission number, but places must be allocated equitably across schools in a local authority's area.

Admissions: local authority responsibilities

8.28. Even though you are the admissions authority for your school, the local authority in which your school is situated still has a number of responsibilities relating to your admissions process. This means they are responsible for:

- operating a co-ordinated admissions process for at least Reception year for primary schools and Year 7 for secondary schools (you will have a choice whether to be part of any co-ordinated admissions process for other year groups);
- submitting a report to the Schools Adjudicator each year on the admissions arrangement for all schools (including academies and free schools) in their area, and on the extent to which they comply with admissions legislation and the School Admissions Code.
- The local authority may not be willing to include you in their co-ordinated admissions process until you have signed a funding agreement, but we have found that many local authorities are willing to include free schools before that - sometimes with a proviso for parents pointing out that the places are subject to the Secretary of State signing a funding agreement. See paragraphs 8.31 to 8.40 below for more information.

The admissions process, including co-ordination

8.29. In your first year of opening, a, you will need to decide how and when your school will accept applications and make offers. The local authority is required to co-ordinatadmissions for all existing state-funded schools in its area, which means they accept applications on their common application form (CAF), manage the admissions process, and make offers. They are also required to publish a composite prospectus containing details of all schools in their area and to keep the prospectus up to date. Your school's admissions policy must feature in the composite prospectus and local authority admissions website³. This has the advantage that information about your school is made directly available to all parents who are applying for a place, at the time they are making decisions.

8.30. In considering whether co-ordination is appropriate for your school you need to bear in mind the fact that local authorities are required, under the co-ordination regulations⁴, to offer parents at least 3 preferences for a school and to make a single offer of a school place. Free schools are not established as schools until their funding agreements are signed and sealed. This means that, until they are, the local authority, if processing applications for your free school alongside existing schools, will be restricted to sending out a conditional offer for your school, on national offer day, alongside a firm offer for an existing school. To comply with its statutory duties, it will also have to offer an additional preference, on top of the number of preferences it offers in its scheme, when parents apply for your school.

³ You should make sure this happens by sending your admission arrangements to the local authority as soon as you have finished discussing them with DfE.

⁴ <http://www.legislation.gov.uk/uksi/2012/8/contents/made>

8.31. In reality, if you do not have your funding agreement in place at least a couple of weeks before the closing date for applications (31 October for secondary and 15 January for primary), it will be very difficult for your school to be fully included in co-ordination. There are, however, other options.

8.32. As a free school, your funding agreement allows you to choose not to be part of the local authority's co-ordinated admissions process for your first year only, and to manage your own admissions. You have three main options for managing your admissions process in the first year:

- a) **Parents make a stand-alone application for a place at the free school. You will receive applications directly from parents and manage the process yourself.** This allows you to set your own application deadlines and the date on which you will send out offer letters. You will not be part of the local authority's co-ordinated scheme. You will want to make sure that application forms are readily available to parents and that the process for submitting an application form is clear and straightforward. Remember, even if you manage the application process yourself the local authority should still publish your admissions policy in their composite prospectus and online.

Following this option gives an advantage to parents. It means they can apply for a place at your school whilst also applying for a place at other local schools via the CAF. Also, if your funding agreement isn't signed by the time you make offers, you would be able to make conditional offers⁵, while parents could still hold an offer from an existing school. This affords them some security in that their child is assured of a school place, even if your free school runs into problems and doesn't open.

- b) **Parents make a stand-alone application for a place at the free school but you request that the local authority accepts applications on your behalf.** As with option (a), you will be able to set your own application deadline and offer date and you will not be part of the local authority co-ordinated scheme. This process could run to the same deadline as co-ordination or to a different deadline agreed with the local authority. However, in this option, parents would submit their application to the local authority which would usually make offers. You will need to discuss with your local authority whether or not they would be able to provide this service – bear in mind they may charge. The application form could be produced by the free school or local authority.

This option has the same advantages as option 'a' as parents will be able to apply to the free school independently of applying to other schools via the local authority's CAF. This makes an application to the free school less of a risk for

⁵ 'conditional' upon the funding agreement being signed and sealed, so that the school is established.

parents. However, not all local authorities will offer this type of support. You may also decide that it is in your interest to receive applications directly from parents so that you are in full control of the process and information provided to parents.

- c) **Choose to be fully part of the local authority co-ordinated admissions process – so the local authority would manage your admissions in the same way as they do for other schools.** To be fully within co-ordination is only open to schools which have a signed and sealed funding agreement in place prior to opening, for the reasons set out in paragraph 8.32. It will also not be possible for secondary schools opening in 2015 to be within co-ordination in their first year for the reasons set out in paragraph 8.38 below.

8.33. If included within co-ordination, applications to your school would be made via the local authority CAF, and in accordance with statutory and local authority timelines. The CAF asks parents to rank a minimum of three local schools in order of preference (this is a minimum of six in London). Once all applications have been received, the local authority will provide you with a list of all applicants who named your school as one of their choices. It cannot lawfully provide you with information on the order of preferences made. You would then rank them according to your criteria, and return the list of successful applicants to the local authority. Offers would be made by the local authority.

8.34. As stated above, if your school is included in the local authority's allocation process, but you do not have a signed and sealed funding agreement by national offer day, the local authority cannot make a single offer for your school on national offer day. Instead, it will send a conditional offer. If this is the case, you would then have to confirm offers once the funding agreement is signed and sealed.

8.35. You will want to consider which of the options available to you will help your school to secure the highest number of applications. For example, whilst asking parents to apply via the CAF may reduce the level of administrative work you have to manage in pre-opening, it also means you will need to abide by the local authority's application deadlines of 31 October for secondary schools or 15 January for primary schools. This might be before you have secured your site or your principal designate has taken up post. As a result, parents may view your free school as a risky option and be unwilling to name it as a choice, and this may reduce the number of applications that you receive.

8.36. However you choose to manage your admissions process, you, as an admissions authority, are responsible for ensuring your arrangements are administered fairly, clearly and objectively in line with the School Admissions Code and School Admission Appeals Codes.

Composite prospectus

8.37. Local authorities have a statutory duty to provide information about school choices in their local area. This information is provided in the composite prospectus, published each year by your local authority and on the LA website. When a free school is approved by the Secretary of State, the DfE writes to the relevant local authority to let them know in

which year the school is expected to open. From that point on, the local authority should take steps to ensure information about the free school is included in their prospectus once your admissions policy is finalised.

8.38. The local authority is required to publish its admissions prospectus by 12 September each year, but it is required to keep it under review as admission policies change (e.g. as a result of adjudicator determinations on admissions or new schools opening). If you are intending to open in September 2015, you will need to provide your local authority with your admission arrangements as soon as they are finalised. While the approval dates for free schools in this round means that no secondary school opening in 2015 is likely to be able to have its admissions policy in place prior to the closing date for parents to submit applications under co-ordination (31 October), we will prioritise 2015 mainstream projects to give secondary schools the best possible chance of having their policies finalised significantly in advance of national offer date (1 March) and for primary schools to have their policies in place before the closing date for parents to submit applications under co-ordination (15 January). This is why we have asked you to submit your admission arrangements, including how you will manage your application process in the first year, to your lead contact by 8 October.

8.39. You will need to provide the local authority with information on how parents can apply to your school, the closing date for applications, and when offers will be made. Contact information and your website address should also be included so that parents know where they are able to find additional information.

8.40. The composite prospectus will also explain how parents can apply to your free school so you must agree this as soon as possible.

Your admission arrangements

8.41. It will be a requirement of your funding agreement that your admissions arrangements abide by the School Admissions Code, so as you would expect, the Secretary of State will not enter into such an agreement where we have reason to believe that this will not be the case.

8.42. Your admissions arrangements should make it clear to parents how and when to apply. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints, for example to the Schools Adjudicator. The guidelines on the [free school admissions website](#) provides advice on drawing up a set of code-complaint arrangements, and we also provide some [example admission arrangements](#) but there is no substitute for a thorough knowledge of the [School Admissions Code](#) and [Appeals Code](#) both before the school opens and once it is operational.

Consulting on your arrangements

8.43. In the pre-opening period, you should include at least an outline of your proposed admission arrangements as part of your Section 10 consultation. Once you have taken

account of any responses to your consultation, we have signed and sealed your funding agreement, and you have determined your arrangements and published your final arrangements on your website you cannot make any further changes to the arrangements, unless they are needed to make them comply with the School Admissions Code.

8.44. Once your school is open, you will need to consult on your arrangements at least every seven years, even if you don't want to make any changes. The requirements for consultation are set out in paragraphs 1.42 to 1.49 of the School Admissions Code.

Special free schools

8.45. Pupil recruitment must be a priority for every free school project, because the majority of your revenue funding will be determined by the number of pupils you recruit.

8.46. Recruitment and admission to alternative provision is via referrals from commissioners (local authorities and schools).

8.47. In this section we:

- explain what your responsibilities are regarding pupil admissions (i.e. for any non-statemented pupils) and the statementing process;
- explain how you are expected to consult on any mainstream admission arrangements you adopt

8.48. Local authorities have a statutory duty to, where necessary, identify, assess and arrange provision for children with SEN. Where a local authority has carried out a statutory assessment and decided to issue a statement of SEN or, from September 2014 an Education Health and Care Plan (EHCP), they will issue a draft statement/plan to parents. Parents can request the local authority to name their preferred choice of school in their child's statement. However, the final decision on the school to be named rests with the local authority responsible for maintaining the statement.

8.49. As a special free school you must admit a child where the school is named in a child's statement or Education Health and Care Plan (EHCP), even if the child's SEN is not a type of SEN for which the school is designated. A special school is specially organised to make educational provision for pupils with SEN. They are designated for specific type(s) of SEN. The main designations of SEN are set out in the [SEN Code of Practice](#). Once a school is open, approval from the Secretary of State would be required if it wishes to change or extend its designation to other types of SEN. It should publish details of its provision and capacity online.

8.50. As a special free school you can also, **if agreed within your funding agreement**, propose admitting children without a statement. This will be restricted to pupils with SEN but without a statement. The process for admitting these pupils must be set out in an admissions policy which must comply with the [School Admissions Code](#). You would also have to comply with all the admissions deadlines and processes within the Code and

offer appeals to any of these pupils refused admission in accordance with the [School Admission Appeals Code](#) . If you admit significant numbers of non-statemented pupils (50% of the intake or 20 or more pupils), you must be part of the local authority's co-ordinated admissions process, after your first year of opening.

8.51. When admitting children without a statement you would first determine that potential pupils have the type of SEN for which your free school is designated, as you will only be allowed to admit non-statemented pupils with this type of SEN. You must set out in your arrangements how you define this need, and give clear details about what supporting evidence will be required (e.g. a letter/report from a doctor or educational psychologist or other specialist) and then make consistent decisions based on the evidence provided. If you are oversubscribed for non-statemented places:

- You will need to set out your admissions policy, including an admissions number and the criteria to be used to prioritise places if your school is oversubscribed.
- If your application includes boarding provision, you should set out a separate admission number and criteria for boarding places. The boarding admissions policy must be in accordance with the School Admissions Code, the School Admissions Appeals Code and admissions law as it applies to maintained schools. It must be clearly linked to the delivery of your education vision.
- Guidance on setting your admissions policy for non-statemented pupils can be found here as well as in the Code.

8.52. Special free schools cannot be designated as having a religious character and so will not be able to recruit pupils on the basis of faith.

8.53. It's important to remember that as the admissions authority for your school, it is your responsibility to get things right.

Marketing - what works?

8.54. As special free schools cannot be designated as having a religious character there is no need to make contact with and have the support of local religious bodies. While you may seek to establish a distinct religious ethos which is reflected within the vision and values of the school but you will not be able to have faith based admissions arrangements for pupils.

Face-to-face

8.55. While local authorities will name your school on statements of SEN and EHCPs, it is crucial that you have the buy-in and support of parents and as far as possible, young people themselves. Without the support of families they are unlikely to ask for your school to be named on a statement/EHCP. This is also important if you to plan admitting pupils without statements of SEN or EHCPs naming the school.

Timing

8.56. It's also important to consider the timing of any activity, and there are some key dates when you will need to increase your efforts, for example, during your S10 consultation make sure you tell people what your school is about and what you are trying to achieve.

8.57. Admissions and the statementing process: your responsibilities

You are responsible for:

- setting out your age range, number of statemented pupils and type of SEN specialised in as part of the consultation you will carry out under Section 10 of the Academies Act 2010;
- publishing your SEN policy (see 8.59 below) on your website;
- consulting on any proposed mainstream admission arrangements, on setting the school up, as part of your section 10 consultation; publishing any admission policy for non-statemented pupils on your website and forwarding them to the local authority for publication.

8.58. If a school disagrees with being named on a statement of SEN it can appeal to the Secretary of State.

- Under the SEN framework, parents of children with statements/EHCPs and young people with statements/EHCPs can express a preference for a special free school and can ask the local authority responsible for making and maintaining the statement/EHCP for one to be named in it.
- The local authority must take into account parental requests, and must consult with a school where they are intending to name it in a statement.
- The final decision on the school to be named rests with the local authority. If parents disagree with the school named in their child's statement they have a right of appeal to the First-tier Tribunal (Special Educational Needs and Disability). Decisions of the Tribunal are binding on all parties.
- Where a special free school is named in a statement/EHCP they are required to admit the child. Special free schools must, therefore, demonstrate that there is both parental demand and an identified local need for the type of provision and number of places proposed. Solid evidence of both parental demand and local need, including support from local authorities is required.
- From September 2014 schools will not be able to refuse to comply with an EHCP naming their school. They will be able to appeal to the Secretary of State if the LA has acted unreasonably in naming the school or has failed to carry out one of its duties.

