Department for Education

Guidance for school pre-opening guide

Updated 19 September 2020

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1. Introduction to the pre-opening phase

1.1 Free schools: the pre-opening phase

Opening a free school is challenging, but also incredibly rewarding. This guidance provides a checklist of the main risks and responsibilities for trustees for a school this reading. It sets out the legal requirements and sets Ofsted's (ofsted.gov.uk) view of what to undertake to ensure your school opens successfully.

Through the free schools programme, the DfE has created thousands of new school places, opening schools across the country. As of June 2020, there are over 500 free schools in England, with over 100 more in the pipeline, including 40 specialist free schools, 16 studio schools and 5 university technical colleges.

Closing the attainment gap for disadvantaged pupils is a priority for DfE. Every free school should be open to all local children and should be actively reaching out to the community, including groups from disadvantaged and other hard to reach backgrounds.

Equally, if you run an existing school, or have another application in pre-opening with DfE, you should use this guidance to ensure you are aware of it is suited to a timeline similar to mainstream free the education and better. Although the DfE's free schools programme is for new schools, it is also for academies, as a result of a school converting to academy status or being created as a result of a school being in special measures, being inadequate, or if there is significant decline in the performance of one or more of your existing schools.

1.2 Free school stages

There stages will be the main points in DfE's assessment through the application.

Applications and assessment phase

- Application is assessed by DfE
- Formal interviews held (if successful in stage 1)
- Approval letter issued (if successful in stage 2)

Pre-opening phase

- You will be allocated a DfE lead contact to support and work with you towards opening the school.
- Free schools capital (FSC) funding will develop a site for the school.
- Trust develops plans and meets legal requirements.
- An external expert (EE) will be appointed to provide professional advice and support as you develop your educational vision and staffing plans.
- Funding agreement signed by Secretary of State.

School opening

- Your lead contact is your main contact for the school, working with ESFA (education and skills funding agency) and providing the main point of contact.

1.3 Types of free school

The guidance applies to the following types of free school projects in the pre-opening phase:

- mainstream (including primary, secondary, all-through and 16 to 19)
- special
- alternative provision

There are some differences between the specific tasks that you will need to undertake and the timeline for your school depending on the type of school you are opening (for example, secondary schools will have different timelines). Where this applies, this will be clearly indicated in this guidance.

If you are applying to open a mainstream free school, you should have an assumption that the proposed school will include a nursery. Throughout the guidance, we have highlighted the key points that the nursery provision must follow to successfully open and operate.

This guidance also applies to presumption free school projects. Once where the local authority has identified a need for a new school and has approached a trust to run the school, the process is slightly different. However, there are some differences between the pre-opening processes for presumption free schools and other free schools. For example, the timeline for the application stage, funding and the pre-opening phase will be shorter for presumption free schools. If you are opening a presumption free school, you should also refer to the presumption free school: guidance for local authorities, guidance, as this provides information on the DfE's presumption process.

DfE will work closely with the local authorities in which special free school projects are based and will invite local authority representatives to attend meetings and site visits. Local authorities, DfE and the trust are the key stakeholders, and they are responsible for commissioning and providing the school place.

There is separate pre-opening guidance for 16 to 19 studio schools, as the pre-opening processes for 16 to 19 studio schools are different to other free schools. If you are opening a 16 to 19 studio school, you should ensure that you refer to the separate pre-opening guidance for 16 to 19 studio schools.

1.4 Roles and responsibilities

All trusts will be assigned a lead contact in DfE. Your lead contact will help advise and challenge you through the process, and will be responsible for making sure it is open, providing new policy changes and system leadership where these are relevant to your school. Your lead contact will also be responsible for lead contact, including a monthly meeting and a termly meeting with ministers. These formal meetings between trusts and DfE will normally be as follows:

- the initial set up meeting
- A checkpoint meeting to determine the provisional opening date, once this can be been confirmed
- A checkpoint meeting, normally in the December or January before the confirmed opening date, which focuses on legal requirement and other preparations for the school to open successfully. This meeting will consider whether to hold a formal opening date
- A readiness to open meeting (RTOM), about 3 months before opening, to confirm that the school is ready to open

At all these meetings, we will assess the project's overall progress, identify any important risks that need mitigation, and discuss any financial and operating sustainability issues open, and assess the costs incurred to date and the trust's ability to deliver the project within the budget and meet the legal requirements. We expect representation from the trust during these meetings.

Commitment to COVID-19

We have had to change some of our practices to ensure safe working for all staff and pupils during the COVID-19 pandemic. We will continue to work with the trust to ensure that we can still hold meetings, but we will be adapting the meetings should the lead force to face but will keep this under review and update this guidance as the situation changes.

You will also be allocated a contact from the Free Schools Capital (FSC) team who will be your main point of contact for capital. This is covered in section 1.12 of this guidance.

Annex A, updated on the main guidance page, contains a project lead checklist, which outlines the main tasks and roles for the project lead. Section 1.4 of this guidance also provides a checklist for the trust to consider in ensuring that your school can open successfully.

It is critical that you set up your governance and school management arrangements because the timetable for opening a free school is very challenging. The DfE will expect a clear plan and a robust project plan about the size of inertia.

We recommend that you designate a specific person as responsible for governance and school leadership. We will expect trusts to be actively working in this a limited number of specific circumstances. details of these are contained in section 1.7 of this guidance. We will also expect a clear confirmation of the proposed governance and school leadership structure.

Until a suitable site has been secured, we would expect you to maintain membership contributing to the development of the school, including:

- admission arrangements
- the curriculum
- governance including membership recruitment and skills or association

However, we would not normally expect you to undertake the following, which requires confirmation of a site: staffing, recruitment, and pupil or parent agreement of DfE.

- recruit the principal designate and other important staff
- carry out the statutory duty under section 10 of the Academies Act 2010 to consult on the proposed admissions
- agree the terms of a site-specific funding agreement and undertake the associated legal responsibilities and implications
- invite applications from parents

New Schools Network

The New Schools Network (NSN) receives a grant from DfE for Education to provide support to free school projects in the pre-opening phase and in preparation to pre-opening, based on the experience of trusts that have successfully opened free schools. NSN provides a range of tailored support for free schools in pre-opening and DfE, Education, or contact nsn@newschoolsnetwork.org.

2. Main risks during pre-opening

Our experience from opening over 500 free schools suggests that most projects share a set of important risks and issues. We have identified a set of risks that we think are important for you to consider and manage, and we ask you to manage each of these important risks. You should inform DfE immediately if any of these risks or issues arise, and should have a plan in place, so that we can help to resolve them and enable you to open a good, stable school on time.

2.1 Summary of main risks

This section summarises important risks.

Leadership

A high-quality principal designate is not secured in the first in subsequent rounds of recruitment and is not in place to implement the school from support and influence the development of school policies and education brief.

Governance

The governance chain of business is not appointed 12 months before opening, for example, by the end of academic year 2019.

If you run an existing school or have another project in pre-opening and:

- your governance structure is not fit for purpose (TPM)
- a DfE official or external expert (formerly education advisers) raise any concerns about it, for example, a lack of independence or a lack of the skill but are sold concerns, such as a forward deficit
- governance is not operating effectively and other requires improvement is necessary
- there is a significant decline in the performance of one or more of your existing schools, or you are in a multi-academy trust and one of its schools is below agreed floorstandard.

You are not able to submit a complete governance plan 10 weeks before opening, or DfE has concerns about the governance structure proposed.

Pupil recruitment

Marketing and recruitment plan targets have not been met, indicating that the school may be unstable upon opening.

Application numbers, at the application deadline date, indicate the school will not be stable.

Premises

Risks could include:

- you are likely to run out of project development grant (PDG)
- a planned unofficial statement is submitted to planning permission (see separate guidance on planning permission)
- the site is not secured by the end of the month before the expectations to open meeting and other contractual points as required.

Education

Risks could include: you are not able to fully set up your education plan with your external expert.

Admissions

Risks could include:

- you wish to adopt unconventional admission arrangements
- you wish be part of your local authority coordinated admissions

Other risks

Other risks have been presented in this section are not exhaustive. These are the most common risks but each individual project will have its own issues and you should discuss any concerns with your lead contact.

3. Governance

This section covers governance arrangements.

3.1 Introduction

The governance handbook outlines the features of effective governance, which trustees should consider when developing their governance arrangements, including:

- strategic leadership that sets vision, ethos and strategy
- accountability that ensures school is managed and performs to high standards
- oversight that sets clear objectives, expenses, questions and capacity
- structures that ensure clarity and effectiveness of decision-making and stakeholder
- compliance with statutory and contractual requirements
- evaluation to monitor and improve the quality and impact of governance

3.2 Guidance for governance arrangements

You should be aware that:

- the board of trustees must be constituted to have at the necessary skills for the proper governance of the school, and to meet its responsibilities
- DfE's governance guidance for academy trustees provides information on the knowledge and behaviours needed for effective governance and clarifying the roles and responsibilities of boards and individual trustees. It also sets out how trustees, governors, and the school leadership framework be independent of the board
- at least 2 parent governors and 20% of the school trustees should be accounted with the school's ethos
- no members and no more than one third of trustees can be employees of the trust. Our school governance guidance provides information on the CEO chair and governance
- whether you are an established trust or a new trust, we expect you to adopt DfE's model articles of association (where signing is before 1 September 2020)
- the school is to be part of an academy trust – a charitable company limited by guarantee

A trust's governance arrangements are laid out in its articles of association (DfE provides model articles for trusts to adopt). Members of a Church trusts should use the model articles, church academies model articles, or the model articles for a multi-academy trust with a church school as the lead school, articles, or use trust's articles of association with the complicated combination of model articles (model articles).

We expect the majority of, if not all members of the board of trustees. This enables members to exercise their powers more objectively and independently than they can do as they grow. Time by the board.

3.3 Board of trustees

The board of trustees manages the business of the academy trust and may exercise all the powers of the academy trust. The board of trustees is supposed and remains accountable for the school's performance and is ultimately responsible for the school's financial and other affairs. The board of trustees may delegate to a committee, or to a single trustee, or to an individual.

The trustees must ensure compliance with the trust's charitable objects and with company and charity law. The board of trustees is also part of the trust accounts and is responsible for adherence to the trust's funding agreement with the Secretary of State for Education. The board of trustees must ensure the trust's accountability to Parliament and to the Secretary of State as the Principal Regulator of academies and charities.

The board of trustees is responsible for and is accountable for the right experience and skills. The board of trustees should have a clear vision, ethos and strategy (governance handbook), which are needed for effective governance.

Trusts need to put in place arrangements to ensure that trustees and governors avoid conflicts of interest wherever possible. Trusts need to be transparent about governance arrangements, and should publish information on the trust's governance structure and how it is compliant with the governance handbook and Charity Commission guidance.

Our charity trustees have to comply with our duties and perform our responsibilities in a way that is consistent with our charitable objects, accountability, expenses and transparency, and we must be able to demonstrate that we have complied with these. Trustees must be aware of the duties, responsibilities and liabilities that they undertake.

The governance professional will also help the board understand its role, governance and how it operates, and how it applies the trust's articles and strategic objectives and decision-making. More information on the duties of the clerk can be found in the clerks to school governing boards guidance.

3.4 The 7 principles of public life

As explained in the academy financial handbook, academy trustees, governors and staff must adhere to the 7 principles of public life. These principles apply to all who are in public office. They include: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Trustees should be able to explain their actions and be willing to

3.5 Clerk (governance professional) to the trustees

You are required to appoint a clerk (governance professional) to the trustees. The clerk to the trustees is not a member of the board of trustees, unless the trust. They will advise the board, and ensure good governance. The trust board

The governance professional will administer board meetings and provide advice and guidance on the board's governance. The clerk to the trustees will also need to be compliant with legal process. Each meeting of the board of trustees must be minuted and minutes kept. The clerk to the trustees should be a suitable person.

The governance professional will also help the board understand its role, governance and how it operates, and how it applies the trust's articles and strategic objectives and decision-making. More information on the duties of the clerk can be found in the clerks to school governing boards guidance.

3.6 The 7 principles of public life

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3.8 Summary of the main tasks

This section contains a summary of the main tasks.

Making sure you have established your academy trust properly

The academy trust will be the signatory to the funding agreement and the legal owner of various assets. Setting up your academy trust allows you to open a company bank account, into which DfE will pay your project development grant (PDG) (see section 4)). You should have set up your trust before submitting your application.

The articles of association describe your trust's constitution and establish the framework of your governance arrangements. DfE's model articles have been designed to follow best practice in corporate, charitable and school governance. That is why our expectation is that you will adopt our model articles to establish your academy trust. Trusts moving from having one school to having a number of schools will also be expected to move to DfE's model master and supplemental funding agreements when the time comes to sign the funding agreement for their new free school. Established trusts must move to DfE's latest model master funding agreement for the new free schools and any future free schools or academies, if they are not already on the latest model.

Where the group is an existing academy trust and therefore has its own articles of association, we would expect you to adopt the latest model articles if this is not the one being used. Where the group is a new trust, you should also adopt the latest model. We will discuss with you any particular governance issues that you will need to consider.

The model articles are flexible enough to accommodate most governance models adopted by free school proposers. Your lead contact will need to be satisfied that your articles of association are in line with our latest model and have not been changed before recommending that the Secretary of State enters into a funding agreement to open your free school.

Your lead contact will ask to see a governance plan to examine structure, roles and responsibilities, and details of internal controls, and to look at pen portraits of governors and any skills gaps and vacancies. The plan should be submitted with a completed checklist, signed by the lead proposer or chair of governors, which ensures your plan contains the level of detail we require. Your lead contact will ask you throughout the pre-opening phase how trustees are managing the transition from pre- to post-opening. You should talk to your lead contact if you are experiencing difficulties developing the governance plan or if you think you will fail to submit a final version 8 months before opening, (for example, by the January for a September opening or by August for an April opener). It is possible that your lead contact will ask you to submit your plan before this time.

3.9 Size of your board of trustees

Consider these points for your governance plans.

Members

Consider these following questions relating to members:

- are there at least 3 (we strongly recommend at least 5), including:
  - whether they meet guidelines around employees and LA associated individuals?
  - Whether there is significant separation between members and trustees to enable members to exercise their powers objectively?
- do the plans demonstrate a clear understanding of the role of the member (and what is not their role)?
- if a sponsor member is listed, is it a DfE-approved sponsor? (Corporate members are considered on a case-by-case basis, check with your lead contact)

Trustees

Consider these following questions relating to trustees:

- is the trust board an adequate size to oversee the business of the trust?
- will there be any cross-over between members and trustees, including whether this cross-over is sensible? (for example, will there be independent challenge?)
- do the arrangements reflect the memorandum and articles?
- is there a chair of the trust board in place, including, do they have the right experience, skills and knowledge?
- are the other trustees suitably skilled, including whether you have Ofsted reports and academic results for other schools trustees have been involved with?
- has a skills audit been carried out to identify skills gaps in the existing trustees, including whether this will be used as a basis for trustee training and recruitment?
- if any trustees are also employees of the trust, including the CEO, is the total number of trustees who are employees no more than one third of the total number of trustees?(this is to retain clear lines of accountability through the trust's single senior executive leader - more information on this can be found in the governance handbook, page 48 paragraph 18)

The number of trustees you need should be determined by the needs of your particular free school. The board of trustees should only be as big as it needs to be to ensure it has the full range of skills it needs to be effective. Between 6 and 12 high-calibre trustees should be sufficient to manage your trust effectively. Any specialist knowledge can be provided as and when it is required by committees or other experts, such as the clerk to the trustees or the trust's legal advisers.

You will have indicated the size of your board of trustees in your articles. The articles require you to specify how many trustees will be appointed by the members and that you will elect a minimum of two parent trustees. In a trust with more than one school, this can be at board level or alternatively on each LGB. When an insufficient number of candidates stand for election, the board of trustees will appoint the required parent trustees or local governors. The articles will also specify the number of trustees that will be appointed by the foundation or sponsor body, where the trust has one.

You should expect your lead contact to challenge you if the number of trustees set out in your articles is greater than 12. DfE will want to be assured that any larger body is justified, according to the likely demands of running your free school. Your lead contact 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.

In establishing an LGB, you should ask yourself the same questions about size, skills and structures as you would when setting up a board of trustees for trust with only one school. You should also consider what, if any, responsibilities should be delegated from the trust board to the LGB, avoiding duplication or overlap between the role of LGBs and the board in holding executive leaders to account. These should be set out in a clear written scheme of delegation published on your website. While you may delegate responsibilities to an LGB, the trust board remains accountable for what is delegated. People appointed to LGBs are not trustees unless they sit on the trust board.

No more than one third of the total number of trustees can be employees of the academy trust. Our strong preference is that the principal/CEO of the trust should be the only employee who is a trustee. The number of trustees who are local authority associated cannot exceed 19.9%. This includes anyone who is a member of a local authority, or has been within the past 4 years, where that organisation has a responsibility for education, or is a district or parish councillor where there is a land or other commercial relationship with the trust.

Ensuring you are recruiting the right people as trustees

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. DfE has published a competency framework for governance setting out the competencies needed for effective governance and you should consider this when appointing trustees. Your lead contact will want to be clear about the skills and experience each trustee brings and what role they will fulfil.

The attributes outlined in the framework 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 important to effective accountability between the trustees and the school, and between the trust's members and board of trustees. DfE and National Governance Association (NGA) 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.

The trustees of a free school need to be assured that its financial systems, transactions and risks are being adequately assessed and addressed. Trustees are also responsible for establishing internal controls that recognise public expectations about governance, financial management and financial probity, and expectations on the stewardship of public funds by ESFA's accounting officer and Parliament. More information on how a free school can check that their financial and other controls are operating effectively can be found in the academies financial handbook.

Your lead contact will want to see evidence of the steps you have taken to ensure that the trust board includes individuals from a range of different backgrounds, so that a diverse range of perspectives are represented. Having some people on the board who come from outside the faith or ethnic group of the majority of pupils can help ensure that the board has sufficient internal challenge to the decisions it makes and how it carries out its strategic functions. In addition, boards must ensure they understand the full diversity of the school's cultural and religious context and that of the community it serves.

Parent trustees are elected by other parents, not the trust, but they are expected to act in the best interests of the trust in the same way as all other trustees. 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 4 years.

Most free school proposers dedicate some of their PDG to trustee training – something that we strongly recommend you do. You may want to consider signing your trust or LGB chairs up to one of the governance leadership development programmesthat are funded by DfE. The programme is delivered by DfE-contracted providersand are available in every region. Enrolment takes place on a regular basis.

Finding trustees

DfE funds Inspiring Governance and Academy Ambassadorsto support boards in finding suitable trustees. Inspiring Governance is a free, online self-matching service for people who are interested in volunteering as a governor, and for board's smaller trusts seeking to recruit new trustees. Academy Ambassadors provides a targeted match-making service between potential non-executive directors and trusts, helping to grow successful academy groups sustainably.

In recruiting your board of trustees, you should aim to have recruited a capable chair and identified the majority of your trustees at least 6 months before your school's provisional opening date. This does not include parent trustees, who you can appoint during the first term post-opening. Your lead contact will challenge you on progress with trustee appointments throughout the pre-opening period and governance will be a important focus at your readiness-to-open meeting, where the chair will be expected to play a full part in the discussion, alongside the principal designate.

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 their skills and experience. If not, there are other ways to involve supporters and give people a say over the running of the school, for example as non-trustees sitting on committees, or on informal working groups reporting to the trustees.

Trustees' commitments, post-opening

You will need to ensure you have trustees with sufficient capacity, particularly in pre-opening and the early years of the trust, to undertake their commitment to the role, which can be significant.

The burden on individual trustees can be reduced 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.

The transition from pre- to post-opening

During pre-opening some trustees take on additional responsibilities as part of the project team. This contribution can be vital and is welcomed, but it will be important to ensure that trustees understand the need to take a more strategic role as the free school moves towards opening. To support this, having a transition plan in place can help trustees to make the necessary adjustments.

Taking a strategic role is not just about handing over plans to the principal designate and senior leaders. An important 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.

3.10 Prompts for your governance plans

Consider these points.

Board structure

You may want to consider these following questions:

- is the board structure clear to all?
- does it reflect the 3 core strategic roles of a board ensuring clarity of vision, ethos and strategic direction, financial oversight, holding the school leadership to account for the educational performance of the school?
- is the level at which the responsibilities of the board will be executed or delegated to committees or individuals clear, for example, does the plan include a delegated decision planner and do all those involved in governance understand their responsibilities within the structure?
- have the terms of reference for committees been developed, including:
  - are there link trustees?
  - in which areas?
  - is their role clear?

To help your trustees begin to define their role as strategic leaders, we recommend focusing first on the guidance in the governance handbook which describes the role and duties of governors and trustees in academies. The all-party Parliamentary Group on Governance has published a list of 20 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. The education inspection framework from Ofsted is also helpful on the wider picture of what the trustees are responsible for overseeing.

Sub-committees

An important consideration will be how to make the most effective use of committees, including, if you are a trust with more than one school, LGB and working groups. Trust boards are expected to have a finance committee and are free to set up committees covering other areas of business, such as curriculum and attainment.

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 may focus on specific issues and make recommendations to the trustees. The constitution of committees is for the trustees to decide (except where you do not have 2 parents on the board of trustees – trusts must then have 2 parents on each LGB). Non-trustees can be co-opted onto committees and can vote on that committee, although (except in the case of LGBs) 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 based 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.

As an alternative to a standing committee, you could consider setting up a working group 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 a working group once an issue has been resolved, which avoids unnecessary demands on people's time. You cannot delegate decision-making powers to a working group.

3.11 Leadership

Senior executive leader

You will be required to appoint a senior executive leader (SEL) in practice also known as the principal, executive principal or CEO. The SEL must be the head of the line management executive chain and held accountable by the board of trustees for the performance of the whole trust. The SEL should also be the trust's accounting officer. The SEL role must not rotate between individuals, although it may be filled by a job-share.

The appointment of a SEL does not require an additional person to be employed. In trusts with only one school, the SEL will be the principal. For trusts with more than one school, the SEL could continue to be the principal of an individual academy within the trust while also acting as CEO. It is important to remember that there is no 'lead school' in a trust. The board must not favour or show allegiance to one school but foster a common ethos and vision across the whole trust. The appointment of an accounting officer or SEL does not remove the responsibility of the board of trustees for the proper conduct and financial operation of the trust.

Accounting officer

Each free school trust must designate a named individual as its accounting officer. The trust, on appointment of the accounting officer (AO), is responsible for ensuring that the AO undertakes sufficient training to undertake the role. In single free schools, this should be the principal. If a free school is joining a trust, it should be the senior executive leader.

The role of the accounting officer includes a personal responsibility to ESFA'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 ESFA'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, of:

- 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 or fraud or irregularity
- keeping full and accurate accounting records to ensure ongoing viability

The free school's accounting officer is also required to sign:

- a statement on regularity, propriety and compliance which is included in the free school's audited annual accounts
- an annual value for money statement explaining and demonstrating with examples how the free school has secured value for money

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.

More detail on the role of the accounting officer and how this can be discharged can be found on the Institute of School Business Leadership's website.

Chief finance officer (CFO)

Free schools must demonstrate 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 that effective governance and robust financial management is preserved. More detail on the role of the CFO can be found on the Institute of School Business Leadership's website.

3.12 Delivering assurance

Academy trusts must have in place a process for checking their financial systems, controls, transactions and risks. This programme of risk review and checking of financial controls can be managed in the way that you deem most appropriate in your circumstances. Options include:

- the appointment of an internal audit service (either in-house, bought-in or provided by a sponsor)
- the performance of a supplementary programme of work by the trust's external auditor
- the appointment of a non-employed trustee with an appropriate level of qualifications or experience to check the trust's internal controls, who neither charges, nor is paid by the trust for their work - this appointment is not mandatory but this is one way that trusts are able to conduct their internal checks
- a peer review, with the work being performed by the CFO, or a suitably qualified or experienced member of the finance team, from another academy trust, as an independent reviewer

Further information on internal scrutiny can be found in the academies financial handbook.

3.13 Conflicts of interest

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'.

It is inevitable that conflicts of interest will arise at some time. 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.

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 the following conditions are met:

- 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 DfE with approved academy sponsors)
- trustees and members comply with the protocols set out at articles 6, 97 and 98 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 (see section 7 for further information). The Charity Commission has also produced helpful guidance on identifying and avoiding conflicts of interest

! **DfE will take very seriously any failure to manage conflicts of interest properly, whether these are real or perceived. Negligence in relation to this could ultimately lead to the cancellation of the project.**

3.14 How we will work with you

Your lead contact will:

1. Need confirmation that your trust has been established and that your articles are in line with DfE's latest model.
2. Check the proposed size of your board of trustees and request to see the governance structure – they will challenge you on any amendments, or if your proposed board of trustees looks unnecessarily large.
3. 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 DfE within 14 days of any change (appointment or removal) of any trustee or member of the trust (the Charity Commission does not regulate academy trusts, so you should not seek to register the trust with the Commission or provide them with details of your members and trustees).
4. Challenge you should any concerns arise about an individual's appointment, including where DfE has a concern about a potential conflict of interest.
5. 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. At this stage, 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.
6. 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 have confirmed which 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.
7. Expect you to have recruited the chair of trustees at least 8 months before your school's opening date, who should be working with the principal designate, and have identified or appointed the majority of remaining trustees and support staff (such as the clerk, and a responsible officer). As a minimum, you will need to have a workable plan to fill outstanding vacancies.

In recommending to ministers that they enter into a funding agreement, your lead contact will need to provide assurance and evidence that your governance arrangements are appropriate and rigorous, and that you have recruited high calibre trustees.

As the school moves towards opening, your trustees should be working with the principal designate on the board of trustees' important 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).