Special needs provision and admissions policies

8.59. Your SEN 'statement of provision' to be published on your website should include:

1. General

A section where you provide the background on your provision including:

- i. Capacity of provision (specifying how many places for statemented and, if relevant, non-statemented pupils);
- ii. Gender;
- iii. Age range;
- iv. Type of SEN offered. Pupils' needs, designations etc;
- v. If agreed with the Secretary of State, any residential provision, the number of places it provides, and the pupils for whom this is available (e.g. those statemented pupils with particular needs, non-statemented boarders with SEN etc).
- vi. Qualifications or methods of teaching;
- vii. Statement of how you will comply with the Equality Act 2010;

In addition, you should consider separately publishing, any other narrative, which sets the scene in terms of the proposed free school's target cohort or policies.

2. Statementing process

- i. The [statementing process](#) and the process for drawing up EHCPs are prescribed nationally. It would be useful to sign-post this in your policy.
- ii. Include details of financial arrangements between the local authority and free school, taking into account the £10,000 base funding level and what should be covered by the top-up funding for each child.
- iii. Provide details of how the provision will cater for all pupils varying levels of Special Educational Needs, disabilities and English as an additional language (EAL) needs.
- iv. Provide details of personnel who will be involved in the process and encourage the inclusion of an independent person and local authorities.

3. Pupil Registration and information sharing

- i. Describe what information the provision will need on each pupil, e.g. health, attainment to date etc.
- ii. Identify the best pathway for the respective pupil.
- iii. Provide details of how you will continue to communicate and share information with the local authority, parents, healthcare professionals and previous school(s) as appropriate.

4. Admissions policy
 - i. If you plan to take non-statemented pupils you will need to set out a process for when there are more applications than places. You will find guidance on setting these arrangements in the [admissions guidance](#). You will need to set an admissions number ('PAN') and oversubscription criteria in accordance with the Admissions Code.
5. Objections / complaints procedure for statemented and non-statemented pupils.
 - i. Explain how parents may object to the admission arrangements (i.e. those applying to non-statemented pupils);
 - ii. Explain how parents can appeal to an independent appeal panel for any refusals to admit pupils without statements or EHCPs naming the school; and
 - iii. Set out how parents can appeal against LA decisions not to name the school in their statement of SEN or EHCP.

Consulting on your arrangements

8.60. In the pre-opening period, we advise that you include your SEN policy and any proposed admissions arrangements within your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final arrangements on your website and signed your funding agreement, you should not make any changes to the arrangements.

8.61. Once your school is open, you will need to consult on any admissions policy you have adopted for non-statemented pupils at least every seven years, even if you don't want to make any changes. You must also consult before making any changes. You will need to allow time for this as you will have to consult in the academic year before the new arrangements would take effect. This means that there is a two-year lead-in period before you admit children according to your new arrangements. The consultation period is set out in paragraphs 1.42-1.49 of the School Admissions Code and must be for a minimum of eight weeks between 1 November and 1 March. So, for example, you would need to consult by 1 March 2015 so the changes can be included for applications to be made for entry to your school in September 2016. Any arrangements must be adopted by the governing body by 15 April and notified to the local authority by 1 May in any year after opening.

Alternative provision free schools

8.62. Pupil recruitment must be a priority for every free school project, because the majority of your revenue funding will be determined by the number of pupils you recruit.

8.63. Recruitment and admission to alternative provision is via referrals from commissioners (local authorities and schools).

8.64. In this section we:

- explain what your responsibilities are regarding pupil admissions post- 16;
- highlight some of the choices you have to make about how you handle your referrals and admissions process, and some of the factors you will need to think about when coming to a decision;
- explain how you are expected to consult on your post- 16 admission arrangements; and
- provide links to useful information that will help you draft your admissions policy and run a successful referrals and admissions process.

8.65. Alternative provision free schools must be principally concerned with providing full-time or part-time education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not otherwise receive suitable education for any period. This means that the majority of pupils (over 50%) must be of compulsory school age (i.e. 5-16). Alternative provision free schools may also have some 16-19 year old young people, but they must number less than 50% of your students.

8.66. Children of compulsory school age can only be admitted to an alternative provision free school by being referred from local authorities, schools and academies using their existing referral powers or duties. Young people aged 16-19 may also be referred by local authorities, schools and academies but can also apply to the alternative provision free school themselves in the same way as they would for mainstream 16-19 provision. The School Admissions Code does not apply to post- 16 admissions at an AP free school. Alternative provision free schools can adopt [Code-compliant post 16 arrangements](#) if they wish, but the minimum requirement is that they follow our guidelines on admissions to 16-19 free schools.

8.67. It's important to remember that, as the academy trust for your school, it is your responsibility to get your policies right.

Summary of the key tasks

Pupil numbers

8.68. The most common error made by free school proposers is to assume that support from commissioners will automatically translate to large numbers of referrals for places. To make sure that you avoid these pitfalls, it is absolutely essential that you continually develop your recruitment strategy and monitor the impact of activities.

8.69. Having entered the pre-opening phase your marketing activity should increase, building on the publicity you will have achieved by being approved. This will show commissioners, parents and young people aged 16-19 who have already expressed an interest that the school is moving to the next stage. It will also give you the chance of

securing new commissioners who may not have paid much attention so far but who would be interested now the school is becoming a reality.

8.70. You may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts:

- some commissioners will have made a firm commitment, and you need to keep them engaged, even once they have indicated the number of places they require;
- some commissioners will have expressed interest without providing written commitments for places, and you need to convert that interest into actual referrals;
- some commissioners will not have been particularly interested, but as you move into pre-opening, you should build strong partnerships within the community, including parents, to engage them as much as possible;
- some young people aged 16-19 may have expressed an interest and you need to keep them engaged.

Marketing - what works?

8.71. As alternative provision free schools cannot be designated as having a religious character there is no need to make contact with and have the support of local religious bodies. While you may seek to establish a distinct religious ethos which is reflected within the vision and values of the school, you will not be able to have faith based admission arrangements for pupils or prioritise referrals from members of any faith group.

Online

8.72. Consider setting up an online forum for commissioners and young people who are aged 16-19 and make it easy for them to raise any questions or concerns. Many areas now have local online community forums, so start a discussion thread with some information about your school. Again, it is important to respond quickly and follow up queries. Think also about setting up a blog with regular updates on your progress.

Timing

8.73. It's also important to consider timing of activity, and there are some key dates when you will need to increase your efforts, for example, during your S10 consultation make sure you tell people what your school is about and what you are trying to achieve.

8.74. Even if you are not able to offer commissioners and young people places at your school, do not stop engaging with them to ensure you have demand for future years. You cannot afford empty places.

Referrals/Admissions: your responsibilities

8.75. As an academy trust, you are responsible for ensuring that the referral policy and any referral or admissions policy complies with the funding agreement. That means it must be fair, transparent and objective; give priority to any pupils with statements of special educational needs naming the school or an Education Health and Care Plan naming the school; and give highest priority to looked after children. Your school does not have to comply with the School Admissions Code but your policy should:

- include your referral process for children of compulsory school age ensuring that it complies with referral powers and duties;
- consider post- 16 provision if applicable. As the School Admissions Code does not apply for post- 16 provision you need to state whether post- 16 students may be referred either using referral duties and powers or whether they will be considered under mainstream arrangements, in which case you will need to set out how you will admit pupils in a fair, objective and transparent way;
- include a process for consulting on and finalising the new arrangements if you want to change your admission or referral arrangements when the school has opened;
- include a process for managing referrals to the school, ensuring systems are in place to manage and track referrals from the opening date;
- make sure that unsuccessful commissioners and others are aware that they can submit complaints about the referral process or complaints about the post 16 admission arrangements to the Education Funding Agency.

8.76. You should also consult on your proposed admission and referral arrangements as part of the consultation you will carry out under Section 10 of the Academies Act 2010;

- Alternative provision free schools should be aware of the **Fair Access Protocol**. It's the mechanism for ensuring children who are hard to place are allocated a school place quickly. The requirements in relation to alternative provision are set out in the [Alternative Provision Statutory Guidance](#).

Referrals: commissioners' responsibilities

8.77. Statutory guidance sets out the Government's expectations of local authorities and maintained schools who commission alternative provision and pupil referral units. The Government expects those who are not legally required to have regard to the statutory guidance to still use it as a guide to good practice.

- Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.

- Governing bodies of schools are responsible for arranging suitable full-time education from the sixth day of a fixed period exclusion. Schools may also direct pupils off-site for education, to help improve their behaviour.

8.78. More on the roles and responsibilities of alternative provision commissioners and alternative provision providers can be found in the [Alternative Provision Statutory Guidance](#).

The referrals/admissions process

8.79. Statutory guidance sets out that there should be clear criteria for referring and admitting pupils, including those who are dual registered. Pupils should be dual registered from the beginning of the first day of which the school has commissioned the alternative provision. For the purpose of the school census a pupil should be dual main registered at their school and dual subsidiary registered at the alternative provision.

8.80. As part of your published referral policy, you will need to decide how you will effectively manage referrals and engagement with your commissioners throughout the academic year. If you also want to admit pupils, by application, to any post-16 provision, you will need also to adopt an admissions policy. The referral policy and admissions policy can be part of the same document. For your referral process, you will need to be clear and open about how it operates. It is important that you are clear about the criteria/type of cohort you wish to cater for so that potential commissioners will understand the type of provision. For post-16 admissions (if any) you will need to set out how you will admit pupils in a fair, objective and transparent way. Your published referral/admissions policy should make it clear to commissioners how and when to make referrals. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints.

8.81. The referral/admissions policy document should include:

1. General

A section where you provide the background on your provision including:

- a. Type
- b. Gender
- c. Age range
- d. Cohort of pupils/their needs etc.
- e. Whether commissioned places are full time or part time
- f. Statement of how you will comply with equalities regulations
- g. A contact for those commissioning referrals; and

In addition, you may include any other narrative which sets the scene in terms of the proposed free school's target cohort, .

2. Referral/Admission Arrangements

- v. Provide a description on the commissioning process, which could be set up with the respective commissioners (local authorities and schools).
- vi. The policy should describe the different routes for compulsory school age pupils and post-16 (if applicable).
- vii. Include details of financial arrangements between the commissioner and the alternative provision free school, taking into account the £8,000 base funding level and what should be covered by the top-up funding for each child.
- viii. Provide details of how the provision will cater for pupils with Special Educational Needs, disabilities and English as an Additional Language (EAL) needs.
- ix. Who will decide on which children will be eligible for referral. Provide details of personnel who will be involved in the process and encourage the inclusion of an independent person and a SENCO or behavioural person from the local authority (this will be decided by the trust).
- x. It would be useful to include a referral form which lists all the information required about the learner.

3. Oversubscription criteria

- ii. Oversubscription criteria must be applied when there are more referrals than places available. They should include a final tie-break, normally distance to the school or random allocation.
- iii. If the school admits applicants, post- 16 there should be a post- 16 admissions policy including an admission number, admission criteria and application form. You should also have a closing date for applications and set out a date by which you will make offers. You should also set out how appeals against refusals to admit are handled. You can find out more about such policies in the models [at the end of the guidance](#) (if you want to follow a school post- 16 policy rather than a post- 16 institution's policy) .

4. Pupil Registration and information sharing

- iv. Describe the registration process e.g. for fixed period exclusions or an off-site direction, the pupil will need to be dual registered. For permanent exclusions, the registration will be with the alternative provision free school.
- v. Describe what information the alternative provision free school will need on each pupil.
- vi. Identify the best pathway for the respective pupil.
- vii. Provide details of how you will continue to communicate and share information with the commissioner, providing updates on progress and details of reintegration of pupils back into mainstream settings.

5. Objections / complaints procedure

- i. Each policy should provide details of how complaints about non-admission will be handled and who will make the decision.
- ii. A panel of individuals independent of the alternative provision free school would be ideal in demonstrating fairness in consideration, but this will be for you to decide.
- iii. The statement should state that complaints about the published referral/admissions policy can be submitted to the EFA.

Oversubscription criteria

8.82. If you have more referrals than places, you are oversubscribed, and you will need clear criteria to help you allocate places fairly.

8.83. Whilst you are not required to abide by the [School Admissions Code](#), you may wish to refer to it to see the range of oversubscription criteria from which you could choose. Equally, [free schools guidance](#) will set out criteria you can use. Your oversubscription criteria should be fair, transparent and objective. However, as an AP free school you can also consider whether your provision is the most appropriate based on the needs, including the social and emotional needs, of the learner. How you will determine this should be set out in objective terms within your policy.

8.84. Post-16 you can admit pupils based on an application process. Where pupils apply for admission you should adopt an admission number and oversubscription criteria for admission, including any academic entry criteria. You will probably also receive referrals to post 16 provision so your policy should set out separately the numbers of pupils who may be referred post 16.

Consulting on your arrangements

8.85. In the pre-opening period, we advise that you include your referral and, if relevant, admissions policy as part of your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final policy on your website and signed your funding agreement, you should not make any changes to the arrangements.

8.86. If you admit pupils post 16 (i.e. through student application), your policy should be reviewed and published on an annual basis to take account of changing demographics in your area. We recommend that you consult local people on any changes and publish your policy each year in September, for the following September's admissions. Your policy for 2016 admissions should therefore be published in September 2015, or as early as possible if this is not achievable.