3.15 Further information

- Table 3 Governance: checklist of activities (Annex A)
- The role of the chair of governors
- Governance handbook and competency framework
- Academies financial handbook
- Model articles of association
- The role of the clerk and how to appoint a clerk
- National leaders of governance
- Ofsted dashboard
- Leadership development programme
- Education inspection framework
- 20 questions for a governing body to ask itself
- Charity Commission guidance on avoiding conflicts of interest
- MAT good practice guidance and expectations for growth
- NSN's resources and guidance about expanding academy trusts

4. Due diligence

Proposers must comply with the 7 principles of public life that set out the standards of behaviour expected of anyone who holds public office, including those who work in education.The 7 principles of public life are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. You can find out more about them at the 7 principles of public life.

DfE will carry out a number of checks on those applying to establish a free school to provide reassurance of the suitability to manage public money and run a school. These will include due diligence checks, financial checks, Disclosure and Barring Service (DBS) checks and other checks necessary to ensure that free schools are only set up and run by those who are suitable and able to do so.

There are several distinct actions for members and trustees to take as part of the due diligence process. You should engage with these requirements proactively and early on in the process to avoid delays in the Secretary of State signing a funding agreement with your trust or opening your school.

4.1 Action required – for the chair of trustees

The chair of trustees is responsible for ensuring that:

1. They apply for an enhanced DBS certificate via DfE, to be countersigned on behalf of the Secretary of State.
2. All trustees or members have correctly completed the suitability and declarations form and hold or have applied for an enhanced DBS certificate.

The following sections provide more information about what is required and the process.

4.2 Suitability and Declarations form

DfE carries out suitability checks on members and trustees of a trust setting up a free school. All members and trustees, when appointed must complete the suitability and declarations form. This does not apply to members of LGBs unless the individual is also a trustee. The chair of trustees must take responsibility for ensuring that all sections of the form are complete, declaration pages are signed, and a passport-sized picture for each individual is provided to DfE. All completed documents should be scanned as a PDF and emailed to due.diligence@education.gov.uk.

During the pre-opening phase if there are any changes to the members and trustees, the chair of trustees must report these changes by email to the lead contact as soon as possible.

4.3 Disclosure and Barring Service (DBS) checks

The Independent Schools Standards require that the chair of trustees must hold an enhanced DBS certificate counter-signed on behalf of Secretary of State. This forms part of DfE's checks to ensure that only suitable people are involved in establishing free schools.

All other members and trustees must hold an enhanced DBS certificate but this does not need to be counter-signed on behalf of Secretary of State. On appointment new members and trustees must obtain a new enhanced DBS certificate, even if they already hold one. All other members and trustees must have an enhanced DBS certificate. The chair of trustees must ensure that these requirements are met. The chair of trustees must also assess whether any offences or police information disclosed on a certificate are such than an individual is not suitable to hold the role of member or trustee.

DfE does not counter-sign DBS certificates for the principal designate and does not require proof that a certificate has been obtained. The principal designate will be an employee of the school. As such, the school is required to ensure that all relevant checks (including vetting and barring checks) are conducted in line with safeguarding requirements.

4.4 Applying for an enhanced DBS check

Chair of trustees

Academy trust chairs of trustees (not a chair of a local governing body) must complete a suitability check with the ESFA as soon as they are appointed. This is to comply with legislation and to keep children safe in education. Guidance says that before they start, chairs of trustees should record their appointment on GIAS. Free schools in pre-opening will not be able to do this as the school will not show on GIAS until they have had a successful Ofsted pre-registration inspection. Chairs should therefore move straight to point 3 to start the application process.

To process a suitability check we need:

- information about your identity verified by a recognised professional, using the verification form on this page
- information confirming your right to work in the United Kingdom (UK)
- the outcome of an enhanced DBS check
- if you have lived outside of the UK, an overseas criminal records check or certificate of good character

When completing a suitability check ESFA will consider any further information, including where individuals are barred from teaching or the management of a school.

To apply for suitability and enhanced Disclosure and Barring Service (DBS) checks, visit academy trust chair suitability checks.

All other members and trustees

Members and trustees (other than the chair of trustees) who already hold an enhanced DBS certificate dated within the past 2 years should email a scanned copy of the certificate to the chair of trustees. The Secretary of State requires the chair to ensure that all members and trustees present an up-to-date DBS certificate at all times, and DfE reserves the right to request sight of members' DBS certificates at our discretion

On appointment, new members and trustees must apply for an enhanced DBS certificate, using the DBS umbrella body directory, even if they already have a certificate which has been issued within the last 2 years.

Once received, the certificate, should be scanned and emailed to the chair of trustees.

4.5 Further information

- Suitability and declarations form
- Table 4 Due diligence: checklist of activities (Annex A)
- DBS checks
- Keeping children safe in education

5. Statutory duty to consult

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

Section 10 of the Act requires the trust to consult with the people they think appropriate, on whether to enter into an arrangement with the Secretary of State to set up and expand the free school.

It is worth recognising that there are some instances where this may not apply as set out in Section 10(1) of the Act.

The statutory consultation should inform appropriate persons 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 should also help to raise awareness of your project and your marketing activity could help to increase pupil numbers.

Trusts should speak to their lead contact if they experience significant opposition by local residents during or following the consultation, or if the local authority becomes unsupportive of the project.

There is no requirement on the trust to carry out a Section 10 consultation in respect of a nursery that is part of your free school. However, it would be useful to mention the nursery as part of your consultation, as responses could help provide evidence of viability or highlight risks. It could also help marketing and local awareness-raising.

The duty to consult rests solely with the trust. DfE does not direct or provide specific advice to trusts on how you should go about it. There are some general themes you might want to think about, which are set out in the following paragraphs. You may also wish to refer to the Cabinet Office good practice consultation guidelines.

5.1 Summary of the main tasks

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.

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 decide when to carry out your consultation, how long it will take, whom you will consult with, the policies and information about your school on which to consult and how you will collect responses to the consultation. You will need to be ready to consider any responses received and whether it is appropriate to adjust your plans, taking into account any concerns resulting from the consultation.

You should report and present your findings and conclusions to those that have responded, the local community and DfE. The report should be submitted to DfE with a completed checklist, signed by the lead proposer or chair of governors. You should ensure your report contains an appropriate level of detail.

The question you should ask those you consult with is whether your trust should set up the free school. You should provide information on the particular proposals for your free school.

Who needs to be consulted

The Act states that you should consult such persons as the trust thinks appropriate. This includes any groups or individuals that may be affected by the opening of your school. Examples include nearby schools, the local authority, any surrounding local authorities, local community groups with an interest, the local population and faith groups.

How long the consultation should be

This is not specified but must be adequate to allow people time to consider the proposal and respond.

When you should consult

It must be done before the funding agreement can be signed, but when plans are sufficiently advanced, to enable those whom you consult to have sufficient understanding of the school that you are proposing.

What to consult on

Examples of areas to consult on include staff recruitment, admission arrangements, special educational needs (SEN) and other policies and the site for the school (or at least a general location).

How to consult

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, social media, open meetings, media announcements or a combination of all of these. Many trusts set up websites for the consultation, but you should make sure that the consultation is also available to those without a computer or the internet. You may also want to consider translating the consultation materials into other languages if the school being proposed is in an area with a diverse population. Finally, you should be able to provide accessible versions, for example a braille version of the consultation, on request.

How to deal with 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.

How to report on the outcome

Once the responses to the consultation have been analysed you will need to consider how the findings will be presented to both DfE and other interested parties. The most effective way is to produce a report of the important findings that provides quantitative and qualitative information, details of methods, timings, who you consulted, the questions you asked and any steps that have been taken because of the responses. You will then need to consider how you will publish the outcome of your consultation.

5.2 How we will work with you

When the time comes to decide whether to enter into a funding agreement with your trust, the thoroughness and transparency of the consultation will form an important part of that decision.

The Secretary of State is required under Section 9 of the Act, to complete an assessment of the impact that 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. You do not need to do this; your lead contact is responsible for carrying out the impact assessment at the appropriate time.

The New Schools Network has produced some guidance on how to carry out a Section 10 consultation.

5.3 Further information

- Table 9 Statutory consultation: checklist of activities (Annex A)
- Section 10 of the 2010 Academies Act
- Model funding agreements
- NSN pre-opening information

6. Funding and finance

6.1 Introduction

This chapter provides information on the project development grant (PDG), financial governance and accountability, risk protection arrangements and school financial planning.

6.2 Summary

Note that:

- the funding that projects 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
- you must effectively plan and manage expenditure during pre-opening, including meeting the terms of the PDG agreement
- you must put in place robust governance arrangements and accounting procedures to allow the school to manage public funding responsibly once open
- you must develop 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, which should be considered jointly with the development of your curriculum

6.3 Risks

Mainstream free schools are funded on the basis of pupil number estimates while they are growing. When a school recruits fewer pupils than estimate or funded for, ESFA will recover the associated funding. This will be based on the October schools census and any excess funding will be clawed back in the following year. It's important to note that if this affects your school, you will need to make sure you are able to pay that amount back the following year; if not, this can lead to financial problems.

Schools that have under-recruited pupils can also have financial viability issues if their plans do not have sufficient flexibility. DfE will not open a school where it does not believe the school will recruit enough pupils to be financially viable.

The pupil recruitment, funding arrangements and risks involved in opening special and alternative provision free schools are different, but DfE will assess these risks and will not open such schools if the financial viability is in doubt. Your lead contact will discuss these with you as a minimum at the main checkpoints.

Projects in pre-opening receive PDG to cover all pre-opening costs (minus capital). If a trust runs out of PDG, DfE will not provide additional funding, except in exceptional cases.

This is a summary of the main funding areas. There's more detailed information in the sections that follow.

Project development grant (PDG)

Note that:

- this is for essential non-capital pre-opening revenue costs
- rates depend on type of school
- there's a initial allocation of £30,000
- full allocation only given once provisional opening date agreed and heads of terms have been agreed for site
- projects need to submit budget profiles and statements of expenditure as requested by lead contact

Financial plans

Note that:

- financial plans should be based on delivered educational outcomes
- plans are assessed by DfE at important points during pre-opening
- DfE must be satisfied that the school will be financially viable before entering into a funding agreement

Understanding financial management

The academies financial handbook sets out financial management and governance requirements.

Insurance

Projects will be covered by Risk Protection Arrangement (RPA) unless they decide to opt out.

Financial statements submitted to ESFA

Note that:

- the academies Account Direction describes the form and content of statements
- you need to be aware of the main submission and publication deadlines

6.4 Essential information you need to provide to DfE

Throughout pre-opening, projects will be required to provide DfE with the following:

- budget profiles and statements of expenditure for PDG
- financial plans with supporting assumptions, demonstrating the school's financial viability when it opens

6.5 Project development grant

In the run up to opening, DfE will provide a fixed-rate PDG to cover essential non-capital costs up to the point at which the school opens. Your trust will need to profile and effectively manage spend of the PDG funding. The rate of funding is set out in this table. You will be issued with a grant agreement setting out the terms under which the PDG will be paid. You must read these terms before signing the agreement and returning it to DfE. Your trust will need its own bank account into which the funds can be paid. You cannot use a personal or other similar bank account. If your school is part of a trust with more than one school, the trust account may be used.

The PDG will be formed of 2 elements. You will be given an initial allocation of £30,000 and the balance of the PDG funds will be paid in instalments after the provisional opening date has been agreed. This initial £30, 000 should be sufficient to meet all the pre-opening costs likely to be incurred by your trust up until the site solution is confirmed and we have agreed a provisional opening date with you in writing. The exception to this is for projects where heads of terms for site and provisional opening date have been agreed at the point which the project enters pre-opening, in these cases, the initial £30, 000 allocation will not be provided separately and will instead be included in the overall PDG payment schedule. The remainder will be allocated at this point, with the schedule of payments modelled around the budget profile you provide for the remainder of time in pre-opening.

You must provide regular budget profiles and statements of expenditure throughout the pre-opening phase. Your lead contact will advise when it will be necessary to provide these returns, but, as a minimum, we will require you to provide a budget profile and statement of expenditure at least once a year. Details of future returns and templates are provided as part of the grant agreement.

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, through inappropriate use of public funds, or if your project does not make satisfactory progress). You must escalate to your lead contact if you forecast to overspend on the PDG.

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

If you have any PDG funding left over when the school opens, you should roll this over into the school's budget. Unspent PDG cannot be held by the trust. The level of PDG 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.

After opening, free schools can reclaim VAT on expenditure incurred during the pre-opening phase 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, 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 PDG expenditure. Note that the terms of other grants may differ.

6.6 Project development grant rates

The amount of PDG you receive will vary depending on the type of school you are opening (for example, secondary, primary, AP).

If your trust is opening a single school in an academic year you will receive the full PDG rate for the type of school you are opening. Once you have been approved to open more than one school in a given academic year, you are expected to realise efficiencies in areas such as project management, educational services, administration and office costs. You will therefore receive full PDG funding for the first school and a reduced amount of PDG funding for each additional school.