8.87. You should also keep your policy on referrals under regular review and respond to any demographic changes.

8.88. It is possible for people to submit complaints about your referral and admissions policy to the EFA who will ensure that the policy is fair, clear and objective, in accordance

with the funding agreement, so it is important to keep your policy under review for this reason, if no other.

16-19 free schools

8.89. Student recruitment must be a priority for every free school project, because the majority of your revenue funding will be determined by the number of students you recruit.

8.90. In this section we:

- highlight the importance of student recruitment and explain how you will be expected to evidence progress;
- share experience from proposer groups that have struggled to recruit students;
- explain what your trust's responsibilities are regarding students admissions;
- highlight the choices you need to make about how you handle your admissions and some of the factors that should inform your decision;
- explain how you are expected to consult on your admission arrangements; and
- provide links to useful information or templates to help you draft your admissions policy and run a successful admissions process.

8.91. Remember, your trust is responsible for admissions to your free school, so it is your obligation to get the process right.

Summary of the key tasks

Student recruitment

8.92. The most common error made by free school proposers is to assume that high levels of support for their application will translate automatically to high numbers of applications from students to join the free school. Students can choose to apply to a number of post 16 institutions or school sixth forms, and hold a number of offers. There is little way of knowing where your free school ranks in their preferences. Successful free school proposers have an unrelenting focus on pupil recruitment, throughout the pre-opening phase.

8.93. Having entered the pre-opening phase your marketing activity should increase, building on the publicity you will have achieved by being approved. This will show students who have already expressed an interest that the free school is moving to the next stage, give them confidence in the institution and encourage them to apply. It will also help you persuade new students that your free school is becoming a reality.

8.94. You may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts:

- some students or parents will have made a firm commitment, and you need to keep them engaged, even after you have offered them a place, to ensure they accept;
- some students or parents will have expressed interest without committing to applying, and you need to convert that interest into applications; and
- some students or parents will not have been particularly interested, but as you move into pre-opening, you can confidently begin to engage them as much as possible.

8.95. You will be expected to provide regular updates on your progress on pupil recruitment to your lead contact, throughout the pre-opening period. Your lead contact will also ask to see evidence to support your updates.

8.96. Post-16 institutions will run their own admissions process. Your lead contact will ask for written confirmation of the number of applications (and then accepted offers) received. They may also ask for scanned copies of applications/accepted offers or for you to bring hard copies to checkpoint meetings, for reference.

8.97. For trusts which agree to be part of a local authority post-16 co-ordinated admissions process, your lead contact will ask you to provide written confirmation from the local authority of the number of applications (and then accepted offers) they have received for the free school.

8.98. To ensure compliance with data protection requirements, trusts should make clear on the top of the application form that the information provided may be used by the Department for Education but that it will not be kept any longer than necessary.

Marketing - what works?

8.99. Understand your audience: when preparing your application you will have looked at local context such as where there is a need for places and how existing local post 16 providers are performing, the number of NEETS (not in education, employment or training) in the area, and the skills gap identified by employers. You can use this information now to target your efforts. For example, you can work with the local careers office to target NEETs.

Face-to-face

8.100. Previous groups who offered vocational education have found it useful to provide taster days for young people which can involve local employers delivering some of the teaching. If students will be using different uniforms for specific courses (e.g. whites for catering and hospitality courses) it may be helpful to measure them for the uniform. Similarly commitment could be obtained to buying relevant equipment such as a set of scissors and brushes for hairdressing courses.

8.101. After the announcement of GCSE results, and even AS results (as some students switch schools/colleges after Y12) its useful to have a stall in a public place to recruit students and to publicise this in advance.

Timing

8.102. It's also important to consider timing of activity, and there are some key dates when you will need to increase your efforts:

- during your S10 consultation – make sure you tell people what your institution is about and what you are trying to achieve;
- leading up to application deadlines – these are crucial times for parents and students, and they will be looking for information;
- in late June, when students have finished sitting their GCSEs, and may be reconsidering their post 16 options;
- immediately after GCSE and AS results, as students may have had better or worse than expected results and need to revise their original plans.

8.103. Even if you are not able to offer a young person a place at your free school, do not stop engaging with them or their parents: experience to date shows that around 30% of applicants who are offered a place will not accept it, and you cannot afford empty places.

8.104. Every free school will face different challenges, but there is no getting away from the fact that student recruitment is a central and essential element of the pre-opening period. We know there will be a lot of calls on your time, and many other pressing matters – whether it be recruiting a principal designate or finding a site – but attracting sufficient students to ensure your free school is viable is vital. Pretty much everything else flows from student numbers: financial viability, educational planning, and staff recruitment.

How admissions make your vision a reality

8.105. You have already set out the vision for your institution in your application; your published admission arrangements will help you communicate that vision to students and make it a reality.

Admissions: your responsibilities

8.106. As an academy trust, you are responsible for admissions to your free school. This means you are responsible for:

- making sure your admission arrangements are clear, fair, open and transparent;
- managing applications to the institution. In most cases you will need to manage these directly although in some areas post 16 institutions co-operate to co-ordinate admissions ; and

- organising an independent admission appeals process.

8.107. As 16- 19 free schools are not legally schools but educational institutions, your free school is not covered by the School Admissions Code. However, your arrangements do need to be fair, clear and objective. Parents/young people still need a clear understanding of how and when places are offered, whether there are minimum entry requirements, whether there will be a test or an interview as part of the application process and what criteria will be used to decide how applications will be prioritised. Arrangements should therefore be as straightforward as possible and be clear how they are to be applied.

8.108. Unlike for mainstream schools there are no national coordinated deadlines for when applications to post-16 institutions need to be made. Institutions generally set their own deadlines based on how large and/or oversubscribed they are (and therefore how long they need to consider initial applications) and whether they need to build time in to hold interviews. Our strong advice is that you should aim to make provisional offers to students in the spring term, so they are clear about any academic conditions you will place on their offer sufficiently in advance of sitting their exams in the summer. Avoid holding interviews in the busy exams periods too. An outline timetable might be:

- inviting applications from the autumn, with an initial application deadline no later than early spring;
- sift applications and apply selection criteria during the spring term. This may include interviewing prospective applicants;
- make conditional or unconditional offers before Easter, so students are clear what requirements they will need to meet;
- confirm places once students have received their GCSE/AS results in August (or if you are offering unconditional places, or places based on predicted grades, you can confirm earlier).

The admissions process

8.109. As part of your admission arrangements, you will need to decide how and when your institution will accept applications and make offers. Your admission arrangements should make it clear to parents how and when to apply. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints.

- a. There are some key things all admission arrangements should include:
 - an admission number for the institution, or admission numbers for courses – for each year of entry into the institution;
 - clear oversubscription criteria;
 - how and when applications can be made;

- an application form;
- a statement on how applications from learners with learning difficulties or disabilities will be considered;
- details of a waiting list; and
- details of your independent appeals process.

It will be a requirement of your funding agreement that your admission arrangements are fair, open and transparent, so as you would expect, the Secretary of State will not enter into such an agreement where we have reason to believe that this will not be the case.

Oversubscription criteria

8.110. If you have more applications than places, you are oversubscribed, and you will need clear criteria to help you allocate places fairly. As a 16- 19 academy you have a great deal of flexibility about how you admit students. You can select by ability, on the basis of qualifications, tests or interviews, but if you choose to do this, you must be clear about your intentions from the start, and explain in your admissions policy on what criteria students will be judged. You can set specific requirements to study specific courses, and you can turn down applicants you have offered places to if they do not subsequently meet the academic requirements. Beware of setting your minimum criteria too high: you do not want to have empty places in September.

8.111. It is a requirement of the [School Admissions Code](#) that first priority is given to children who are either looked after by the local authority, or who have previously been looked after. While you do not have to abide by the Code, we would encourage you to prioritise the admission of young people who are, or who have been, looked after.

8.112. You then need to list your oversubscription criteria in order. You need to think carefully about these and make sure they strike the right balance between admitting the young people who will thrive and benefit most from the provision you offer, and being overly complex, burdensome, or inadvertently disadvantaging a young person.

Offering places

8.113. Once your application deadline has passed and you have applied your admission criteria you can choose to make either conditional or unconditional offers. Bear in mind that you should only make conditional offers until your funding agreement is signed and sealed, in case there is any delay in opening. You should be clear about any requirements you expect students to meet when you make offers. You do not need to have signed your funding agreement to do this, but you should advise your prospective students that they may wish to have an 'insurance' place.

8.114. At the point the department is otherwise ready to enter into a funding agreement with you, you should expect your lead contact to want to know detailed information about the status of any applications made, offers made, and offers accepted. Precisely what

he/she will want to know depends on where you are in your application process, but generally information about 'expressions of interest' will not suffice: he/she will expect to know how many formal applications have been made and, from March onwards, how many conditional offers have been made and how many offers have been accepted.

Finalising choices

8.115. Unlike a school with a sixth form where students move seamlessly into Year 12, you need to create opportunities to engage with students after you have offered them a place. It is a great advantage to both you and them if you continue to get to know them and help them finalise their plans, such as which A-Levels/vocational subjects they want to study. This helps you plan timetables and teaching loads, and helps make sure the young people have a strong start at your institution. In particular, we suggest you host a 'getting ready' day for students that have accepted places in late June or early July, much like a secondary school would hold an induction for students moving from primary schools.

8.116. It is also important to have opportunities to meet individually with students between GCSE/AS results and the start of term, in case they or you think they need to adjust their plans.

Waiting lists

8.117. You need to keep a clear, fair and objective waiting list and be clear about how long you will keep it for. Our advice is that you should certainly keep a waiting list up until the first day of the academic year, and many post 16 institutions choose to maintain it for a longer period of time. In choosing the date until which you will maintain your waiting list, be mindful of the fact it can be difficult for students to catch up with their peers if they have missed a significant part of the planned curriculum. Young people on the list should be ranked in line with your published oversubscription criteria.

Appeals

8.118. Students who have not been offered a place at your free school have the right to appeal. Your admission arrangements must tell students about their right to appeal and the process, deadline and contact details for making an appeal.

8.119. Local authorities will operate an appeals service for school admissions, and you may want to consider buying into that service to run your appeals process. In doing so, however, you need to make sure they understand that as a 16- 19 academy you do not have to abide by the School Admissions Code or the School Admissions Appeals Code. There will also be a cost attached to the local authority service, but it could save you time and possibly money in your busy pre-opening period. You could consider running joint appeal panels with other institutions or contract with other neighbouring local authorities, diocesan authorities or private providers.

8.120. If you want to manage your own appeals, you should be prepared to commit time, money and resources to it. You will need to set up an appeals panel which should be independent of the institution. It should comprise a clerk and we advise at least two other people. We strongly recommend you provide training for all panel members.

Administration and verification of information

8.121. In operating your admission arrangements you can request proof that the information provided in the application form is valid. You can, for example, ask for a proof of address to confirm that a student lives where they say they do, but recognise that many students won't have access to the same types of proof of address that their parents would. They are unlikely to be named on utility bills! You must not ask for evidence that includes, for example, parents' financial or marital status, or first languages of the parents and family.

Consulting on your arrangements

8.122. In the pre-opening period, we advise that you include your admission arrangements as part of your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final arrangements on your website and we have signed and sealed your funding agreement, you should not make any changes to the arrangements until the application process is over for the year. It should, however, be reviewed and published on an annual basis to take account of changing demographics in your area. We recommend that you consult local people on any changes and publish your policy each year in September, for the following September's admissions. Your policy for 2015 admissions should therefore be published in September 2014, or as early as possible if this is not achievable.

8.123. It is possible for people to submit complaints about your policy to the EFA who will ensure that the policy is fair, clear and objective, in accordance with the funding agreement, so it is important to keep your policy under review for this reason.

9. Religious Character

Faith-designated schools

- 9.1. A school designated as a school with religious character can:
- give preference when advertising for and when appointing, promoting and remunerating teachers in accordance with the faith of the school;
 - admit up to 50% of pupils on the basis of faith if the school is oversubscribed; and
 - provide religious education and collective worship according to the tenets of the faith of the school. You will also need to organise the inspection of religious education and collective worship.
- 9.2. These powers are only available to schools with a faith designation. This means they are not available to schools with a faith ethos.
- 9.3. If you applied to open a faith-designated free school you will need to apply to the department for a religious designation.
- 9.4. Your school will **not** be officially a designated faith free school until you have signed a funding agreement with the Secretary of State and the designation process has been completed.

Summary of the key tasks

- 9.5. In order for your school to be faith-designated you will have to satisfy the Secretary of State that the conduct of the school or the provision of education is or will be in accordance with the tenets of one or more religions or religious denominations, **and** that **one or more** of the following applies:
- Some or all of the premises currently occupied by the school were provided on trust in connection with (i) the provision of education, or (ii) in connection with the conduct of an educational institution in accordance with the tenets of one or more religions or religious denominations.
 - At least one trustee is a person appointed to represent the interests of one or more religions or religious denominations.
 - The governing instrument of the school provides that the school shall be conducted, or some or all of the education shall be provided, in accordance with the tenets of one or more religions or religious denominations.
- 9.6. In advance of approving a designation application, the Secretary of State may consult the relevant religious authority, or any other religious body. The Secretary of

State will need to be assured that your school will be conducted in accordance with the tenets of your faith.

9.7. In order to apply for religious designation, you need to fill in the [FSRDApp1 form](#) and return it to your lead contact for processing as soon as possible.