Where you are opening multiple schools, the amount of PDG will be determined by the provisional opening date of the school agreed with the department. This is regardless of when the project was approved to pre-opening. The current rates which are payable to projects in the pre-opening phase are set out in the table below.

> These amounts are subject to review and may change.

Type of school	PDG funding for first school opening in a given academic year	PDG funding for each additional school opening in the same academic year
Primary mainstream	£220,000	£150,000
Secondary and all-through mainstream	£300,000	£200,000
Special	£220,000	£150,000
AP	£220,000	£150,000
16 to 19	£250,000	£170,000
Local authority presumption schools	£25,000	£25,000

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

In cases where the provisional opening date is deferred, additional funding will not normally be allocated to the project. The project will retain the PDG rate that it is already receiving (although the payment profile may be amended to reflect the longer pre-opening period). Trusts will need to re-profile their budget expenditure plans and resubmit them to DfE.

Planning your project development grant budget

You must ensure that all spending is essential to the development of the school during the pre-opening phase and provides good value for money. DfE 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.

The PDG is intended to cover all revenue costs up to the opening of the school. It is not intended for the purchase of resources that the school will need once open such as books and curriculum materials. Capital costs to secure and develop the school's site and ICT to support the curriculum are provided by FSC and should not be funded from the PDG.

Typically, projects will use their PDG funding to pay for the following:

- project management (support to coordinate all work leading to the development of the school, excluding site related issues)
- educational services
- staff recruitment (including the principal designate)
- salary costs (which often include the principal designate, finance or 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

Many projects also use their PDG 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 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.

It is up to you to decide how you allocate your PDG spending. Requirements vary from project to project depending on the local context, the school and the wider resources available to the trust. The New Schools Network provides a budget planning tool, which you can use to plan your spending during pre-opening. This includes examples of how different types of proposers have used this funding in the past.

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.

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

You will receive the PDG grant letter shortly after the project enters the pre-opening phase. Your 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 PDG funding, and can arrange for payments to be delayed or stopped where necessary.

6.7 Governance and accounting arrangements

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.

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 to be able to demonstrate 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. You must escalate to your lead contact if you have identified any potential conflicts of interest when spending your PDG.

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 DfE may review at any time.

Your trust will need to have a robust framework to manage its funding and ensure proper accountability and procedures are maintained. At the pre-opening phase, important tasks to deliver this include:

1. Setting out the role of the Chief Finance Officer (for example, a finance director or business manager) and recruiting an appropriate person.
2. 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 and a process for checking its financial systems, controls, transactions and risks. This programme of risk review and checking of financial controls can be managed in the way that the trust deems most appropriate to their circumstances. Further information on internal scrutiny can be found in the academies financial handbook.
3. Ratifying the appointment of the accounting officer (normally the principal for a trust with only one school and the SEL for a trust with more than one school).
4. Securing formal governing body approval for the first year's budget.
5. 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.

The governance section of this guide gives further advice on some of these tasks.

6.8 School resource management

Effective schools make the best use of resources, ensuring that every pound is used to have maximum impact for their pupils and the school. Schools that do this well tend to:

- base their financial planning on delivering educational outcomes, rather than as a separate consideration (this is also known as integrated curriculum and financial planning)
- have a strategic approach towards financial planning for the longer term (3 to 5 years)

- deploy their staff effectively and efficiently, linked to their long-term plan
- have robust challenge from financially skilled governors and headteachers
- have skilled staff responsible for managing finances, who have experience of seeking best value for money when procuring
- have transparent financial systems and processes that encourage constructive challenge within and between schools

The school resource management strategy outlines the tools, support and guidance available to schools. This includes the Schools Benchmarking Service, which allow schools to compare their spending patterns to schools in similar circumstances and DfE's Teaching Vacancies service allows schools to advertise their vacancies at no cost. Access to Teaching Vacancies for schools in pre-opening is currently being developed and your lead contact will let you have details of how to do this once it has been finalised.

The strategy also directs school leaders to DfE's national deals, including deals on:

- printers, photocopiers and IT equipment
- Schools Switch, an energy comparison service for schools, to ensure they are getting the best deal
- hiring supply teachers and agency workers, which makes fees and mark-ups transparent and removes the temp-to-perm fee

The schools resource management: top 10 planning checks for governors guidance contains information to help schools manage their resources efficiently to deliver good educational outcomes. In particular, you will want to use the important metrics contained within the planning checks to consider the affordability and value of your proposed curriculum and staffing plans.

The Academies financial handbook

The academies financial handbook, together with the funding agreement, sets out the financial management and governance requirements for academy trusts.

You must comply with the handbook throughout the pre-opening phase and once open. This is outlined within the grant agreements underlying any funding you receive from DfE or ESFA. Non-compliance with the handbook is considered a breach of contract and may trigger various sanctions.

The handbook includes requirements in relation to financial oversight, financial planning, internal control, financial monitoring and management and proper and regular use of public funds, as well as a number of other specific matters. The handbook also sets out the audit requirements for academy trusts.

The handbook is aimed at trustees, accounting officers (principals, chief executives and SELs), principal finance officers (finance directors and business managers), clerks to the board of trustees, local governing bodies of trusts and auditors.

The handbook clearly articulates that the accounting officer is personally responsible to Parliament and to the accounting officer of ESFA for the resources under their control. This personal responsibility extends to ensuring regularity, propriety and value for money. The accounting officer also has responsibilities for keeping proper financial records and accounts, and for the management of opportunities and risks.

Financial statements

Free schools, including those in the pre-opening phase, with a signed funding agreement must submit audited annual report and financial statements to ESFA, for each year ending 31 August, by 31 December. The academies accounts direction prescribes the form and content of the financial statements. Prior to signing the funding agreement financial statements should be prepared in accordance with company law.

Trusts should set their accounting reference date to 31 August at Companies House. This is the date to which their financial statements will be produced.

The accounts must also be filed by 31 May (within 9 months of the end of the accounting period) with Companies House. Further information can be found on the Companies House website.

Other financial returns

Trusts must also submit the following financial returns to ESFA once open:

- budget forecast return -submitted to ESFA by 31 July or 6 weeks after receiving the final funding letter (whichever is the later)
- academies accounts - return due where the free school did not prepare audited accounts at 31 August but had opened by 31 March, or where the free school did prepare accounts at 31 August but has opened between 1 September and 31 March - the return must be submitted to ESFA by 31 May in the first year only - subsequent returns will be for the year ending 31 August and must be submitted to ESFA by 31 January
- land and buildings valuation return - new free schools should complete the land and buildings valuation online form within 6 weeks of opening - this allows DfE to produce desktop valuations of the land and buildings of all new academies - ESFA will send academies that opened in the year between 1 September and 31 August a copy of the desktop valuation in the following January (the copy is for information only)
- Financial management and governance self-assessment submitted to ESFA within 4 months of opening - the self-assessment highlights the main requirements academies must have in place soon after opening

Trusts are responsible for keeping up-to-date with the latest deadlines and requirements. More information on academies financial returns is available.

You can also keep up-to-date through the ESFA update.

6.9 Insurance cover: risk protection arrangement (RPA)

Risk protection arrangement (RPA) is an alternative to commercial insurance, whereby the government funds cover any losses that arise. The RPA will cover losses that are in scope of the RPA membership rules.

The RPA membership year runs from 1 September to the following 31 August, however members can join at any time. Please note, free schools can join the RPA scheme and receive cover prior to opening; there is no cost or premium to join the RPA in pre-opening. In the pre-opening stage, you should have discussions with your lead contact regarding RPA and inform them if you wish to opt into the RPA scheme at an early stage.

Once a school is open, ESFA funding will deduct the per-pupil cost at source from your free school's general annual grant (GAG). The cost of RPA is currently £18 per pupil per place per year.

Free schools do not have to enter the scheme and are free to make their own alternative insurance arrangements: however, there will be no additional funding provided should extra costs be incurred. More information on RPA can be found at risk protection arrangement.

6.10 Funding for open schools

DfE will assess your school's financial plan before entering into a funding agreement, and in advance of issuing your indicative funding letter, which will set out the level of funding you should expect upon opening. DfE will not enter into a funding agreement if it is not confident that the school has a viable financial plan. You must escalate to your lead contact if you are unable to submit a viable financial plan.

Developing your school's financial plan should be an ongoing process, which should be considered jointly with the development of your curriculum. Plans should be updated as further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the projected number of pupils become clearer and other costs are more confidently established.

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

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 ESFA, and expenditure (including service contracts and salaries).

Guides to free school revenue funding are available on the gov.uk website, for mainstream, 16 to 19, special and alternative provision free schools. These explain how funding for new free schools opening in 2020 to 2021 is calculated and also contains details of how the post-opening grant, which is provided to new schools as they build up to full capacity, will be calculated.

The free school financial templates are updated in spring each year to reflect the changes in national and local funding rates. The latest version of the templates can be obtained from your lead contact. The rates in the template you used when you made your application 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 phase is therefore conditional on you submitting revised financial plans at important points during pre-opening so that DfE can be assured that your school is on-course to be financially viable. In particular, you may be asked to share your current financial plans with DfE before entering into a funding agreement, which should also include a version modelled around the lowest viable number of pupils for your first year of opening. You will be asked to share your current financial plan using accepted offers in the spring before opening in order for draft funding allocation packs to be issued.

Your lead contact may ask you to revise your plans or give further information if needed to show that the school will be viable and efficient in using resources to deliver pupil outcomes, both during your early years of operation, when pupil numbers are building up and when your school is operating with all year groups. They will need to see that the school has developed robust and consistent curriculum, staffing and financial plans, and strong financial governance arrangements. Plans should demonstrate clearly how the school will minimise non-staff costs and that the school will be efficient, viable and not go into deficit in any year.

Mainstream schools: developing a viable financial plan

Once the school is open, it will be funded by the ESFA. The funding for free schools is set at an equivalent level to funding for all other state-funded schools. 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.

The national funding formula (NFF) for 5 to 16 provision came into force in April 2018. The NFF distributes school funding to local authorities according to a formula based on the individual needs and characteristics of every school in the country. This is directing resources where they are needed most and providing transparency and predictability for schools.

The government will ensure that any new free schools that are not yet open but are in the pipeline, or will enter the pipeline during 2020 to 2021, are funded consistently with other schools.

In 2020 to 2021 local authorities will remain responsible for setting individual schools' budgets through a local funding formula. Free schools are encouraged to speak with their local authority about their plans for implementation of the NFF. Funding for schools from 2020 to 2021 and beyond is subject to the next spending review.

Financial (and, therefore, educational) viability is dependent upon you admitting a sufficient number of pupils. In order to provide a sustainable, broad and balanced curriculum, there is a presumption that primary provision should have a minimum of 2 forms of entry of 30 pupils, and secondary provision have a minimum of 4 forms of entry of 30 pupils. We do not expect financial plans submitted to DfE to be based on fewer pupil numbers. If you expect this to be the case, then please contact your lead contact to discuss the rationale.

Once open, if the October schools census shows the school has not admitted the predicted number of pupils, any excess funding will be clawed back in the following academic year. Where more pupils are recruited than have been funded for, ESFA will carry out an in-year reconciliation and pay any additional funding in the current academic year.

More information can be found in the guide to mainstream free school revenue funding.

16 to 19 free schools: developing a viable financial plan

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

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

Securing financial viability can be particularly challenging for 16 to 19 institutions. If you are proposing a 16 to 19 school with a broad curriculum of A levels (or A levels and vocational qualifications), you will need to consider whether this would be achieved by being the following size:

- a larger school of at least 1,000 students
- a smaller school within a trust with more than one school, so that nearby schools in the trust can share expertise, teaching staff or other resources, such as back office services, to produce economies of scale, or where existing local 11 to 16 schools in the trust could be 'feeder' schools for the 16 to 19 school – school in a trust where only back office services are shared might need to have up to 900 students, whereas one where there was also extensive sharing of teaching staff and facilities with neighbouring schools in the trust might be viable at a smaller size

If you are proposing a smaller specialist school with a narrow or niche curriculum, you will be best placed to achieve this where you have significant support from a partner organisation that will help to attract students. We would expect a suitable partner organisation to be well-established, stable and known as a leader in its field. The partner organisation will need to commit to close involvement with the school, such as through financial support or by providing teaching for courses in the specialist area or additional opportunities for students, such as high-quality work experience or access to teaching in a different institution.

If you are proposing to include a sixth form within a secondary school, you should consider the following:

- size - an expectation of around 200 students or more, either in the institution or through partnership
- breadth - an expectation that a student should be able to choose from around 15 A levels across a range of subjects, either in the institution or through partnership
- demand - including any shortage of post-16 places, and assessment of the quality of level 3 provision overall in the area and the impact of the new provision on other providers
- financial viability and value for money - including testing financial resilience should student numbers fall and considering the degree and impact on 11 to 16 education of cross-subsidisation of funding from the school's other budgets

You may be eligible for a programme weighting funding uplift if you offer a curriculum that is particularly expensive to deliver, such as engineering. You may also be eligible for funding uplift if you anticipate higher disadvantage levels than the LA average. If these criteria apply, you will be asked to provide a business case to establish any additional funding you might attract in order to reflect the extra costs associated with technical programmes of study or high levels of disadvantage.