9.8. As a designated faith free school, you are required to consult with the relevant religious authority on your admissions arrangements and when identifying a body to inspect your religious education and collective worship provision.

What are the responsibilities that come with being faith-designated?

9.9. We expect faith-designated free schools to appeal to a wide range of parents and pupils, including those of other faiths and no faith. You therefore need to ensure that your school policies are inclusive and your school is welcoming to pupils of other faiths and no faith. This includes ensuring that your school policies and curriculum would not deter pupils from other faiths and none from applying for a place at the school.

9.10. Like all free schools, you must also adhere to the conditions set out in your funding agreement, including clauses relating to inclusivity.

What does a religious authority do and how do we find one?

9.11. Religious authorities have two consultation roles. You must consult your religious authority when:

- identifying a body to inspect your religious education and collective worship provision;
- agreeing your admissions arrangements. This means, for example, consulting them on how you will determine adherence to the faith in your admissions arrangements.

9.12. You could name the same religious authority for both inspections and admissions, or choose two separate religious authorities.

9.13. Listed below are examples of religious authorities that may be consulted in relation to the inspection of RE and collective worship.

School designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools UK
Sikh	Network of Sikh Organisations
Seventh-day Adventist	Education department of the British Union Conference of the Seventh-day Adventists

9.14. Examples of religious authorities that may be consulted in relation to admissions arrangements are listed in [Schedule 3 of the School Admissions](#) (Admission Arrangements and Co-ordination of Admission Arrangements) (England) 2012.

9.15. Please note that if you to seek designation as a Church of England free school you **must** have the support of your local diocese. The diocese should then be the named religious authority for both admissions and inspections.

9.16. If your faith is not covered by any of the bodies listed above - for example, groups intending to seek designation as 'Christian' - you will need to identify an alternative body. Please contact your lead contact for advice.

9.17. You should also contact your lead contact if your faith is covered by the list above, but your intention is to name an alternative religious body.

9.18. You should be clear about the role you intend the religious authority to play in the design and running of your school, beyond the consultation role required by law.

Can free schools recruit teachers before the school obtains religious designation?

9.19. Being a designated faith free school gives you various exemptions from the Equality Act. This includes being able to give preference to recruiting teachers of the faith.

9.20. In order to be designated officially, you will need to have signed a funding agreement with the Secretary of State. If you wish to appoint teachers before this point (i.e. before you are designated), you will need to be able to demonstrate that adherence to a particular faith is a genuine occupational requirement (e.g. the principal designate, or an RE teacher). Where this is the case, you may be able to advertise, hold interviews

and employ teaching staff prior to the designation of the free school. However, wherever possible you should refrain from entering into an employment contract until you have obtained religious designation.

Working with the department

9.21. Please speak to your lead contact if you have any questions regarding your faith designation.

9.22. In order to apply for faith designation, you need to provide the department with all the information in the [FSRDApp1 form](#).

9.23. If the department requires further information in relation to your application for religious designation we will contact you and request it. We may also consult your religious authority.

9.24. Once your religious designation has been approved, the department will provide written confirmation. It will also appear on the designation orders which are published termly.

9.25. Please remember, your school will not be designated until you have agreed and signed a funding agreement.

Links to further information

View the [Table 10 Faith: checklist of activities](#).

10. Statutory consultation

Statutory duty to consult

10.1. By law, your trust must meet its statutory obligation to consult under [Section 10 of the Academies Act 2010](#) about your free school proposal.

10.2. Section 10 of the Act requires the trust to consult with the people they think appropriate on whether to enter into the arrangement with the Secretary of State. The arrangement in question is the funding agreement that needs to be signed before your school can open.

10.3. The statutory consultation will inform stakeholders and the local community about the project. This process is very useful as trusts will be able to use and build on the feedback and suggestions they receive. It will also help to raise awareness of your project and your marketing activity could help to increase pupil numbers.

10.4. The duty to consult rests solely with the trust. The department does not direct or provide specific advice to trusts on how you should go about it. There are, however, some general themes you might want to think about which are set out in the following paragraphs.

Summary of the key tasks

10.5. It is important to invest some time to plan how you will run your consultation to ensure this complies with your statutory duty. Your consultation must be thorough and transparent.

10.6. You also need to decide whether you will carry out the consultation yourself or bring in additional resources to do this on your behalf. Above all, you will need to agree when to carry out your consultation, how long it will take, who you will consult with, the policies and information about your school on which to consult, and how you want those you consult with to respond. You will need to be ready to consider any responses to the consultation and whether it is appropriate to make any changes to your plans, taking into account any concerns resulting from the consultation. You should report and present your findings and conclusions both to those that have responded to the local community and to the department.

10.7. The key question you should ask those you consult with is whether your trust should enter into a funding agreement with the Secretary of State to open your free school. To enable people to provide an informed response to this question, it is recommended that you provide a link to the appropriate [model funding agreement](#) which you will use for your particular school.

10.8. **Who needs to be consulted?** The Act states that you should consult 'such persons as the person thinks appropriate', which will include all groups or people upon whom you believe the opening your school may have an impact. Examples include

nearby schools, the local authority, any surrounding local authorities, groups with an interest, the local population and faith groups.

10.9. How long should the consultation be? This is not specified, but six weeks should allow sufficient time for people to have a reasonable chance to become aware of the consultation and to respond.

10.10. When should we consult? It must be done before the funding agreement can be signed, but after some other elements are in place, or sufficiently advanced, to enable those whom you consult to have sufficient understanding of the school that you are proposing. Examples include admission arrangements, SEN and other policies, and the site for the school or at least a general location.

10.11. How should we consult? Many trusts set up a website specifically for the consultation, but you must take account of those people without access to a computer. It is important that you give as many people as possible an opportunity to respond. You may therefore use a variety of channels, such as mailshots, leaflets, open meetings, media announcements or a combination of all of these. You may also want to consider translating the consultation materials if the school being proposed is in an area with a diverse population.

10.12. How do we deal with responses? There is no point in consulting if you do not consider consultees' responses. You need to build in time to consider responses and whether it is appropriate to make any changes or additions to the plans for the school.

10.13. How do we report on the outcome? You will need to consider how you will publish the outcome of your consultation (e.g. by providing the website address where the results will be published). Once the responses to the consultation have been analysed you will need to consider how the findings will be presented both to the department and other interested parties. The most effective way is to produce a report of the key findings which provides quantitative and qualitative information, details of methods, timings, who you consulted, the questions you asked and what steps, if any, have been taken as a result of the responses.

How we will work with you

10.14. When the times comes to decide whether or not to enter into a funding agreement with your trust, the thoroughness and transparency of the consultation will form a key part of that decision.

10.15. The Secretary of State is also required by law, under Section 9 of the Academies Act 2010 to complete an assessment of the impact the opening of the free school will have on maintained schools, academies, institutions within the further education sector and alternative provision in the area in which the institution is proposed to be, or is, situated. This will incorporate any related evidence from your consultation. Trusts do not need to do this, your assigned lead contact is responsible for carrying out the impact assessment at the appropriate time.

Other helpful sources of information

10.16. The New Schools Network has produced some very helpful guidance including exemplar documents used by free school groups who have held successful consultations on how to carry out an S10 consultation. You can find this and other useful guidance and information in the [pre-opening section](#) of their website. You need to sign up to access this as it is only available to groups in pre-opening and open free schools.

Links to further information

View the [Table 11 Statutory consultation: checklist of activities](#).

- [Section 10 of the 2010 Academies Act](#)
- [Model funding agreement](#)
- [NSN pre-opening information](#)

11. Equality duty

Free schools' equality duty

11.1. The key aim of the free schools programme is to secure educational improvements through opening new, high-quality schools and by doing so promoting equality of opportunity for all children.

11.2. When your free school opens it will be a public authority. [Section 149 of the Equality Act 2010](#) requires all public authorities when exercising their functions and making decisions to have due regard to the three aims of the Public Sector Equality Duty (PSED). This is a continuing obligation on your trust, and must be considered throughout the whole pre-opening process and once the school is open.

11.3. The Secretary of State has a statutory duty to consider the potential equality impact (positive and negative) of his decisions, and so the Secretary of State must consider how your free school might affect the equality of different groups before deciding whether to enter into a funding agreement.

Summary of the key tasks

11.4. Throughout the pre-opening process you should consider how your free school might affect the equality of different groups, with particular reference to the three aims of the PSED which are to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited under the Act
- advance equality of opportunity between those who share a relevant protected characteristic and those who do not
- foster good relations between those who share a relevant protected characteristic and those who do not.

11.5. The protected characteristics that you need to consider are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

11.6. You also need to note that discrimination on the grounds of marriage and civil partnership is unlawful.

How we will work with you

11.7. When making all your key decisions in pre-opening you should ensure you comply with the equality duty. Your lead contact at the department will be looking for evidence that the equality duty is being considered throughout the whole pre-opening process.

11.8. At meetings you should aim to keep your lead contact informed about how your equality duties are being met.

11.9. To show that consideration has been given to the relevant protected characteristics in the school plans and policies, some examples of the information the lead contact will need are:

- details of your marketing plan: to show how you will engage and promote community cohesion in both the local and surrounding community.
- your staff recruitment policy: to show how you will ensure that all candidates will be treated in a fair and transparent way during the recruitment process.
- your SEN policy: to show what provision will be available for the pupils at the school and what other specialist provision will be available.

11.10. Your lead contact will keep a record of all pertinent information. This will help the Secretary of State to assess the impact on people with reference to different protected characteristics. It will also show if there are any issues around equality which could prevent the trust or the Secretary of State from fulfilling their obligations under equality legislation.

Links to further information

The department has produced [guidance](#) to help schools understand how the Equality Act affects them and how to fulfil their duties under the act.

View the [Table 12 Equalities duty: checklist of activities](#).

- [Section 149 of the Equality Act 2010](#)
- [DfE Advice on Equalities Act 2010](#)

12. Staffing, education plans and policies

Staffing plans and educational policies

12.1. You will need to turn the detailed staffing and education plans in your application into reality during the pre-opening stage to ensure everything is in place to open successfully - from recruiting high-quality staff to having detailed staffing, education policies and schemes of work in place.

12.2. You will need to have some policies in place early for consultation and pupil recruitment. Others will be needed ahead of the readiness to open meeting with the department and the Ofsted pre-registration inspection. You should also consider what you will need ahead of your first full inspection, which will normally take place during year two of opening.

12.3. We have provided an overview of policies which sets out the main staffing, education plans and policies you will need to produce ahead of opening in a suggested priority order.

Summary of the key tasks

Appointing your principal designate (PD)

12.4. Appointing an excellent principal designate is the most important thing you'll do as a trust during pre-opening. Getting the right person is of critical importance to the success of your school. The principal designate will be involved in appointing other staff and writing the detailed education brief, education plans and policies and schemes of work you will need ahead of opening.

12.5. Principal designate appointments can be made either through open national recruitment or as a direct appointment, i.e. without advertising. Given the importance of the appointment, a DfE education adviser will be involved in open national recruitment of the principal designate, as an adviser to the trust.

12.6. In exceptional circumstances (e.g. an experienced multi-academy sponsor is behind the project) we may agree that an education adviser does not need to be involved. Your lead contact will discuss this with you.

12.7. Direct appointments can be made where these are appropriate, but as a free school trust you will need to be able to show how the appointment was transparent and fair.

12.8. Once you've identified a candidate, the department may suggest they undergo a benchmarking exercise. This will involve the candidate being interviewed by the education adviser for the project and having their performance assessed against

leadership standards. The results can then be used to inform the design of a development programme, which the trust can then take forward with the PD.

12.9. If the candidate is not an experienced head or only has experience as a head in a different phase or type of school, the department would usually insist on a benchmarking exercise being undertaken by a DfE education adviser who will advise the trust on the suitability of an inexperienced candidate for the principal designate role.

12.10. Additionally, you may choose to spend the money you would have spent on advertising the post to put your preferred direct appointment candidate through an assessment to make an informed judgement about their suitability. Most large education recruitment firms and universities run assessments for school leaders.

Finalising your staffing structure and recruitment

12.11. You will need to finalise your staffing structure for all staff and recruit those needed in your first year. Alongside your principal designate, you will need to consider other key posts. As well as teaching posts, it is important to think carefully about who will take on the finance role to develop the more detailed budget for year one and for pre-opening, regularly considering staffing plans against financial plans and pupils recruited. Only by doing so will you be able to demonstrate that your proposed staffing structure is affordable, both pre- and post-opening. Additionally, it's important to remember that your staffing structure and recruitment plans should not be confirmed until you have a firm idea of how many pupils you've recruited.

12.12. Most free schools advertise for staff in both national and local press. Some have found holding their own recruitment fairs a good way of attracting staff. Others have used agencies or organisations with talent pools. Many of the major education recruitment agencies have access to pools of staff. Your education adviser may also be able to advise you on what you could do to attract staff.

12.13. The New Schools Network has negotiated a discount on advertisements made for staff appointments with the Times Education Supplement. If you would like to take advantage of this discount you need to explain you are a free school and use the New Schools Network as the reference.

12.14. Remember that all serving headteachers and teaching staff will be bound by contractual resignation dates and you will need to factor this into your recruitment plans. For example, a serving headteacher will have to have accepted a post and resigned by the end of September for a January start, the end of January to take up an appointment in May, and the end of April for a September start.

12.15. Although many free schools are keen to appoint newly qualified teachers (NQTs), it will be important, particularly for subject specialists in secondary schools, to consider where subject specific support might come from if there are no other specialists in the school in the first and even second year of opening. There might be a similar note of caution when recruiting a high proportion of senior and/or middle leaders with little

relevant leadership experience. This can significantly limit leadership capacity at a time when it is needed to implement school improvement systems.

Free school freedoms for appointing staff

12.16. The trust as the employer is responsible for appointing all staff. Groups working with education providers may pass this responsibility on to them but the trusts may still want to be involved in the recruitment process, as they will be the legal employer of all staff. Free schools, like academies, have some freedoms in appointing staff that other schools do not:

- You are not bound by the national pay and conditions document and you can set your own pay and conditions. However, trusts have asked us about national pay scales for comparative purposes. These are set out in the Teachers Pay and Conditions Document, available on the website.
- You are not required to employ staff with Qualified Teacher Status (QTS), with the exception of the SEN co-ordinator and the designated lead for children in care.
- Your principal designate is not required to hold the National Professional Qualification for Headship (NPQH).

Free schools' statutory responsibilities

12.17. There are some statutory requirements on free schools with regard to staffing that you should be aware of:

- As stated above, the SEN co-ordinator (SENCO) and designated lead for children in care must hold QTS.
- As an employer, the trust has a statutory duty to offer all of its staff membership of either the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS). Pension contributions must start with employment so the trust should ensure that pension provisions are in place for staff taking up post prior to the free school opening (i.e. during pre-opening). Click on the following link to find more information on pension schemes for free school trusts.
- If the school is to be a designated faith school and you wish to recruit teaching staff on the basis of faith, you will need to seek designation as a school with a religious character and you can find more information on how to do that in the faith section of this guidance.

12.18. Serving headteachers and teaching staff are bound by contractual resignation dates, and appointments made before a funding agreement is in place should be **conditional** on the trust entering into the funding agreement and the school opening.

12.19. We recognise that the free school trust may be asked by a potential principal designate for additional security where a funding agreement has yet to be signed and they are being asked to hand in their resignation and accept the job at the free school. In such cases the department will underwrite the salary costs plus on costs, should the free school not open, or opening be deferred by a year. The salary would be underwritten for up to two consecutive terms from the point at which the decision is taken not to proceed. Click on the following link to find a [letter](#) which you can share with your principal designate to this effect.

12.20. The Transfer of Undertaking Protection of Employment (**TUPE**) regulations protect employees whose activities are being transferred from their employer to another organisation. Usually we would not expect TUPE to apply to free schools, which are new additional schools that create a new education provision quite distinct from any existing or outgoing provision. The exception to this basic position is where existing provision (e.g. existing alternative provision or independent schools) convert to become free schools. Click on the following link for further information on [TUPE](#).

Developing your education policies

12.21. As a trust you have statutory duties in terms of all the policies that need to be in place before opening. The department has published a [guide for schools](#) (including free schools) about these duties.

12.22. You will also be required to submit some policies before your [Ofsted pre-registration inspection](#) and an inspector may ask to see others on the day. There will be other detailed plans and policies you will need to have in place for your first Ofsted inspection in year two of opening. In the checklist of tasks, we have set out what needs to be done and by when in the run up to opening as a minimum. The checklist is not exhaustive but will give you an idea of what may be required, and when.

12.23. We have developed outline [education policies](#) that give guidance on the structure and content of many of the main policies you will be developing. Many free schools and academies have also found the overarching structure of the [education brief](#) helpful as this brings together all of the school's strategic and detailed education plans and policies.

12.24. Exemplar education plans and policies are also widely available. Exemplar policies are available on the [New Schools Network](#) pre-opening microsite. You can also find them on local authority websites and from project management companies (where you are using one). You should tailor these to take account of the vision and curriculum plans for your free school.

12.25. Education plans and policies are not routinely signed off by the department's education advisers. We may ask to see some, but this will depend on our level of engagement with your project. Education advisers will usually review the education brief.

Safeguarding

12.26. It is vitally important that as an academy trust you fully understand your responsibilities for safeguarding the children in your care. You may want to consult the department's [Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children guidance](#). You can also find more information on the [Ofsted website](#) including FAQs regarding setting up a single central record.

How we will work with you

12.27. Lead contacts will be asking you to report on recruitment of staff (as linked to pupil recruitment and financial plans) and in developing your education plans and policies - some of which will be needed at specific points, including ahead of the Ofsted pre-registration inspection and at your readiness to open meeting.

Education advisers

12.28. An education adviser from the department will be allocated to your project and they will work with you through your lead contact. Education advisers (EAs) are external contractors and highly experienced education professionals who have worked in senior education roles and are typically heads of outstanding schools and/or as Ofsted HMIs or inspectors.

12.29. EAs are contracted by the department to provide expert educational advice. You will need to have your own educational expertise in place to support you as a trust and the education adviser does not replace that. As a minimum they will usually:

- attend and contribute to the kick-off meeting;
- be involved in the process of appointing the principal designate (where you are using open competition) or benchmarking direct or inexperienced appointees;
- be involved in the process of appointing the Chair of Governors (unless already appointed) and will scrutinise the governance plan looking at the skills gap analysis carried out by the trust;
- comment on the build-up of the senior staffing structure;
- provide assurance to the lead contact on the quality of the education brief and education policies;
- attend and contribute to the readiness to open meeting.

12.30. There is a differentiated approach to the department's support across different free school projects. This applies equally to the involvement of the EA and it will differ for each project. The EA may allocate between two and eight days to your project.

12.31. Lead contacts will advise you on the level of EA support and the EA will be accessible through your lead contact. Some of the factors we take into account in determining the level of EA support include the experience within your group, for example if the educational expertise is limited or the group has not set up a new school before, and the complexity of your vision.

12.32. The level of EA support may change during the pre-opening period. For example, if a project has significant difficulty recruiting a principal designate, the level of support may increase.

Links to further information

The [New Schools Network](#) pre-opening site provides guidance on recruitment which you may find helpful.

View the [Table 13 Staffing, education plans and policies: checklist of activities](#).

- [Statutory policies for schools](#)
- [Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children](#)
- [Ofsted website - Safeguarding Children](#)

13. Funding agreement

13.1. The funding agreement is the contract between the trust and the Secretary of State, which defines the terms and conditions upon which a free school is funded. Signing the funding agreement is a significant step towards opening your free school.

13.2. Entering into a funding agreement is an important decision for both parties so requires careful consideration. For the Secretary of State, signing a funding agreement represents a commitment to fund your school. Your lead contact will need to be sure that your trust is ready to enter the agreement and is likely to establish and maintain a popular and successful school.

13.3. The funding agreement is a legally-binding contract. Either party must give at least seven years' notice of their intention to exit the contract unless there is a breach of contract or one of the specific termination clauses is triggered.

13.4. The contract sets out what the trust needs to do to receive funding, how the funding is allocated, how the trust can spend that funding and the circumstances in which it might be withdrawn, i.e. the contract is terminated. The guide to the mainstream funding agreement for academies and free schools is available on gov.uk.

13.5. The funding agreement checklist at the end of this section sets out the key tasks you will need to complete in order to begin the process of agreeing the funding agreement for your school.

Why does the department use model funding agreements?

13.6. The department produces model funding agreements for all types of academy, including free schools, studio schools and UTCs. There are different models available to reflect the requirements of different types of free school on the website. Using model funding agreements helps the department ensure consistency across all free schools.

13.7. The terms of the model funding agreement have been developed since the beginning of the free schools programme. The Secretary of State has agreed these terms and is not willing to negotiate different terms for individual projects. The only acceptable variations between different funding agreements are those clauses which reflect the specific circumstances of that school, e.g. land arrangements, planned capacity of the school, faith/non-faith provision and arrangements for free schools with predecessor schools. The model funding agreement makes clear where these variations will be made and your lead contact will tailor them accordingly before sending the document to you.

When should we begin the process for entering into the funding agreement?

13.8. The timing for entering into a funding agreement will vary depending on the project. Your lead contact will agree with you the appropriate time for your project. There is no right or wrong time to sign a funding agreement and it is, in theory, possible to sign one right up to the moment the school opens.

13.9. Before either party can begin the process, there are certain statutory duties that must first be fulfilled by both parties.

Statutory duties

13.10. The trust must consult under Section 10 of the Academies Act 2010 and have due regard to Section 149 of the Equality Act 2010 - see Section 10 on [Statutory Consultation](#) for full details.

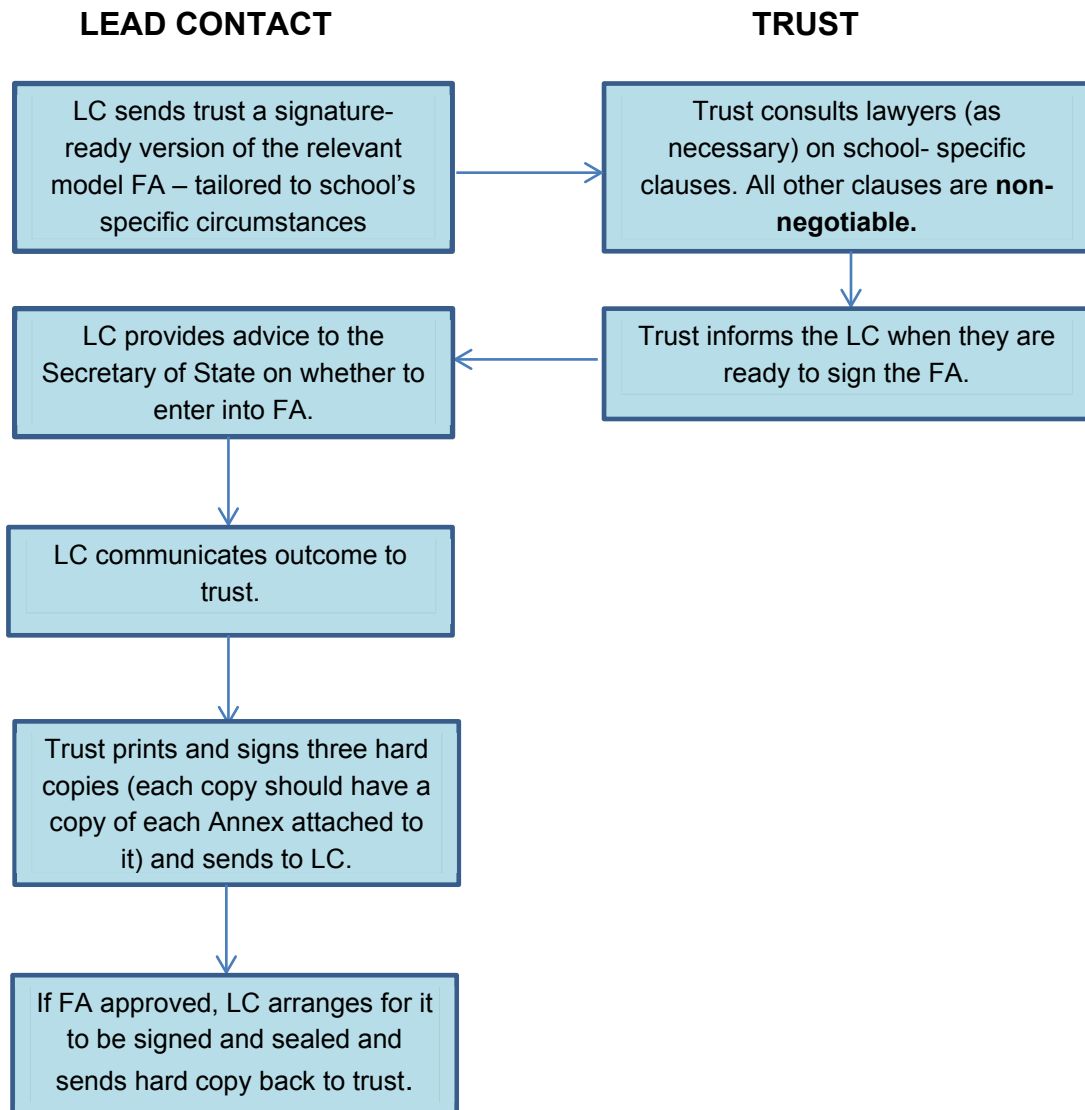
13.11. The Secretary of State is required under Section 9 of the Academies Act 2010 to complete an assessment of the impact the opening of the free school will have on other state-funded educational institutions in the area and is required under Section 149 of the Equality Act 2010 to consider the impact on equalities of the opening of the free school before the funding agreement can be signed. This will be undertaken by your lead contact.

13.12. In addition to the completion of statutory duties, the Secretary of State will want to be satisfied that the school will be popular and successful upon opening. In making his decision, the Secretary of State will consider:

- whether the school will deliver a good or outstanding education, according to the Ofsted criteria. Have enough high quality teachers been appointed or are they likely to be appointed by the time the school opens? Is the school's leadership strong? Are all the school's policies in place?
- whether the school will recruit enough pupils to be financially viable and will it be full within two to three years of opening? Are the admissions arrangements for the school compliant with the School Admissions Code?
- whether the governing body will be capable and effective. Does the proposed governing body include trustees with appropriate educational, financial and business experience/expertise? Are there arrangements in place to manage conflicts of interest?
- whether the school will open on an appropriate, value for money site (or sites if a temporary solution is needed). At the very least, Heads of Terms will need to have been agreed for a temporary site with a reasonable prospect of securing a permanent site before the school opens.
- whether the school is financially viable. The recruitment of pupils and an appropriate staffing structure are crucial for ensuring financial plans are

affordable. Can the school cope with reasonable levels of change to its income and expenditure?

How do we enter into a funding agreement - what is the process and who does what?