Note that as students are able to hold multiple offers, an adjustment of at least minus 30% must be applied to financial plans to take account of a potential drop-out between accepted offers and start date.

Once open, if the October schools census shows the school has not admitted the predicted number of pupils, any excess funding will be clawed back in the following academic year. Where more pupils are recruited than have been funded for, ESFA will carry out an in-year reconciliation and pay any additional funding in the current academic year.

More information can be found in the guide to 16 to 19 free school revenue funding.

Special free schools: developing a viable financial plan

Once the school is open, funding will be calculated and paid in the school's first year by both ESFA and local authorities commissioning places at the school.

As of 2019, funding for special free schools is included in local authorities' high needs allocations. The number of places to be funded at special free schools from their second year of opening onwards will be agreed with the local authority through the place change notification process.

Funding in special free schools comprises:

1. Funding from ESFA for full-time equivalent places. The flat rate per-place funding will be paid for a number of places, which will be subject to regular review, and dependent on local authority commissioning and take up of the places. The detailed funding methodology may vary over time as changes are made to the school and high needs funding systems.

2. Per-pupil top-up funding paid by the local authority. The top-up funding comes from the local authority commissioning the place, and is determined by the local authority in negotiation with the free school based on the pupil's assessed needs and the cost of meeting those needs in the school. This top-up funding is paid for as long as the pupil attends the school, and will flow directly between the local authority and the special free school.

3. Pupils without EHC plans can only be admitted to special schools in certain circumstances. You should refer to the SEND code of practice and your funding agreement for further details.

Special free schools, like other special schools, can also receive funding from local authorities and other schools for commissioned services, for example, to provide specialist teaching support for pupils in local schools.

In all cases, the income that special free schools receive and their future viability will depend on providing the places needed locally and on local authorities' willingness to place pupils with EHC plans at the school and pay for the costs of the special provision on offer. Local authorities often have standard rates of top-up funding for pupils with different levels of need, which they use for maintained special schools and special academies. We have encouraged local authorities to publish information about their top-up funding arrangements. Special free schools should expect to operate on similar levels of funding from local authorities.

More information can be found in the guide to special free school revenue funding.

Alternative provision free schools: developing a viable financial plan

Alternative provision (AP) free schools are established in response to demand by local authorities or local schools. Evidence of this demand is needed to support the establishment of the school. Local authorities are responsible for ensuring that adequate AP is available for pupils in their area who are not at a mainstream or special school. The detailed funding methodology may vary over time as changes are made to the school and high-needs funding systems.

From the third year after an AP free school opening, ESFA starts to deduct an appropriate proportion of the place funding from the high needs funding block within the dedicated schools grant (DSG) of the local authority where the pupil resides. This is because some AP free schools accept pupils from local authorities other than the one in whose area they are located, or from schools and academies in other local authority areas.

Funding in AP free schools comprises:

- funding from ESFA for each full-time equivalent place for pre-16 pupils. Like all funding, this will be subject to regular review
- per-pupil top-up funding paid by the commissioner (local authority or other school. Top-up funding is agreed between the provider and commissioner and paid to the provider directly by the commissioner for each individual pupil. Top-up funding is to meet any costs in excess of the base funding threshold)
- per student funding from ESFA for students aged 16 to 18
- any other funding received for commissioned services (such as outreach work in local schools) from the local authority or school commissioning the service

AP free schools' continuing financial viability depends on both the ongoing support of local authorities and schools or academies, in terms of a commitment to commission placements and services, and their willingness to provide associated funding. It is therefore important that you are able to show evidence before you open that your commissioning authorities and schools have committed to commissioning places at your school. Schools' commitment to commissioning places at your school should be accompanied by a recognition of the costs of the AP and the value for money the school will offer, an understanding of how those costs will be met by local authorities and schools in the area, and an assessment of the affordability of the provision based on these factors.

More information can be found in the guide to AP free school revenue funding.

Funding for free school nurseries

If your free school includes a nursery, it will be funded on the same basis as other early years provision not using the same formula as any other free school. This is because the Secretary of State does not enter into a funding agreement in respect of the nursery, as it is instead funded by the local authority or parents paying for places. Our expectation is that the school and the nursery should each be financially viable without reliance on cross-subsidy.

All 3 and 4-year-olds, and some 2-year-olds whose parents receive certain benefits, are entitled to 570 hours of funded early education each year. Since September 2017, 3 and 4-year-olds have been eligible for an additional 570 funded hours per year where both parents are employed and earn above the minimum/living wage for 16 hours per week but neither has a taxable income over £100,000. Further information regarding the criteria for funded childcare can be found at get childcare. A nursery cannot put conditions on the free hours (for example, only allowing parents to access their free entitlement if they agree to taking additional paid hours or pay for lunches).

Where parents choose to take their free entitlement in a nursery that is part of a free school, the local authority will fund that provision from their DSG allocation at an hourly rate agreed by the local schools forum. The local authority is only required to fund the children who attend the nursery; they are not required to fund empty places.

The government funds local authorities to deliver the government-funded entitlement through the early years national funding formula (EYNFF). This formula includes a minimum hourly funding rate of £4.38 and a requirement for local authorities to pass 95% of funding directly to providers. The EYNFF also established a Disability Access Fund, which pays £615 per year for each eligible child, to enable them to access the free entitlement, and it also places a requirement on local authorities to establish a special educational needs inclusion fund (SENIF), to support children with SEN to achieve good outcomes in the early years. Further information on the EYNFF can be accessed early years funding 2020 to 2021.

To receive funding for the free early years entitlements, your free school nursery must be registered on the Early Years Register, or be a school that is exempt from such registration (see section 15 for further details). When these criteria are met, the local authority must ensure that free childcare is made available at the early years provider (including nurseries) of the parent's choice, provided that the nursery is willing to provide the funded places, accept any terms of payment, and accept any requirements that would be imposed by the local authority (for instance, requirements in respect of SEN, safeguarding and maintaining Ofsted quality standards).

A free school nursery may charge parents for additional hours above the free entitlement and is free to decide its own rate for this additional provision, but it cannot charge for the free hours that are funded by the government. Free school nurseries are allowed to make a profit, but the accounting must be separate from the school's General Annual Grant and the provision must be set up as one of the following:

- direct provision by the free school – any surplus can be reinvested into the school
- a not-for-profit charitable company – the company can retain any trading surplus as a reserve, or reinvest this into the school
- a for-profit company – the profits can be reinvested into the school once the company has accumulated a prudent reserve

For nursery funding arrangements and details of support available to nurseries during the Coronavirus pandemic, please refer to guidance at coronavirus (COVID-19): early years and childcare closures. Please note this guidance is subject to change.

6.11 Other sources of information

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.

6.12 Further information

- Table 5 funding checklist (Annex A)
- HMRC website
- NSN budgeting tool and guidance
- Academies financial handbook
- Academies accounts direction
- Funding arrangements for free schools
- Schools financial efficiency: top ten planning checks for governors
- Schools resource management

7. Procurement and additional support

7.1 Purchasing goods and services

Academy 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 the best value for money.

Schools need to buy a wide range of goods and services and they may use different suppliers, such as public sector buying organisations, procurement consultancies and local authority traded services to help them do so. This diversity can offer opportunities for schools to improve their efficiency but navigating the system can be complex. Detailed guidance on buying for schools is available. Our schools' buying strategy outlines the support available to help schools improve value for money from their non-staff spend. Further guidance on school procurement, which includes example contracts and expression of interest forms, can be viewed at school procurement.

7.2 Summary of the main tasks

You will need to make sure that you understand the rules and regulations on buying procedures and procurement laws 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 are spending, the greater rigour and scrutiny you should have to the procurement rules.

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.

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 involves 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 demonstrate 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.

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

Good procurement decisions will help you get the right support and achieve value for money. Conversely, if you do not 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 being fair and if people think you are not using public money properly. If you have not followed the requirements of public procurement policy 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).

Guidance is available on Buying for schools to help you plan and implement the most appropriate process for your school procurement need.

7.3 Procurement regulations

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 for anyone with responsibility for spending public funds. More information on EU financial limits is provided in section 7.4. Further guidance on EU procurement thresholds is also available.

Buying in services 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.

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.

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.

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.

Free schools in pre-opening, as trusts, are expected to follow the principles in the academies financial handbook. The handbook sets out a number of rules governing financial transactions using public money.

NSN has also put together some guidance around following public procurement regulations when spending your PDG. This can be accessed new schools network: resources.

If you decide you need to buy in additional support using your PDG, you have 2 options:

- pen procurement, whereby the trust agrees and issues a specification for the required services and appoints a supplier based on an evaluation of the bids received
- in-house, whereby the trust has and uses its own employees to deliver specified services on an 'at cost' basis

You can use a combination of these options to buy any or all of the additional support and services you need. More detail on these options is provided in this section.

The academies financial handbook is clear about our expectations around delivery of services to academies and free schools from anyone with a governing relationship to the 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 trust, including if sourcing such services from the sponsor
- the definition of 'at cost' has been amended to ensure that at cost delivery is sustainable for the supplier in the long term.

It is the responsibility of the trust to ensure that these requirements are met, and that audit trails are kept. The academies financial handbook includes a requirement for trusts to secure a statement of assurance and open book arrangement with restricted suppliers, but beyond this it is up to the trust to decide how best to meet the requirements.

7.4 Open procurement

Under this option, you can invite any third-party supplier 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.

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. You will also need to ensure that you have put in place robust arrangements to manage any potential conflicts of interest.

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.

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

At lower values, the procurement process could be very simple – such as getting 2 or 3 telephone quotes to help you check that you are getting a fair market rate. We provide some further buying procedures and procurement law for schools on low-value procurement on our website, which sets out what you need to think about when writing a statement of requirement. This does not need to be a complicated document; a paragraph might be sufficient.

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.

Under the EU Directive, there are set financial limits that 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.

The current thresholds (from the 1 January 2018) are £181,302 for goods and services, and £4,551,413 for building works. You cannot artificially 'split' contracts to avoid these rules. It is unlikely that many purchases during the pre-opening phase will exceed the EU thresholds. More information and guidance on the process is available at buying procedures and procurement law for schools.

A 'light touch regime', with a higher threshold of £589,148, applies for some services that are specifically for education provision. You should seek legal advice or contact DfE to determine whether your procurement qualifies.

7.5 In-house delivery

In-house delivery involves the trust using its own employees to deliver specified services, using PDG 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.

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

Where a trust uses its own employees, the salary levels must be set at reasonable levels 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. 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 PDG letter.

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 new employees.

7.6 How we will work with you

Trusts are accountable for their decisions and expenditure. Your lead contact will monitor the progress of the project and check that expenditure returns are received and appropriate.

7.7 Sources of information

Support from open free schools
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 PDG to cover the backfill expenses of any school you work with can be an appropriate use of your funding.

Support from other organisations
There are a number of other organisations that 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 at Free Schools: Information and Resources. You can also find a range of organisations that provide services and support to open free schools on the Offers for free schools section of NSN's website.

Please note that neither DfE nor NSN endorse any particular provider of services.

7.8 Further information

- Buying for schools – guidance and support for buyers in schools
- Buying procedures and procurement law
- DfE Find a Framework – recommended frameworks for schools
- Table 2 procurement and additional support: checklist of activities (Annex A)
- Academies financial handbook
- HMRC guidance on employing staff
- NSN 'Offers for free schools'
- Information and resources available to free schools

8. Site and buildings

8.1 Introduction

This chapter explains how FSC will work with you to find and secure a suitable site for your school. It also includes information on what happens during the build or refurbishment of the site and what to expect prior to the formal handover.

8.2 Important messages

1. Finding the right site for your free school is very important. It can also be the most time-consuming, complex and frustrating aspect of your project. However, it is important not to get distracted by the site at the expense of the important tasks during pre-opening. Clarity of roles within your proposer group is crucial in relation to this. It is recommended that there is a person who leads on the site and works with FSC to prevent people from worrying about the site unnecessarily.

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

3. The length of time to a secure a permanent site will vary for each free school project. Important factors for finding a site are your school's operational requirements and the location. Some areas have better site availability than others. It is difficult to find suitable sites in some areas of the country and for this reason, you may need to be flexible about where the school is located (as well as about the year of opening). We will only look at temporary accommodation in exceptional circumstances.

4. The average time taken to secure a suitable site is around a year, while the normal lead time for acquiring and delivering sites ready for a school to open is around 3 years. Therefore, unless a site is already secured and requires little work and no planning approval, opening in a shorter period will be extremely challenging. 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.

5. You should not announce the site that has been chosen for your school until your project director has confirmed the site has been secured and that it is appropriate to do so. This is because commercial negotiations are highly sensitive and can be undermined by premature public announcements about acquisitions.

8.3 FSC team

Project director
The FSC project director and project manager will work closely with you and your lead contact throughout the project. Project directors will provide a strategic overview and will ensure that the project managers and technical advisers who report to them are delivering their individual projects and adhering to internal FSC processes.

The project director's level of involvement will vary according to the risk and complexity of your project. Where there are significant site issues and concerns (or where there are few educational, governance or finance concerns), they may intervene and engage directly with the proposer group.

Project manager
The project manager will be your primary point of contact at FSC. Your project manager will coordinate the rest of the project team to ensure all site related activities are delivered. They will work with and co-ordinate activity between the property team, ICT and central technical advisers, and legal managers, and will report progress to the proposer group.

Regional technical adviser
The regional technical adviser will work with FSC or LocatED (a non-DfE government body) to assist with site selection and set the capital works budget for the preferred site. The regional technical adviser will define works type, building and site areas, and develop capital budgets. They will select the project procurement route and provide strategic procurement advice at project and programme level. The regional technical adviser also has oversight of external appointments with programme oversight. They provide advice and support a number of project directors working within a specific region. Any changes to the budget, scope or procurement route have to be agreed by the regional technical adviser.

External technical adviser
The external technical adviser will manage the procurement process from the start through to completion. Their main role is to collate and agree all necessary technical information pre-contract and once on site they will administer the contract. They will manage the specialist staff required to provide expert services on your project, such as architects, quantity surveyors, and the construction design and management coordinator.

Acquisition manager
An FSC property manager or LocatED acquisition manager will be responsible for securing site or sites for each free school. Normally an FSC property manager will be assigned where a site is to be acquired from a local authority through a peppercorn lease (where DfE leases sites at effectively zero rental cost, typically over a long period) or a Section 106 site (which is provided by a developer as condition of planning permission). LocatED will be commissioned to secure sites for most other projects where commercial acquisitions are required. One of their acquisition managers will work with the project director and project manager to secure a site. The FSC property manager or LocatED acquisition manager will be responsible for completing site searches, negotiating with vendors and agreeing terms. The project director in FSC will be your main contact for site search updates and will be primarily responsible for liaison with the property team or LocatED in relation to your project.

Regional planning leads
The FSC regional planning lead will provide advice on strategic or site specific planning issues, including new build schemes, changes of use and Section 106 agreements. They are engaged to advise on the most appropriate planning strategy from site selection and acquisition (working in parallel with FSC and LocatED colleagues), through to when permission has been granted and related conditions and obligations have been met. At each stage, they engage with framework consultants or contractor teams to ensure that the necessary planning permission is in place for the school site at the time it is required.

ICT adviser
The ICT adviser will discuss information communication technology (ICT) requirements with you. The ICT adviser is responsible for setting an appropriate ICT budget and for signing off ICT capital claims. They will ensure that the proposed building will comply with all relevant requirements included in the output specification (the baseline design for new school buildings and facilities as developed by FSC, which may also be referred to as the generic design brief). The ICT adviser will provide support to the group in order to develop requirements of any solution, and will assess proposals for technical, practical and pedagogical suitability. They will also work as a liaison between the proposer and any contractors. Prior to formal handover of the project, the ICT adviser will witness the testing of any provided solution with the proposer. They will also provide support to you on procurement options available for capital spend on ICT equipment and services.

Finding a site
Free schools can be located in a wide variety of premises. They may not look like 'traditional' school buildings and will often not require the construction of a completely new building. Free schools have historically been delivered in refurbished or remodelled accommodation, as well as new build facilities. DfE has adopted a presumption in favour off offsite construction where it represents value for money following the Chancellor of the Exchequer budget announcement in 2017. Sites should be selected based on suitability for offsite construction where there are no road access restrictions. The Modern Methods of Construction (MMC) Team can provide further guidance at this stage of the process.

After the approval of your proposal, FSC 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, FSC 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:

- commissioned LocatED, to undertake a site search, and considered alternative sites where relevant
- contacted the relevant local authority about planning designation
- considered the availability of government buildings

We realise you may already have a preference for 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 includes the following:

- it is too small or too big for the number of pupils
- it is not actually on the market, or available in the time needed
- it is too expensive to buy, lease or maintain
- it requires too much work to be affordable
- it does not have, and we may not be able to get, the appropriate planning permission for a school
- it is a listed structure (securing planning for change of use and works is expensive, complicated and time consuming, which may increase the risk of delays – the ongoing maintenance of a listed structure and restrictions of use is likely to be expensive and restrictive for the trust)

We would encourage you to keep an open mind regarding sites. Just because a site doesn't look like a school, it doesn't mean it cannot become one.

8.4 FSC and LocatED responsibilities in finding a site

During the site search stage of the project, FSC will commission LocatED where appropriate to do the following:

- conduct site searches and provide you with a suitable site
- FSC or LocatED's technical advisers to visit and assess the preferred site, provide a high-level view of the nature and cost of any construction works needed, planning consents required and likely running costs
- if that assessment shows the site is affordable and good value for money, FSC or LocatED will start negotiations to acquire the site

If a market site is to be acquired, it will be LocatED's decision to secure sites based on a commission from FSC following close engagement with the trust on their requirements. Trusts will be given an opportunity at the start of the process to input into the commissioning instruction. It is important that you take this opportunity to feed in your views, as the commissioning instruction will form the basis for decisions on securing a site. LocatED will be required to obtain confirmation from the project director that the original commissioning instruction has been met prior to LocatED finalising their decision to acquire a site and the project director will keep the trust involved throughout and inform you of the site selected.

8.5 How the trust can help

If you have any information or local knowledge that you would like FSC property managers or LocatED to be aware of as part of the site search, you should feed this in through your project director. We welcome any information that trusts may have – but you must not enter into negotiations on sites, as doing so would undermine the negotiating position of the experts who are commissioned to do that. More importantly, this is public money and any funds committed to a project must be done with ministerial approval.

You must not announce the site that has been chosen for your school until your project director has confirmed that it has been secured and that it is appropriate to do so. This is because commercial negotiations are highly sensitive and there is a risk that they will be undermined by premature public announcements about acquisitions.

You will also need to take heed of our advice about local developments and how they affect your site options, for example, new build development and their contribution to basic need or s106 site provision.

In collaboration with NSN, FSC have developed a number of resources that provide an overview of the people and processes involved in securing a site. These can be accessed New Schools Network.

You should work with your project director throughout the process, to ensure that the site is suited to the needs of your proposed school. However, you may need to be flexible, as it is not always possible to deliver a site and buildings that match your preferred specification exactly, due to constraints such as cost, size and time.

8.6 Securing a site

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, FSC property team or LocatED will begin negotiations to acquire it. The six main ways of doing that are:

- peppercorn rent lease (by FSC property and legal teams)
- S106 site (by FSC property and legal teams)
- peppercorn lease (academy trust held lands – FSC property and legal teams)
- peppercorn lease pursuant to development (FSC)
- freehold purchase (by LocatED on behalf of FSC)
- commercial lease (by LocatED on behalf of FSC)

The following link provides more information on the options to acquire a site.

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 taxpayer.

It is vital that you check with your FSC 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 and may result in the transaction being aborted.

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 and at the appropriate time we will welcome the support of the trust in establishing a base of support for the proposal with planning officers and elected members at the relevant local planning authority.

We will tell you when you can publicly confirm your sites (permanent, temporary or both), see the paragraph on statutory consultation.

8.7 FSC responsibilities on securing a site

It is the responsibility of the FSC property manager or LocatED to commence negotiations with the site owner or the agent representing them and seek to agree heads of terms for the purchase or lease of the site.

The FSC property manager, LocatED or the FSC project team will, at the same time, estimate the total costs for the site and seek approval from its investment committee and, where required, ministers, to complete the acquisition.

Lawyers will carry out checks on the tenure, ownership and any restrictions affecting use of the property and complete the transaction. The time this takes will vary from property to property, depending on planning and other issues affecting the property.

8.8 Interim site solutions

In some cases, free schools have opened on a temporary site before being relocated to their permanent buildings, but this should only happen in exceptional circumstances (for instance, because the school is necessary to meet pressing demographic need). When securing the permanent site, we will establish with you whether opening in temporary accommodation is appropriate. We will evaluate the risks of this by examining the delivery of the project's permanent site, evaluating the viability of any proposed temporary solution, testing whether there is clear evidence of need for places in the area and ensuring that value for money is provided when compared to other schools of a similar phase/location. 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 centres
- part of a neighbouring school
- temporary accommodation on the permanent site
- a local office building

To ensure value for money for the entire project, we do not want to spend any more money than necessary on temporary accommodation, so will try to provide an interim solution that requires minimal alteration.

The procurement and costs associated with temporary site works (such as the rental of temporary classrooms) will be managed by FSC, with the Secretary of State entering into required contracts.

8.9 Difficulties in securing sites

If a project has spent considerable time in pre-opening without a site being secured, therefore potentially wasting resources, and we do not feel it is making sufficient progress despite numerous interventions, we may contact you to inform you that we are considering cancelling the project. During this process, we will explain why we are minded to make a particular decision, taking into account the representations of those affected and allow trusts to respond to this before a final decision is made by the Minister to cancel the project.

8.10 The site and your statutory consultation

Section 10 of the Academies Act requires proposers of free schools to consult formally with those they think appropriate. This statutory consultation must be completed before the funding agreement can be signed - (see section 14).

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

If it is not, you could identify a particular catchment area for the free school, such as a postcode, or a particular area of a city or town. At the same time, you do not want to undermine any site negotiations, so we will agree with you what information you will need to provide.

8.11 The site and your funding agreement

Other than in exceptional circumstances, DfE will not enter into a funding agreement until heads of terms have been agreed for the permanent site and any temporary site, if relevant. We will need to be confident that there is a strong prospect of securing a permanent site and approving the full capital budget for your project.

As part of the 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.

Note that:

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

8.12 FSC responsibilities on capital funding

FSC 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 or officials. At this, point FSC will confirm that it has permission to proceed with the construction works and will notify the trust that funding has been approved for trust-procured elements (such as ICT).

8.13 Procuring works and services

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 approved pupil numbers and associated basic area requirements of your school.

All building contract appointments must comply with public procurement procedures for free schools. The most common procurement routes, using design and built construction contracts, are:

- DfE offsite framework (also known as modern methods of construction

Transcripts)
- Lesson plans (Word 2011 and 2007)
- Lesson plans (Pages)

The FSC team will lead on the presentation and the Secretary of State will join the construction contracts once we are ready to discuss the Green Deal in detail.

6.14 Building works

Your input at all stages of the procurement is encouraged and the FSC team will be working with the Secretary of State's Procurement Advisory Group (PAG) aspects for the action to the design teams to ensure they have the right stage the construction contract. the design of the school will be agreed with the trust and the Secretary of State. Once the design is agreed, the construction contract will be submitted to project leaders for approval and then put into planned design contents and are happy with the approved agreed.

Before starting the school, we will need to:

- Keep staff, parents and local communities updated on progress;
- Develop contingency plans just in case building works overrun;
- Prepare for and celebrate the milestones in open meeting with PAG;
- Work with us to ensure the works are completed to the contract specification and formally handed over.

6.15 Ofsted pre-opening site inspection

There are a number of formalities that need to be completed before the school can open. The Ofsted pre-opening site inspection is a key milestone and needs to operate the school and the school leadership team.

In order for your school to become registered with DfE and Ofsted, open the school, you need to complete the Ofsted Pre-opening Inspection. Please see section 7 for purpose of the visit and is to ensure the building is safe and complies with the requirements for the school to be registered and open.

In the majority of cases, the site will not be completed and ready for occupation, the works will not be ongoing. Inspectors will be aware of this, but will still want to see that the site is ready for occupation and that the school is ready to open. The inspection will take place in the morning and will last approx. 2 hours. The DfE team will support you on this.

Under the free school contract and prior to expiry the conveyance (CONVEY) solicitor, acceptance of arrangements were made to ensure that the school is ready to open. Ofsted will be informed of the date of the school's first day of school arrangements, your project team will support you in making arrangements about this.

6.16 Planning how to operate the school

Construction works may continue up to the school's opening day or beyond. Ofsted will be informed of the date of the school's first day of school and as soon as we can after you notify us of your intended opening date. We ask you to do all take for opening to inform parents and then plan for preparing, opening and operating the school. Ofsted will be informed of the date of the school's first day of school and as soon as we can after you notify us of your intended opening date.

In exceptional circumstances, the phased completion of a school building may be considered by the Secretary of State. Phased completion is where the school is being opened, because it is impossible to open the whole building at once. It is difficult for your school to operate effectively (for example, teachers would have additional difficulties in delivering lessons next to a building site).

6.17 Planning issues

The main reasons why new schools may need to seek planning permission are:

- change of site use or classification (of an existing building);
- change of use of existing buildings and external areas;
- Land building operations.

FSC are responsible for ensuring that the necessary planning permission is in place. The FSC team will work with the planning department and external consultants and contractors, and keep you informed of progress.