NB - We strongly recommend trusts wait to receive the signature-ready version of their funding agreement from their lead contact before engaging their lawyers in the process.

13.13. Previously, we have received drafts of funding agreements from trusts with suggested amendments to the model. This is no longer the case: the Secretary of State will not negotiate terms for individual projects.

13.14. To ensure the funding agreement is executed correctly, trusts must arrange for two trustees to sign the two copies (or one trustee and a witness). In addition, trusts should leave the documents undated when they send it to their lead contact - the DfE will date the document at the point it is signed and sealed.

How long does this process take?

13.15. The timings for this process will vary, depending on individual projects. However, historically, the stage that most often holds up the process is agreeing the final version of the funding agreement. It is for that reason we ask trusts to focus only on the school-specific clauses (as highlighted by your lead contact).

13.16. In order to speed up the process, we advise trusts to discuss with lead contacts, at an early stage in the pre-opening phase, their preferred timings for signing the funding agreement, e.g. in line with local authority admissions process. Whilst we cannot guarantee this will always happen, agreeing a timescale helps to focus both the trust and the lead contact on ensuring they have completed the necessary tasks in advance.

What are the arrangements for multi-academy trusts?

13.17. Multi-academy trusts require different funding agreements to single academy trusts. While a single academy trust will have one funding agreement for its single free school, multi-academy trusts require a single master funding agreement to cover all schools within the trust and supplemental funding agreements for each, individual school. Model funding agreements for free school and studio school multi-academy trusts are available on the gov.uk website.

13.18. The master funding agreement contains general clauses (e.g. freedom to set the duration of the school day and year) whereas the supplemental agreements cover those clauses which are specific to the individual school.

13.19. If you are an existing single or multi-academy trust looking to open a new free school, the multi models will apply to you. Your lead contact will be able to advise on how the new models will work together with your existing funding agreements.

Working with the department

13.20. See process flowchart above on how to enter into a funding agreement.

Links to further information

View the [Table 14 Funding agreement: checklist of activities](#).

- [Free school model funding agreements](#)
- [Studio school model funding agreements](#)
- [UTC model funding agreements](#)

14. Ofsted inspections and registration as an independent school

Inspections and registrations

14.1. Your free school will have more freedoms and flexibilities than other state-funded schools but, once open, it will be held accountable in exactly the same way and subject to the same Ofsted inspection regime.

14.2. Your free school must undergo an Ofsted pre-registration inspection and be registered on EduBase before it can legally open. The only exception to this is where an existing independent school is converting to become a free school. These schools will not require a pre-registration inspection.

14.3. The only situation where this may not be the case is where there is a 'material change' to the existing school. A material change could consist of changing the premises, capacity, age range of the school etc. As a rule, converting independent provision will not require a pre-registration inspection prior to becoming a free school but do talk to your lead contact if you think your situation could be described as a 'material change'.

14.4. 16-19 free schools are not legally independent schools but it has been agreed with Ofsted that they will undergo the equivalent of a pre-registration inspection to ensure parity of accountability for all free schools.

Why you need an Ofsted pre-registration inspection and what the inspection looks at

14.5. In order to be added to the department's register of schools and legally be allowed to open, the Secretary of State must decide whether or not your free school is likely to meet the relevant Independent Schools Standards outlined below once open. The Ofsted pre-registration inspection informs that decision.

- Part 2 Spiritual, moral, social, and cultural development of pupils
- Part 3: Welfare, health and safety of pupils
- Part 4: Suitability of the proprietor and staff
- Part 5: Premises and accommodation
- Part 6: Provision of information for parents, carers and others
- Part 7: Procedures for handling complaints

14.6. NB - Part 1 of the regulations ('quality of education') does not apply to free schools and academies. Your education plans and policies will be considered during your [readiness to open meeting](#) with the department.

14.7. The inspection is not like a full inspection which you will be subject to once open, it merely seeks to establish if the school is fit to open based on the standards as outlined above.

14.8. You can link to the full [Independent School Standards](#), and to the [amendments](#) that took effect on 1 January 2013. A consultation on proposed new standards ran from 23rd June to 18th August 2014 and [results of this will be published in due course](#).

14.9. There is also more detailed information about each of the [relevant standards](#) you are required to meet.

Timing of pre-registration inspections

14.10. You will be informed by your lead contact when your inspection will fall. Your Ofsted inspector will then contact you directly to confirm the date of inspection. You will be given a minimum of two days notice of when your inspection will take place and you will be expected to make yourselves available.

14.11. Schools which have made the most progress towards opening will be prioritised for early inspection, while projects that would benefit from more time before their inspection will be scheduled later. It may seem advantageous to have the inspection as late as possible to give yourselves the greatest possible time to prepare; however, having an early inspection gives you longer to put right any issues identified by Ofsted before your opening day. A school cannot legally open unless it has been added to the independent schools register.

What you need to do ahead of the inspection

14.12. First, you'll need to fill in a copy of the [registration of independent schools form](#).

14.13. This form should be completed and accompanied by the following documents:

- A plan showing the layout of the premises and accommodation of all buildings.
- A copy of the school's written policies on:
 - preventing bullying. Changes to the Independent School Standards in 2013 mean that it is no longer prescribed that bullying policies must take into account the DfE guidance 'Safe to Learn: Embedding anti-bullying work in schools'. However, you may still find it useful to consider the DfE advice for headteachers, staff and governing bodies.
 - safeguarding and promoting the welfare of children who are pupils at the school. This should be compliant with the relevant health and safety law. Again this no longer needs to have regard to DfE guidance: 'Safeguarding Children and Safer Recruitment in Education', but you may find it useful.

- safeguarding and promoting the health and safety of pupils on activities outside the school which has regard to DfE guidance 'Departmental Advice on Health and Safety for schools'
- promoting good behaviour amongst pupils setting out the sanctions to be adopted in the event of pupil misbehaviour.
- A copy of the school complaints procedures, as outlined in Part 7 of The Education (Independent School Standards) (England) Regulations 2010.
 - Evidence that the school has appropriate procedures in place for undertaking Disclosure and Barring Service (DBS) checks of staff and recording the results (formerly known as CRB checks). All schools should have a single central register to record this information and it is the trust's responsibility to keep it up to date. The department's due diligence process means DBS checks have already been, or are being undertaken, on trust members and trustees. Before registration can take place, as a minimum, DBS checks must be completed and clear for all members of the trust (which must include those whose names are on the trust's articles registered at Companies House). That said, we would expect DBS checks on all trustees to be well underway if not complete ahead of registration.

14.14. The registration of independent schools form and these documents should be sent in one batch to your lead contact absolutely no later than two weeks ahead of your inspection. This is to ensure Ofsted inspectors receive all documents sufficiently in advance of the inspection. Your lead contact will advise on the deadline and send documentation onto Ofsted. **If you do not submit the necessary documentation in time your inspection may be delayed.**

What happens once the forms have been sent to Ofsted

14.15. Once Ofsted receives all the relevant documents, they will consider them and report their views to the department. These will be taken into account in determining whether your school can be registered. However, before offering final views Ofsted will need to visit the school in order to advise the department on whether the school is likely to meet the prescribed standards for registration once open.

Compliance with the Regulatory Reform (Fire Safety) Order

14.16. You will need to be able to demonstrate that your school is meeting the requirements of the [Regulatory Reform \(Fire Safety\) Order 2005](#). Trusts should ensure that they comply with the fire safety order and registration will not be agreed until confirmation of satisfactory fire precautions is received.

14.17. Trusts should inform the local Fire and Rescue Service ahead of opening but the fire service may decide not to immediately inspect the premises. Trusts should be aware

that the fire service is not under any obligation to provide this service before the school opens, though many are still happy to do so. Ofsted will consider alternative evidence such as written confirmation from the Fire and Rescue Service that they have approved your fire risk assessment in principle;

- documentation/certificate issued by an independent fire safety advisor;
- confirmation that you have a fire risk assessment and are complying with the Regulatory Reform (Fire Safety) Order 2005.
- A Completion Certificate confirming construction in accordance with Building Control Regulations and compliance with the fire safety standards.

The day of the inspection

14.18. The inspector will usually spend half a day with each school and they will need to be met and escorted by either the principal designate and/or the lead proposer. They may also need access to some office space in order to work. While in most cases it is the principal designate who talks to the inspector, it does not have to be. As long as someone else in the group can talk through the policies and plans, the principal designate does not have to be there. Ofsted will not rearrange the date of the inspection because the principal designate is unavailable.

14.19. In order to make a judgement about each of the standards, the inspector may ask to see a [number of policies](#) on the day in addition to those submitted with the registration form. Your lead contact will be able to provide these to you. If for any reason a document is not available, whoever is meeting the inspector needs to be able to discuss the plans for its development. Similarly, if the work on the site is not completed, you will need to be prepared to talk to the inspector about how the building will develop. If site works are still underway and it is possible for the inspector to be shown around (hard hat on!) that would be desirable but, again, not necessary. The building work does not need to be completed ahead of the inspection but the inspector will need to see evidence that all the requirements of part 5 of the standards, relating to the premises and accommodation of the school, are being considered and will be met by the time the school opens.

After the inspection

14.20. After the inspection, the inspector will produce an advice note and a checklist. The advice note is for the Secretary of State but the checklist will be sent to you by your lead contact. If your checklist includes no conditions of registration and you have a signed funding agreement, the free school can be added to the department's register of schools (EduBase) with a status of "proposed to open" and this will be viewable to the public.

14.21. In the event that the Ofsted checklist indicates that there are issues that must be addressed - known as 'conditions of registration' - the free school trust must take action to resolve these before the school can open. Your lead contact will be in touch to make sure that the conditions have been met and that you have evidence to demonstrate this.

14.22. In the event that Ofsted recommends that your school should not be registered your lead contact will work with you to urgently address the issues and will arrange for the school to have a re-inspection, if necessary. After the re-inspection the inspector will produce a second advice note and checklist.

14.23. It is the department, not Ofsted that decides when your conditions have been met. Only then can you be registered onto EduBase. If you are not added to the this, you cannot legally open!

14.24. Ofsted does not publish the advice note or the checklist. However, in every year of free schools opening so far there has been a Freedom of Information request to the department to publish these documents, and we have. It is therefore likely that yours will also end up in the public domain. If you're interested in seeing what an advice note and checklist looks like, you can view [previously published advice notes](#). You should also be careful in how you communicate the outcome of your inspection to your local community. These inspections are about whether or not the school is fit to open rather than any judgement of quality. For example, it would be incorrect and misleading to say that Ofsted have visited and said you are 'outstanding'.

The independent schools register (EduBase)

14.25. EduBase is the department's database of all educational establishments across England and Wales. Being entered on EduBase gets your free school its DfE number and unique reference number, which are used in a variety of circumstances to identify the school formally.

14.26. The first thing that needs to happen is for you to complete your EduBase form (your lead contact will provide this) and submit a copy to EduBase.FreeSchools@education.gsi.gov.uk. This form is different from the one available on the independent schools part of the gov.uk website, because the process involved is slightly different. You will need a landline telephone number to put on this form (others are not accepted on the EduBase system). If you do not have one for the school, use another but remember to change it to the school number as soon as your EduBase record goes "live". This form can be submitted for processing at any time, but you should aim to ensure that it is submitted by the end of phase 4 at the latest. You will then be issued with a set of numbers that can be used for things like registering with pension schemes or ordering equipment. Groups can request a letter confirming these numbers if they need evidence of what they are – eg for purchasing services – before the record has gone "live" and is therefore publicly visible.

14.27. Your EduBase record will go "live" – and will become viewable by the public – once you have a funding agreement in place and you have met any conditions set out by your Ofsted pre-registration inspection. Once your lead contact has confirmed that this is the case, you will need to contact Edubase through the [website](#) in order to gain login details for your school. It is important that someone at the school takes responsibility for keeping your EduBase record up to date – the department will not do it for you. Once

your school goes live on the system, you will be able to request login details for *Secure Access*. This is the portal that allows access to the department's system for sharing data, including *COLLECT*, *School to School* and *Key to Success* in addition to the EFA managed *Information Exchange*.

14.28. Please note that your school will not be able to open and your record will not go live unless the department is satisfied you have met all the conditions identified in the pre-registration inspection.

Inspections once open

14.29. Once open, you will not be inspected as an independent school. All mainstream, alternative provision and special free schools will be inspected under the Section 5 Ofsted framework - the same as maintained schools. 16 to 19 free schools will be inspected under the Common Inspection Framework (CIF), in line with other post-16 providers. The first full inspection for all free schools will normally take place during the second year of opening. It is the responsibility of the trust to keep abreast of inspection developments and the latest information can be found on the [Ofsted website](#). These inspections are judgement-based and the reports and judgements will be made public by Ofsted.

14.30. Ahead of schools' first Ofsted inspection, the department's education advisers will carry out monitoring visits to open free schools in their first and third terms.

14.31. The objectives of these visits are to ensure that schools are satisfactorily addressing risks identified at ROMs (first term visits only), that they are providing a high standard of education, are likely to enjoy a good or better first Ofsted inspection and to assure the department that there are no other issues or concerns that need to be addressed.

14.32. Monitoring uses the Section 5 Ofsted Inspection Framework (CIF for 16-19 provision) as a basis for assessing schools' educational performance. EAs will make contact towards the end of September to make arrangements for visits. The department may ask EAs to conduct follow-up monitoring visits should schools' require additional support in their first year.

14.33. Visits are supportive but are also designed to provide challenge in order to highlight areas schools should focus on ahead of their first Ofsted inspection. In addition to monitoring visits, many open free schools have found it useful to buy in support to undertake a trial run inspection ahead of the real thing to identify any outstanding issues. Many providers offer this service and employ ex-HMI to deliver it.

14.34. These external assurance exercises will help validate schools' own self-evaluations and inform school improvement plans ahead of their first Ofsted inspection.

Lessons learnt - open free school experiences of Ofsted inspections

14.35. In 2013, the first free schools were inspected by Ofsted. In February 2014, the New Schools Network (NSN) analysed the reports of all free schools inspected, to date. They have drawn out the key issues where inspectors found further development was needed:

14.36. **Governance** - in some schools, Ofsted found that governors lacked a clear understanding of the school's strengths and weaknesses, and did not provide enough challenge to senior leaders.

14.37. **Target setting and use of assessment** - some schools were not using assessment data to inform the way that they set targets or planned teaching. This was sometimes linked to a lack of previous pupil data or to the quality of the systems which the school was using to collect data about its pupils.

14.38. **Middle leadership** - in some schools, middle leadership was underdeveloped and was not yet having enough of an impact on the school. This was usually due to the short period of time that middle leaders had been in post, the small size of the staff body in the early years of the school or an overreliance on senior leaders.

14.39. The full NSN analysis and guidance for free schools facing their first inspection can be found on their website.

14.40. Moreover, initial analysis within the department for Education has highlighted the following additional themes from open free schools:

- PD recruitment - experience shows that recruiting a high-quality PD is crucial to securing a good or better Ofsted result.
- Staff retention - schools with high staff turnover (particularly PDs) tend to fare worse in their Ofsted inspections.
- Quality of teaching - schools where the quality of teaching is inconsistent tend to fare worse in Ofsted inspections (there may be a link to high numbers of inexperienced staff members).
- Size of school - there is a link between schools that do not fare so well in Ofsted inspections and schools that are smaller than average (perhaps linked to staff spread more thinly over a number of different roles).
- Behaviour and attendance - in those schools which fare better in Ofsted inspections, their behaviour policy tends to be more consistently and effectively implemented.
- Pupil expectations - in schools which fare better in Ofsted inspections, high expectations are clearer for pupils and staff.
- Moderation - in schools which fare better in Ofsted inspections, they moderate their data (e.g. assessment data) externally to validate their judgements.

Working with the department

14.41. The pre-registration inspection process is applicable to all free schools except independent converters, and it is up to you to follow the process as set out above. You will have some interaction with the department about the inspection through your lead contact.

14.42. Your lead contact will advise you when your inspection will take place during the summer prior to opening.

14.43. You will need to send the completed registration form and all of the relevant documentation to your lead contact at least two weeks before your inspection. If you don't, you risk your inspection being delayed.

14.44. Following the inspection, usually within four weeks, your lead contact will send you the checklist sent to the department by Ofsted. Should there be any issues which need to be resolved, they will be clearly indicated on the checklist.

14.45. If, following your inspection, the school is recommended by Ofsted not to be registered, your lead contact will arrange for you to have a re-inspection and will work with you to address the issues which have been highlighted.

14.46. You will need to provide evidence to your lead contact that you have met any conditions specified by Ofsted. Once the lead contact is satisfied that any conditions have been met, and a funding agreement has been entered into, you can be registered on EduBase and are legally allowed to open.

Links to further information

View the [Table 15 Ofsted inspections and school registration: checklist of activities](#).

- [Independent School Standards](#)
- [Amendment to independent school standards](#)
- [Advice on bullying for headteachers, staff and governing bodies](#)
- [Safeguarding Children and Safer Recruitment in Education](#)
- [Health and Safety of Pupils on Educational Visits](#)
- [Ofsted advice notes](#)
- [Ofsted website](#)

15. Preparing to open

15.1. Readiness to open meetings (ROMs) will take place before the end of June ahead of opening in September and are formal meetings between the department and the trust to:

- consider the progress the project has made through the pre-opening phase;
- tackle any remaining obstacles and risks to opening; and
- consider any further actions that need to be taken to ensure opening and a successful first year of operation.

15.2. Education will be the key focus of the ROM. The department will use the meeting to make a judgement on how confident it is that the proposer group will open a successful school.

15.3. Attendees from the proposer group should be:

- Chair of Governors (we suggest both the Local Governing Chair and the Chair of the board from the multi academy trust should attend where appropriate);
- Principal Designate (Head of school and or the Executive Head may also attend where appropriate);
- any other person who can provide information useful to the meeting, e.g. Chair of Finance Committee, Business Manager;
- for UTCs and studio schools a university or employer could also be invited.

15.4. Only those who hold a governance or leadership role should attend, with a maximum of five attendees overall.

Summary of the key tasks

15.5. In most instances the ROM will take place in the department and be chaired by a senior DfE official. Given the focus on education in the ROM, a DfE education adviser will also attend.

15.6. The Principal Designate will be required to complete a risk report and return it to the lead contact at least two weeks prior to the ROM. The report will:

- outline any risks or issues and the actions needed to address those issues;
- identify areas that require further discussion

Working with the department

15.7. Your lead contact will discuss the format and aims of the ROM with you in advance of the meeting. There will also be an opportunity to consider the content of the risk report to be completed by the PD.

15.8. Your lead contact will inform you of the venue of the ROM and will agree a date that is convenient.

15.9. The ROM will be chaired by a senior DfE official and will also be attended by your education adviser, lead contact and, where appropriate, representative(s) from EFA.

15.10. They will ask questions about progress, risks and issues in key areas of the project and agree actions for each area where appropriate.

Links to further information

View the [Table 16 Readiness to open: checklist of activities](#).

16. Once your school is open

The final stage of the pre-opening period

16.1. The final stage of the pre-opening process is to prepare for opening, which includes the hand-over of your free school project from the department's free schools group (FSG) to the EFA, which is responsible for all open academies, including free schools.

16.2. In some cases, you will be introduced to your EFA link officer at your ROM and it will be from this time onwards that the hand-over arrangements begin. Your lead contact will ensure that your EFA representative is fully briefed on your project so they know what challenges you may experience in your early days of opening. Once your project is handed over to the EFA it is important that you communicate with your EFA contact and not your original lead contact.

16.3. Your EFA link officer will arrange an initial meeting with you early in the autumn term of opening to provide an opportunity to visit your free school and develop an understanding of the school's vision. The role of the EFA link officer is significantly different to the lead contact and the expectation is that now you are open, you have the freedom, autonomy and responsibility to run your school but to call on the EFA if issues arise. Details of how to contact the EFA can be found below.

What does the EFA do?

16.4. The role of the EFA is to calculate and pay revenue and capital funding, as well as seek assurance over the use of public funds from academies of all types, including free schools, university technical colleges, and studio schools.

16.5. The EFA expects free schools to make the most effective use of their financial freedoms to raise educational standards, operating full accountability for how they spend tax-payers' money. Schools are asked to complete certain tasks so the EFA may provide assurance that this is the case and that free schools are meeting the terms of their funding agreements.

16.6. The EFA supports a free school's compliance with its funding agreement by responding to any requests that you may make of the Secretary of State as required by the funding agreement. This may include things such as: approval to enter into a lease; to dispose of land; or to make significant changes to provision, for instance by adding a sixth form.

How will the EFA work with you?

16.7. The EFA has published a Customer charter that sets out what all free schools and academies can expect in terms of service delivery standards. The paragraphs below are a summary of the EFA's role and service in relation to free schools.

16.8. You can get information and support from the EFA in these ways:

- The website 'About the EFA' is the gateway site for all EFA customers and has specific areas for academies and free schools.
- The Academies Financial Handbook, information about school funding reform, schools forum regulations, the Priority Schools Building Programme and the School Admissions Code are a few of the useful documents available on the website.
- Every fortnight the EFA publishes an e-bulletin that contains information for academies and free schools. It highlights key developments and changes in policies and procedures, events and things to look out for. It is often used to remind you of returns that are due.

16.9. If you cannot find the information you need on the website, you can email queries to the Enquiry Service at: academyquestions@efa.education.gov.uk. The EFA aims to answer questions within 48 hours and if they can't do that, will tell you and keep you informed of progress.

16.10. Free schools will in addition have a named point of contact or link officer for you to deal with. This will be for the first year of operation. You will meet the EFA link officer at the ROM.

Key tasks in the early days of opening

- a. Meet with your EFA representative.
- b. Update EFA on pupil recruitment numbers and any early issues.
- c. Prepare for a DfE education adviser visit in your first term of opening.
- d. Ensure that the academy trust has approved an annual budget for the first year of operation and submitted this to the EFA in accordance with the published timetable.
- e. Ensure that the academy trust has implemented the requirements of the 'Academies Financial Handbook'.

Links to further information

View the [Table 17 Handover to EFA: checklist of activities](#).

- [EFA website](#)
- [Academies Financial Handbook](#)
- [EFA Customer Charter](#)
- [About the EFA](#)
- [Funding reform](#)
- [Schools forum](#)
- [Priority Schools Building Programme](#)
- [EFA e-bulletins](#)

17. Freedom of Information (Fol)

Freedom of Information explained

17.1. The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.

17.2. The Act covers **any recorded** information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

17.3. The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection Act 1998.

17.4. Free schools are likely to be the subject of Freedom of Information requests asking for written information about the school. Whilst the Freedom of Information Act (2000) does not apply to free schools until the school is actually open, Freedom of Information requests received after this point can still request information generated during the pre-opening phase. It is therefore worth thinking now about the type of information that you hold.

Summary of the key tasks

17.5. The department cannot advise free schools on how to answer a Freedom of Information request. However, if you receive a request and are unsure how to deal with it, you should ask your EFA Academy Liaison Officer, in the first instance, as they may be able to help you understand what is being asked of you and can point you in the direction of useful resources.

17.6. From time to time, we are made aware of 'round robin' Freedom of Information requests that are being sent to every open free school. If you think you have received such a request it would be helpful to let the department know.

Other helpful sources of information

17.7. It may be helpful, when considering how best to answer an FOI request, to look at the [Information Commissioner's Office website](#). This provides advice on understanding the request, and on any exemptions that you may use when dealing with the request.

18. Who does what - roles and responsibilities?

The academy trust

18.1. You (the trust) are solely responsible for leading and managing the establishment of your free school. You are responsible for using any funding effectively and acquiring and engaging the necessary expertise and support.

18.2. Typically, trust will carry out the following tasks:

- provide vision, drive, and innovative solutions to guide the development of the free school;
- agree the project support arrangements you will need and manage the project development grant;
- develop the curriculum, specialist provision and organisational plans;
- agree the Memorandum and Articles of Association with the department;
- play a leading role in the composition of the free school trust board and appointment of trustees; ensuring there are no conflict of interests and appointments are made on the essential skills and expertise they can bring to the school;
- apply for DBS checks and ensure all members and trustees obtain valid DBS certification;
- continue to market and promote your school through pre-opening;
- carry out the statutory duty under Section 10 of the Academies Act 2010 to consult on your school;
- develop the staff plan and recruit the principal designate and other key staff;
- develop the school policies including admissions, special educational needs (SEN), behaviour, etc. and ensure these are in line with statutory requirements;
- develop robust, accurate and realistic financial plans; agree the terms set out in the funding agreement and understand the associated legal responsibilities and implications;
- recruit pupils to your school; and
- keep the department (via your lead contact) informed of the progress of the project through meetings.

The Department for Education

18.3. You will be allocated a lead contact from the department's free schools group, who will have three key roles:

- to support your group, offering advice and practical suggestions of ways to tackle issues;
- to challenge you, pushing you to complete certain tasks, questioning your approach to particular issues; and
- to act as a channel of communication between you and ministers - reflecting concerns both ways.

18.4. Your lead contact will arrange to meet you via an initial kick-off meeting. They will also invite a capital project director and project manager from the EFA (see below) to discuss your site and buildings requirements, and how the EFA will support you with your school building project. They are likely to have done some work on your site requirements before they meet with you.

18.5. At that kick-off meeting, your lead contact will give you feedback on the assessment of your application and cover any specific conditions that will need to be met in order for your project to progress successfully through pre-opening. They will also discuss your immediate priorities and answer any questions you have on pre-opening.

18.6. In advance of this kick-off meeting you will want to think about the progress you have made since your application was submitted. In particular, your lead contact will ask you to update them on the plans you have for:

- developing your admissions arrangements
- commissioning DBS checks on members and directors
- spending your project development grant
- recruiting a Principal Designate
- submitting your Memorandum and Articles of Association to your lead contact
- submitting your governance plan to your lead contact

18.7. Your lead contact may also arrange a series of meetings with you to allow discussion of progress, risks and issues. The lead contact will also advise ministers on progress, risks and issues.