Planning permission will be required for the construction of a school building. Planning permission will be required for the change of use of existing buildings. Issues and final practice solutions to planning related matters are: may arise

The Planning permission for the construction of a school building and other matters should not place unnecessary burdens on school development. The Secretary of State has issued a statement to the effect that the establishment of new schools, but does not guarantee planning permission. Nevertheless, if a school at least been been advanced, we can expect to a planning appeal to the planning inspectorate under DCLG if the planning authority refuses to grant permission.

In addition to the presumption in favour of new school development, there is a presumption in favour of the development of schools. The DfE will be offering to provide funds in exchange for a peppercorn rent, the DfE will be able to make a direct relative price if these rights may be offered to your project. Some of the main planning issues are:

- A new transport contribution (payment) right to operate a school in the first free academy (when without meeting planning permission for changes of use, or building operations, the school can open for a limited period);
- a right for 'permanent' change of use that allows the school to change classes to be converted into schools, without the need for a full planning application (for example, from offices to schools, B1 to D1 or from institutions (C2) or retail premises (A1) to offices (B1) and warehouses (B2) – these uses are subject to a higher-level 'prior approval' process, which means that a full planning application is not required);
- some minor operational development, including social radio additions to existing schools, boundary treatment and operational external works.

6.18 Formal handover of the site

When building works on the site have been completed, the building contractor will hand over the school premises to your school. The handover process will include the building contractor taking your business or premises manager through the building and explaining how it works, including the heating, mechanical and electrical equipment, the fire alarm, the security system, and handing over all warranties and certificates, such as the certificates. A handover pack will be provided, which will include a copy of the building contractor's health and safety file, and a copy of the building and the operation specification. The contractor will be required to rectify Mega following a formal notification of defects, which will be issued by the project leaders and the Formal handover process.

At handover, you will be given a building health and safety manual for the school premises, which will include a copy of the health and safety file, the operation instructions (O & M) and a copy of the building and the operation specification. This will provide you with building information, commissioning and test results, and information on the maintenance requirements. Copies of the manual documents are also to be provided to your maintenance and maintenance contractors, so you can tender for the maintenance contract and ensure that the contractor has the right information to carry out the work. Copies of the manual documents are, in the case with most contractors, in relation to the site, your obligations will be set out in your lease or licence as well as your funding agreement.

6.19 Checklist of activities

The activities in the site are building checklist, available in Annex 3, provide an overview of the key activities that need to be completed before the school can open as free academy. The timetable for activities for your project will also depend on when the site is secured.

6.20 Further information

- Annex 3 Site and buildings: checklist of activities Annex 4
- HSE1 website
- HSE's and FSC site resources
- Building Regulations
- Academies financial handbook
- Funding arrangements for free schools
- Ofsted Pre-opening site inspection
- Public procurement guidance for free schools
- Independent school standards regulations or premises

7. Pupil recruitment and marketing

9.1 Survey

Ensure you have a wonderful focus on recruitment and have an effective marketing and recruitment strategy in place.

Focus on frequent face-to-face contact with parents, children or young people. Where coronavirus (COVID19) restrictions make this difficult, consider other ways to do this, such as using social media, phone calls, or video calls. Ensure that you have a clear and consistent message about your school's ethos and vision and consider the importance of the school's ethos and vision and consider the importance of your school's ethos and vision.

You must make your school's ethos and vision clear to attract a wide range of different ethnic, religious and socioeconomic groups. including those from the local community. Ensure that you have a pupil-ready-to-learn ethos that promotes high achievement.

9.2 Risks

It is essential to attract sufficient pupils to ensure your school is viable. Evidence of high levels of demand for your school does not automatically guarantee that pupils will actually attend your school. It is vital that you take steps that ensure that all those offers will be accepted.

9.3 Recruitment and marketing

Successful pupil recruitment is an essential element of the pre-opening period. We know there will be many calls on your time, and many other pressing matters, but it is important that you make time for this end-to-end process. Your recruitment plan must be well-thought-out and carefully executed and will depend on pupil numbers.

Your school will need a high level of demand for your school when considering the number of places. Your school may receive many applications or referrals. Similarly, do not assume that the offers you make will be accepted. Your school may need to make more offers than it has places.

You may have set very high levels of interest in your free school, but you need to convert this into applications and offers. Your school's pre-opening operational plan marketing activity should receive and build on the publicity and interest created by the announcement of your school. Your school's marketing plan should ensure that the school is well-known, that people are aware of the school, gain their confidence in the school and encourage them to make an application or referral. Your school's marketing plan should ensure that people are aware of the school and have pull information and be far-reaching and be interested now the school is becoming a reality.

9.4 Pupil recruitment

You may find it useful to analyse the types of responses you have had to date and assess where and how to improve your offers. For these reasons:

- some applicants who have made a firm commitment and you need to keep in touch with your project and ensure that they will actually attend;
- some potential applicants who have expressed interest without committing to an application, and you need to convert this into an application;
- some people who have made a firm commitment to your school, but may not be pre-opening, you can confidently begin to engage them in much as possible.

Pupil recruitment will take place in the pre-opening period. It is key for FS projects to take account of a potential drop-out rate between applicants and accepted offers.

For faith-designated free school projects, projects registered with a religious body, or projects with a religious ethos, pupil recruitment and admissions

It is important that your proposed school is likely to attract applications from people who are not of the faith or religious ethos of the school. Your school must market the school to a wide range of people in the local community, building on the engagement that you demonstrated during the application process.

For alternative provision projects

Your school, if it is an alternative provision, your marketing activity should increase. Audition or other pre-entry assessments may be required for applicants. This will allow commissioners who have already expressed an interest that the school is ready to receive pupils. It will also allow the school to inform local commissioners who may not have had an opportunity to visit the school or who would be interested now the school is becoming a reality.

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:

- because some commissioners may have expressed interest without providing written commitments, you need to keep in touch with commissioners and ensure that they will actually place pupils;
- because some commissioners will not have been particularly interested, but now the school is open, you should build a relationship with them, for example, by inviting them to visit.

Special free school projects

It is important to engage with commissioning local authorities to ensure the school is ready to receive pupils. It will also allow the school to inform local commissioners who may not have had an opportunity to visit the school or who would be interested now the school is becoming a reality.

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- because some commissioners will not have been particularly interested, but now the school is open, you should build a relationship with them, for example, by inviting them to visit.

9.4 Recruiting sufficient students

To provide a broad and balanced curriculum, there is a consultation that school provision should have a minimum of at least forty-five of entry of 30 pupils. Your school should be able to demonstrate that it is likely to attract and recruit not expect your substantial admission number (PNA) to be at least this number. If you expect to be in the case, contact your sponsor and contact the Secretary of State.

When recruiting, you:

- should regularly update any best contact on the number of applications or referrals received;
- must escalate to your sponsor and contact the Secretary of State immediately the deadline date, or the accepted offers number by national offer day, for your school, if you are not on target to meet your PNA;
- should continue with your marketing and recruitment plan until the school is fortunately there can be a drop of around 30% from the number of applications received to the number of accepted offers, for example.

Wrap Ed Notifications

Wrap Ed Notifications can be particularly challenging. See section 6 of this guidance for further information.

9.5 Promoting international and community cohesion

Promoting integration and community cohesion is a key priority for the government. Its schools should prepare children and young people to participate in life in Britain. Free schools, UTCs and studio schools should be genuinely welcoming to people of different backgrounds and communities. When marketing your school, you must consider how you can encourage applications from people of different backgrounds, including different socioeconomic groups, to establish a pupil intake that reflects the composition of the wider local community.

To ensure that your marketing plan will support integration and community cohesion, you will need to consider the demographics of the local community and how to reach out to them. Your school's marketing plan should ensure opportunities are taken to ensure that people of different ethnic groups are disadvantaged, and people from different backgrounds live. When marketing your school, you should take every opportunity, you should:

- the characteristics of the school that are emphasised in publicity materials, for example, the school's ethos, the curriculum, the extracurricular offer, the religious ground, the language of the school;
- where marketing events are advertised and held, are prospective applicants from different backgrounds encouraged to attend, for example, by using translating, plain, simple English and ensuring that the venue is accessible for some groups to attend?
- are the marketing materials distributed or posted online, are they likely to be visible and accessible to people from different groups – or are special backgrounds that reflects the diversity of the wider local community?
- are the marketing materials distributed or posted online, are they likely to be visible and accessible to people from different groups – or are special backgrounds that reflects the diversity of the wider local community?
- are the marketing materials distributed or posted online, are they likely to be visible and accessible to people from different groups, to seek their support for the school.

9.6 Marketing guidance

If there are continuing restrictions associated with the coronavirus (COVID-19) outbreak, some of the following activities may not be undertake face-to-face. You may wish to consider developing online or virtual versions of these activities.

There are some general principles and lessons learned by previous pressure groups that should be taken into account when marketing your school. It is important to maintain momentum, so make sure, for example, that newsletters are produced regularly and that the website is kept up-to-date. Ensure that you have a clear and consistent message about your school's ethos and vision. Be a principal designate or sponsor you offer. You may wish to consider the following marketing activities:

Understanding your local community

When preparing your application, you will have looked at local context, such as the demographics of the local community and the local education provision. You should use this information to target your marketing efforts.

Understanding the particular needs of the local community in which your school will be based

You should use this information to target your marketing from disadvantaged backgrounds. Your school's marketing plan should ensure that people from schools that have a high level of disadvantaged or their tribes. By effectively marketing your school to people from disadvantaged backgrounds, you will attract pupils from disadvantaged backgrounds and ensure that from the high-quality education that your new free school will provide.

Deal with the local media

You will be aware of the number of young people locally who are not in education, employment or training (NEET) and how they are spending their employers. You can use the information now to target your efforts. For example, you can use the information to target your efforts.

Personal contact for pupils retention

Your school's marketing plan should be a target campaign. Find out who is the education commissioner for your local authority area. Telephone or email your prospectus for local radio stations, and give them a call. Make sure they know that there is a school in your area and that you are ready to open and that you are ready to open.

Local feeder schools

Engage with local feeder schools. If appropriate, Offer to speak at assemblies or have a presence at school events such as parents' evenings and transition days.

Faith schools

If you are a faith school, make sure you make contact with and have the support of your religious body and, if relevant, broader local religious organisations.

Other organisations

Consider producing regular newsletters. You can distribute printed copies or post them online. Make sure that you have a clear and consistent message about your school's ethos and vision.

Landline and mobiles

If you have a landline or a mobile phone, you will have a landline. Rather than use a mobile number as a contact point, which can create a sense of impersonality, there are a number of ways to make it more personal. Use a landline or a mobile number – which you can then confirm to use when the school is open.

Transitions into other languages

Use the school's website, prospectus and newsletters into languages which reflect the mixes of your local community.

9.7 Online

It is essential that you have comprehensive information available on your website, and that the website is updated regularly. It will help to have a dedicated page for your school. Make sure that it is easy to find and that it is kept up-to-date. Ensure that it is easy to navigate and that it looks professional. Keep the site that all documents are followed up posting and keep the website up-to-date. Make sure that it is easy to find and contact for information and updates.

Consider setting up an online forum for parents, young people and, in the case of a sixth form, students. Ensure that it is easy to navigate and that it is easy for them to post questions or comments. Make sure that you have an online community forum, so start a discussion thread with some information. Make sure that it is easy to find and that it looks professional. Make sure that it is easy to navigate. Make sure that it is easy to navigate and keep up with regular updates on your progress.

Make sure that you have a presence on social networks, especially with the needs, by creating and managing social media platforms. For example, using a Facebook page, a Twitter account, a blog or a YouTube channel. Make sure that it is easy to navigate and keep up with regular updates on your progress. Make sure that you have a presence on social networks, especially with the needs, by directly contacting. If your school is a post-16 free school, then Facebook or Twitter or an official body (e.g. Instagram) by location and interest.

9.8 Face-to-face

During coronavirus (COVID19) restrictions, holding face-to-face events may not be possible. You may wish to consider developing online or virtual versions of alternative online versions of these activities.

Previous prospect groups tell us that face-to-face contact with parents and prospective commissioners has proved especially effective and can build up trust and confidence in your school. Consider using the following ideas: Consider holding an open or prospective parents meeting. Make sure that it is easy to find and easy to engage with the community as a whole and make your group known to parents.

Events provide an effective platform to display your free school and can provide a focal point for your marketing. Consider organising a stall at local events, for example, at a local fete, or a local shopping centre. Make sure that it is easy to find and easy to engage with the community as a whole and make your group known to parents.

Previous groups have also found that holding events with a theme can attract more people and provide a focal point. Consider a theme that will attract the most Pitch lessons and enrichment days that demonstrate the school's pedagogy. Make sure that it is easy to find and easy to engage with the community, by organising, or creating a dedicated page on your website.

After the announcement of GCSE results, and even AS level results (as some students may be interested in joining a sixth form), offer your school's ethos and a public space to recruit students and to publicise this in advance.