Other departmental advisors will be:

Education adviser (EA)

18.8. Your project will be allocated an EA who is contracted by the department to provide expert educational advice. As a minimum they will usually:

- be involved in the process of appointing the principal designate
- comment on the build-up of the senior staffing structure
- provide assurance to the lead contact on the quality of education policies
- attend and contribute to the readiness to open meeting

18.9. There is more detail on the EA role in the [Section 12: Education plans, policies and staffing](#).

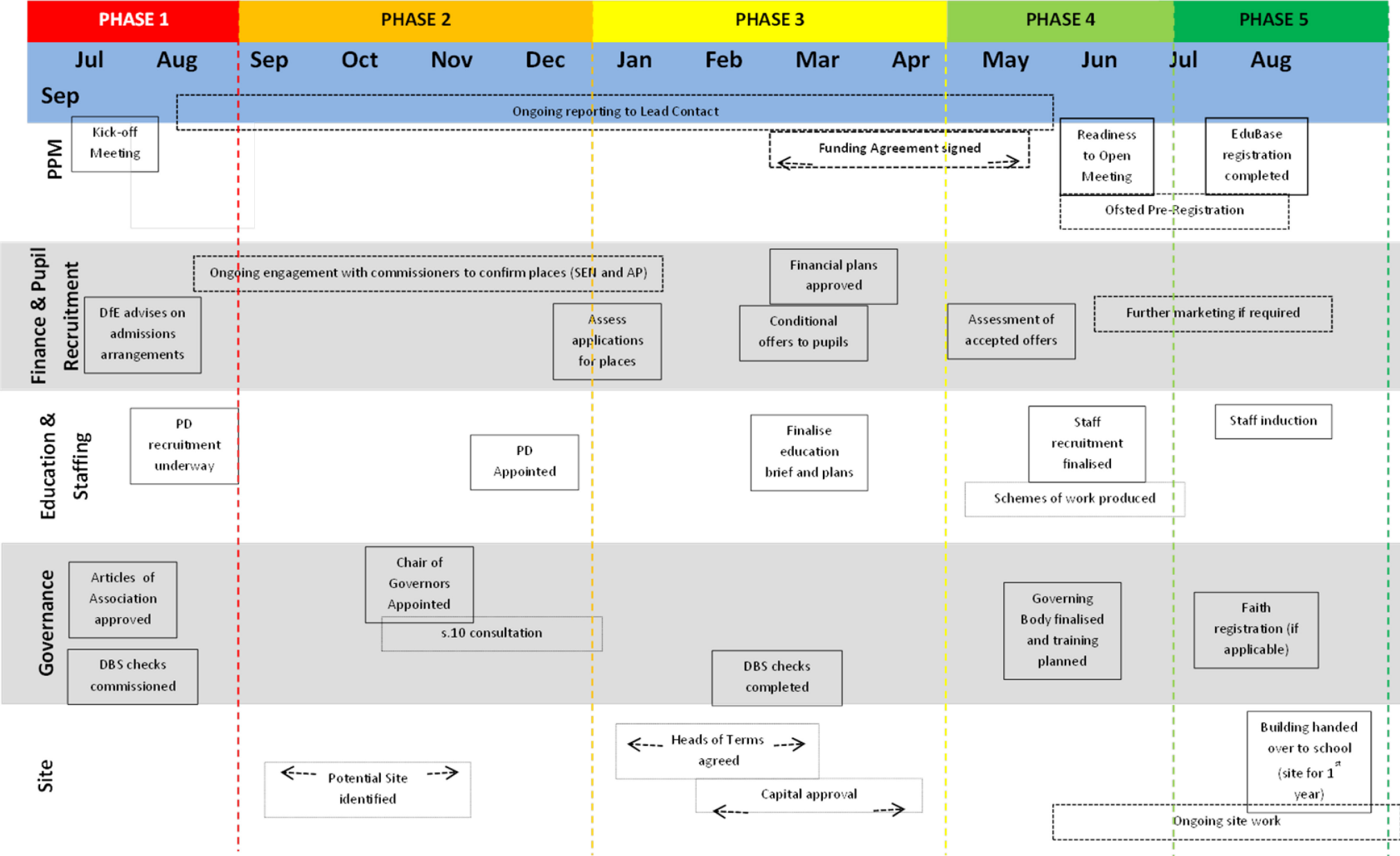
EFA capital support

18.10. Expertise and technical support will be provided to help you to both secure a site and construct the buildings for your school. Key contacts for your project will be:

- EFA project manager - the main contact for the capital project and who will coordinate further technical support when required and progress the project up to and including the procurement of the site and building(s).
- EFA project director - to oversee your project manager to ensure that your project is progressing to programme. They will provide support and guidance to the EFA project manager where required.
- EFA project technical adviser - who will oversee the capital project when procurement has been completed and will coordinate any specialist support requirements (e.g. surveyors).
- EFA ICT adviser - to discuss your ICT requirements and agree suitable solutions value for money

18.11. More detail on the EFA capital role is included in the [site and buildings](#) section of this guidance.

Example Pre-opening Timeline



Project task checklist

Table 2 Managing your project: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Review the capacity within your group to ensure there is sufficient expertise with the right skills sets (financial, educational and other appropriate skills), the capability, and time commitment to successfully deliver your school project. Submit governance plan to lead contact.	trust	Phase 1
Ensure you have a robust project plan in place with key project milestones and sufficient resources allocated to manage all the tasks in pre-opening, including expertise to manage your project plan.	trust	
Ensure you have a marketing plan in place to ensure marketing is a continuous priority process throughout pre-opening.	trust	
Kick-off meeting with trust.	lead contact	
PD recruitment- draw up timeline and set interview dates. If benchmarking is necessary liaise with EA to ensure they feed in and can scrutinise.	trust	

Table 3 Procurement and additional support: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Plan pre-opening expenditure, agree approach to procurement and set up arrangements to manage the budget.	trust	Phase 1
Decide where the trust will need to buy in services and support and plan the appropriate procurement to ensure suppliers/ goods are in place as and when required.	trust	

Table 4 Governance: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
To have established a company limited by guarantee (the trust) using the department's model Memorandum and Articles of Association. Set governing body size.	trust	Pre-application - to be discussed at kick-off meeting
Pen portraits on new trustees. Procedures in place to identify and manage conflicts of interest.	trust	Phase 1
To have in place plans for the structure of your governing body and plans for how you will source, recruit and train your trustees.	trust	Phase 1
To have recruited the chair and be on track to recruit remaining trustees and support staff. Workable plans in place for recruiting the remainder, and any training.	trust	Phase 3
Trustee recruitment complete and work completed/underway on key protocols and documents for term one.	trust/chair of trustees	Phase 4

Table 5 Due diligence: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Ensure you inform the department of all new members and trustees and have sent in all completed Section I forms to the Due Diligence Unit.	trust	Whenever a new member or trustee is appointed
Ensure that all enhanced DBS checks have been commissioned for the trust.	trust	Phase 1
Ensure that all members and trustees have emailed a scan of their DBS certificate along with declaration statement to the Due Diligence Unit.	trust	Phase 3

Table 6 Funding checklist

Activities to complete	Who has responsibility	Recommended timescales to complete
Issue project development grant agreement.	lead contact	Phase 1
Plan pre-opening expenditure, open bank account (if this doesn't already exist), agree approach to procurement and set up arrangements to manage the budget.	trust	
Sign and return project development grant agreement.	trust	
Submit plans for expenditure of PDG throughout pre-opening to your lead contact after first payment has been made.	trust	
Continue to develop school finance plan as project develops and review staffing structure.	trust	

Activities to complete	Who has responsibility	Recommended timescales to complete
Submit project development grant expenditure declaration within fourteen days of receiving second payment.	trust	Phase 2
Continue to develop school finance plan as project develops and review staffing structure.	trust	
Submit project development grant expenditure declaration within fourteen days of receiving third payment.	trust	Phase 3
Submit revised financial plan which takes account of pupil numbers and a revised staffing structure for the school on opening.	trust	
Assess financial plan and planned governance arrangements for the school.	lead contact	
Submit project development grant expenditure declaration within fourteen days of fourth payment.	trust	Phase 4
Issue indicative funding letter based on approved financial plan and agreed estimate of pupil numbers.	EFA (revenue)	Phase 4
Submit final project development grant expenditure declaration, showing balance of any unspent money, within eight weeks of final payment.	trust	Phase 5

Table 7 Site and buildings: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Arrange site kick-off meeting.	lead contact	Phase 1
Search for a site.	EFA	Phase 1

Confirm technical feasibility of site, including planning.	EFA	Phase 2
Procure construction works and ICT.	EFA	Phase 3
Build or refurbish school.	EFA/trust	Phase 3
Building works complete and site handed over.	EFA	Phase 5

Table 8 Admissions: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Submit admissions arrangements to lead contact. These should include the timeline and process for accepting applications and making offers.	trust	Phase 1
Lead contact to work with trust and admissions team to agree admissions arrangements for the free school.	lead contact/trust	Phase 1
Submit marketing plan for discussion.	trust/lead contact	Phase 1
Free schools will need to consider whether to include their admissions arrangements in their S10 consultation. This is good practice, as it allows interested parties to comment on the arrangements.	trust	To link into S10 consultation timeline - Phase 2
Monitor pupil recruitment - providing frequent updates, with supporting evidence, to your lead contact - and consider how this relates to the financial and educational viability of the free school.	trust/lead contact	On-going

Make offers to pupils in line with published admissions arrangements.	trust	1st week of March - secondary national offer day
Although free schools are able to set their own dates for offering places, many will do so around the same time as national offer day. Free schools need to ensure they follow their published admissions arrangements when accepting applications, allocating places and making offers. When offering places, free schools without a signed funding agreement must make it clear that the offer is conditional on the funding agreement being signed.	trust	Mid April - primary national offer day
Ensure an independent appeals panel is in place to hear any appeals from unsuccessful applicants following the offer of places.	trust	Following the offer of places

Table 9 Faith: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Identify a religious authority for admissions.	trust	Phase 1
Identify a religious authority for inspections.	trust	
Submit FSRDApp1 form to the department.	trust	Phase 1

Table 10 Statutory consultation: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
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Have clear plans in place for carrying out your consultation	trust	Phase 1
Launch your consultation in line with section 10 of the Academies Act 2010.	trust	Phase 2
Include evidence from the section 10 consultation in the assessment of the impact that opening the free school will have on other state-funded educational institutions in the local area.	lead contact	Phase 2
Consider the responses to your consultation and whether you need to make any changes or additions to the plans for your school	trust	Phase 2
Provide a report of the consultation, including key findings, to the department.	trust	Phase 3

Table 11 Equalities duty: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Review your on-going commitment to your equalities duty for all your plans and policies through-out pre-opening.	trust	On-going

Table 12 Staffing, education plans and policies: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Discuss your proposed staffing structure with the department.	trust	Phase 1
Consider how you will meet your statutory duties in relation to the Equalities Act through recruitment material for staff.	trust	

Begin the recruitment process for your principal designate.	trust	
Include the recruitment of staff and the development of your educational plans and policies in your project plan.	trust	
Recruitment of essential senior staff begins.	trust	Phase 2
Begin drafting all the staff policies required for recruitment of staff.	trust	
Single Central Register (SCR) set up	trust	
Staffing structure finalised and financially viable given likely number of pupils.	trust	Phase 3
Key appointments made and minimum staff appointed, Disclosure and Barring Service checks (was CRB), contracts and pension arrangements underway.	trust	
Have in place all education plans and policies that are required for your Ofsted pre-registration inspection (not applicable to registered independent schools which are converting).	trust	
Produce curriculum plan.	principal designate or education expert	
Produce three-year development plan/education brief (the overarching plan to which all other policies and plans relate).	principal designate or education expert	Phase 4
Schemes of work developed that cover at least the first year of opening.	principal designate other teaching staff in post if applicable	
Pupil level assessment and accreditation plans in place.	principal designate	
All policies the trust has a statutory duty to produce are in place.	trust	

Plans for pupil induction in place.	principal designate	
Begin staff induction and training.	trust	

Table 13 Funding agreement: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Complete your statutory consultation and submit report to your lead contact.	trust	Phase 3
Meet your requirements, as a public authority, under section 149 of the Equality Act 2010.	trust	
Have appointed sufficient, and appropriate, staff to start in September of opening (including PD).	trust	
Secure enough pupils (with conditional offers) to meet your PAN.	trust	
Submit your financial plans to your lead contact for approval.	trust	
Secure your permanent site for your school (i.e. Heads of Terms in place).	trust	
Produce the necessary policies for the Ofsted pre-registration inspection.	trust	

Table 14 Ofsted inspections and school registration: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Inform the trust when their inspection will take place.	lead contact	Phase 3
Submit the completed Ofsted registration form and all required documentation to Ofsted.	trust	

Submit the completed EduBase form to the department.	trust	
[If inspection concluded and checklist issued by Ofsted] Send the Ofsted pre-registration inspection checklist to the trust.	lead contact	Phase 5
[If inspection concluded and checklist issued by Ofsted] Address any conditions of registration identified by Ofsted as per the checklist	trust	

Table 15 Readiness to open: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete
Agree date/venue of ROM	lead contact/ trust	At least one month prior to the ROM (Phase 4)
Discussion/briefing on ROM	lead contact/ trust	
Completion of PD Risk Report	principal designate	At least two weeks prior to the ROM (Phase 4)
ROM meeting	principal designate, lead proposer, chair of trustees, lead contact and EFA.	Phase 4
ROM risk register and key actions document	lead contact	Two weeks after ROM (Phase 4)

Table 16 Handover to EFA: checklist of activities

Activities to complete	Who has responsibility	Recommended timescales to complete

Activities to complete	Who has responsibility	Recommended timescales to complete
Complete actions generated from the ROM	trust	Phase 4
Meet with your EFA representative	trust/EFA	Phase 4
Ensure your free school is prepared for an education adviser visit during the first term	trust	First Term
Ensure that the requirements of the Academies Financial Handbook are in place when the school opens, including formation of a finance committee, the appointment of external auditors, responsible officer and accounting officer	trust	By opening
Approval and submission to EFA of the trust's annual budget forecast for the first year of opening	trust	Early autumn (year of opening)
Completion and submission to EFA of academies' financial management and governance self-assessment	trust	First term



Department
for Education

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