9.9 Links to further information

- DfE's marketing and communications guidance

10. Admissions

10.1 Introduction

This chapter will provide you with tools to help ensure you have a clear, fair and compliant admissions process in place. It also sets out the admissions processes for the different types of free schools.

You have set out the admission arrangements, which may be improve standards in a particular area or address a deficit of places, your admission arrangements should be fair, clear and objective. Your admission arrangements should be transparent and easy to understand. Your admission arrangements should give priority priority in your arrangements to children eligible for the pupil premium.

10.2 Summary of this section

- You must have admission/entrance policies that comply with the School Admissions Code and the School Admission Appeals Code (the Code of Schools).
- You must use the relevant admission template in drafting your policies.
- You must not arrange for your school to be included in the local authority coordinated admissions processes operated by other local authorities.
- We will offer you advice on developing your school's first set of admission arrangements (transformation or 16-19 free schools), or your referral arrangements (alternative provision free schools). Your sponsor is responsible for putting these arrangements in place. Sponsors need to understand the requirement to have clear and fair admission or referral criteria.
- If you are opening a mainstream free school, we expect you to consider how your admission arrangements will contribute to your school's ability to fulfill its pre-opening duty to secure the school. Sponsors should make their admission or referral criteria clear to the local authority.

10.3 Key issues

Your admission or referral arrangements must be strong enough to withstand challenge. Your admission or referral arrangements must be clear and objective. Your admission or referral arrangements must be fair.

- complete or overly prescriptive admission arrangements could put off potential applicants
- previously, a significant number of admission policies and application forms were found to be unfair, unclear or incorrect. Parents/carers should be able to use the admissions forms and the admissions helpline.

10.4 Essential information you must provide

As a school, the governing body is responsible for ensuring that as part of your prospectus or admissions policy, reference policy and statement of provision, including your school's sixth form provision, you include:

10.5 Mainstream free school admissions

Because your school will be an academy, the trust is the admission authority. This means it is responsible for:

- making sure your school's admission arrangements comply with the school admissions code, including the requirements for consultation, fair and clear admission arrangements, and the prohibition of pupil fees and deposits
- consulting on the proposed admission arrangements, before you open, as part of the consultation on the school's admission arrangements for the first year
- complying with the mandatory requirements to admit all pupils with an education, health and care plan (EHCP) naming your school, and to have regard to the SEN code of practice
- determining or finalising the school's admission policy, once you have gone through the consultation process
- consulting on a discretionary admission arrangement, or adjustment, after the school opens, in accordance with paragraphs 1.42-1.48 of the school admissions code
- managing applications for the school, and ensure that requests for this in the first year (either by managing the process directly, or agreeing that the local authority will manage the process on your behalf, as set out in the relevant process in paragraphs 2.10-2.17)
- operating an independent admission appeals panel (or contracting this out to a suitable provider) in accordance with paragraphs 3.1-3.4

Every mainstream free school must operate within the local fair access protocol, which is agreed by the local authority. This ensures that the school admissions process, and your admission arrangements, are offered a place at a suitable school as quickly as possible.

10.6 Nursery admissions

The school admissions code does not apply to nurseries, including those that are part of a school. As such, there is no requirement on them to adopt school admission arrangements.

It is possible for schools to prioritise children, for admission to reception year, who have attended the school's nursery. Some schools operate a nursery on the school, in their school premises, or in a separate building, but must always ensure that giving priority is fair to local parents who choose not to send their children to the school's nursery. Some schools also have a link with a local nursery, or nurseries, and may give priority to children who have attended without any reference to whether the school has attended the nursery. In most cases, such arrangements are fair, as long as the nursery is open to all parents, and the place are available to the children who have attended the nursery before have been admitted to reception. In such circumstances, it is always recommended that the school's admission policy makes it clear that it is for the governing body (or academy trust) to determine the list of eligibility. You must ensure that the school's admission policy makes it clear that the prospectus or school's website contains the relevant information.

Within any priority given to children who have attended the nursery, those children attending the nursery who are eligible for the early years pupil premium (EYPP) should be given priority over those children who are not eligible for the early years pupil premium, if the school is oversubscribed.

Free paying nurseries cannot be named as a feeder institution to your free school, however, it is acceptable for your free school to have a link for their child's nursery provision only where it is for additional provision above the 15 or 30 hour free childcare entitlement.

10.7 The admissions process (including co-ordination)

As part of your of opening, our normal expectation is that you either:

- provide your own admissions process
- arrange for the local authority to process admissions on your behalf

Either way, this should be done outside the local authority's co-ordinated admissions process, so that it is clear to parents that it is your school, or your academy trust, that is responsible for making an offer of a school place and agreeing your admission process.

After your first year of opening, your admissions must be handled through the local authority's co-ordinated admissions arrangements, like all other schools. Parents will be able to express a preference for your school, and the local authority will offer a place based on your school's admission arrangements. The admissions process until the beginning of Sixth Year entrance into a nursery, or school, is the responsibility of the local authority, and it is important that you make it clear to the local authority.

We will not advise the Secretary of State to enter into a funding agreement for your school until we are satisfied that it will be operating in accordance with the law.

It is important to make core parents aware for your school are not left without a place, or with a place in a school they do not want. Therefore, they are never your school's opening is delayed. Parents should make an application to the local authority, and the local authority will make an application for DfE to open a free school.

Unless you choose option 2a, you will need to produce an application form and set out the application process for your school, including the closing date for applications, the conditions offer date, and where to submit the application.

Option 1: the school's handle the application process in house

The school will provide an application form, and will publish the admission date. The school will provide an application form, and will publish the admission date and offer day and manage the process of considering applications and making offers itself.

You should encourage parents who apply for your school to submit a CTF application form, and make it clear that it is the parent's choice whether to doesn't open to the local authority. Parents who do not submit a CTF application form will be at a disadvantage, as their application will not be considered by the local authority, or allocated by the local authority, or an existing school as an insurance place. If a parent does not submit a CTF application form, the local authority will not be able to help them.

Unless you choose option 2a, you will need to produce an application form and set out the application process for your school, including the closing date for applications, the conditions offer date, and where to submit the application.

Option 1: the school's handle the application process in house

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Unless you choose option 2a, you will need to produce an application form and set out the application process for your school, including the closing date for applications, the conditions offer date, and where to submit the application.

Option 2: the school's local authority to handle the application process for the school

The local authority will publish a local authority-level coordinated scheme, and the school will provide an application form, and publish the admission date and offer day and manage the process of considering applications and making offers itself.

You should encourage parents who apply for your school to submit a CTF application form, and make it clear that it is the parent's choice whether to doesn't open to the local authority. Parents who do not submit a CTF application form will be at a disadvantage, as their application will not be considered by the local authority, or allocated by the local authority, or an existing school as an insurance place. If a parent does not submit a CTF application form, the local authority will not be able to help them.

Unless you choose option 2a, you will need to produce an application form and set out the application process for your school, including the closing date for applications, the conditions offer date, and where to submit the application.

Option 2a

The local authority handles applications for the school outside co-ordination.

Parents would fill in the school's application form and submit this to the local authority along with its other school preferences, in the usual way. In case the free school doesn't open in time. You would need to decide whether to use the school's admission date, or a specific offer date.

10.8 Composite prospectus

Local authorities have a statutory duty to provide information about school places in their area. This information must be published in a prospectus by the 31 December. Parents can use this information to express a preference for a free school (DfE writes to the relevant local authority to let them know in which year groups the free school is opening, and the local authority will then take the steps to ensure information about the free school is included in its prospectus and must include your school's admissions policy once it is finalised.

Your admissions policy must be included in the local authority's composite prospectus as admission places (Change for example, as a result of adjustment to admission arrangements, or a change to the PAN) and must be clearly indicated that you are a free school, and that you are a mainstream school. It should be determined as final and submitted to the local authority. The local authority will include your school's admission policy in its composite prospectus, before opening the first year and is suitable to which to provide information on your school's admission policy.

10.9 Your admission arrangements

We have developed comprehensive guidance free school admissions for free schools, which is based on the school admissions code, and includes a template when drafting an admission policy and the mandatory requirements, including the requirement to admit all children with an EHCP naming the school. Arrangements, including application forms, must be clear, fair and objective, and must comply with the admissions code.

Promoting integration between people from different ethnic, religious and socio-economic backgrounds is a key aim of free schools. Your admission arrangements should not unreasonably discourage parents from applying to the school, the school's intake might not represent the diversity of the wider local area. Free schools should be open to all children and families, and should not select pupils based on their ability or aptitude, or discriminate against pupils from a range of backgrounds that represents the diversity of the wider local community to access the school.

10.10 Appeals

Parents whose children have not been offered a place at your free school have the right to appeal, and your admission arrangements must include information about this.

It is the responsibility of the trust to set up an independent appeals panel in accordance with the school admissions code, and to publish information as well as other bodies, with our appeals services and you may want to consider buying into one of these services.

If you want to manage your school's own appeals, you should be prepared to provide information about the process, and the timetable for appeals, and to appoint a complete independent panel. If the school is a voluntary aided or voluntary controlled set the services, it is the trust's responsibility to ensure that panel members are trained and understand their responsibilities, and the requirements of the school admissions code. Further information and guidance advice on school appeals services is available for admission authorities, school's appeals, and parents and guardians.

10.11 Consulting on your school's admission arrangements

In the opening period, you should include at least an outline of your proposed admission arrangements as part of your Section 10 consultation and publish your admission arrangements for your first year of operation. Your admission agreement is signed and the arrangements are published, you cannot make any further changes, other than where permitted by the school admissions code.

Once your school opens, you will need to consult on your admission arrangements for children with EHCP and SEN Code of Practice. Once a school has opened, it can't change its admission arrangements, except in limited circumstances. If the school is oversubscribed, it is mandatory to be failed to carry out one of its important duties under the Education Act, Section 88(3) of the Act.

If parents disagree with a school being named in their child's EHC plan, they can appeal to the First-tier Tribunal (Special Educational Needs and Disability) and ask for a different school.

If a special free school is allowed within its funding agreement to admit children with EHCP, it will be required to consult on its admission arrangements, and set out in an admissions policy. All complaints about the admissions code cases could contacts will be able to provide more information.

Consulting on your school's admission arrangements

In the opening period, we allow you to set out details of the size and nature of the provision and your admission arrangements, including your proposed admission arrangements, as part of your Section 10 consultation and your Section 10 consultation. Once you have been account of any responses to your Section 10 consultation, you should publish your admission arrangements for your first year of operation. Your admission agreement is signed and the arrangements, cannot make any further changes, other than where permitted by the school admissions code.

Once your school opens, you will need to consult on your admission arrangements for children with SEN Code of Practice. Once a school has opened, it can't change its admission arrangements, except in limited circumstances. If the school is oversubscribed, it is mandatory to be failed to carry out one of its important duties under the Education Act, Section 88(3) of the Act.

If parents disagree with a school being named in their child's EHC plan, they can appeal to the First-tier Tribunal (Special Educational Needs and Disability) and ask for a different school.

If a special free school is allowed within its funding agreement to admit children with EHCP, it will be required to consult on its admission arrangements, and set out in an admissions policy. All complaints about the admissions code cases could contacts will be able to provide more information.

Consulting on your school's admissions

Alternative provision (AP) free schools must be principally concerned with providing education for children who have SEN or are vulnerable because of illness, or who had otherwise excluded or children who are at risk of permanent exclusion, or children receive. There is no requirement for AP free schools to have a PAN, or to admit children in year 7 or 12. However, AP free schools may also choose to admit children in other years, but they must number less than 50% of pupil numbers.

Children of compulsory school age cannot be admitted to an alternative provision free schools being referred by commissioners (local authorities or schools) unless they are permanently excluded.

AP free schools have the flexibility to admit children at any time, including parents can choose to apply for a place in year 10 also, but this is not compulsory. Parents can choose to apply for a place in year 11 also, but this is not compulsory. Parents can choose to apply for a place in year 12 also, but this is not compulsory. Parents can choose to apply for a place in year 13 also, but this is not compulsory. Parents can choose to apply for a place in year 14 also, but this is not compulsory.

The school admissions code does not apply to referrals or joint AP admissions, as AP free schools AP free schools are not required to operate fair access arrangements. If they wish, but the minimum requirements are that it follows publication arrangements, to fit the admissions code, and that it has a fair, clear and objective admission arrangements.

Your admission arrangements, you need to consult on your admission arrangements for children with SEN Code of Practice. Once a school has opened, it can't change its admission arrangements, except in limited circumstances. If the school is oversubscribed, it is mandatory to be failed to carry out one of its important duties under the Education Act, Section 88(3) of the Act.

If parents disagree with a school being named in their child's EHC plan, they can appeal to the First-tier Tribunal (Special Educational Needs and Disability) and ask for a different school.

If a special free school is allowed within its funding agreement to admit children with EHCP, it will be required to consult on its admission arrangements, and set out in an admissions policy. All complaints about the admissions code cases could contacts will be able to provide more information.

10.12 Alternative provision free schools

Alternative provision (AP) free schools must be principally concerned with providing education for children who have SEN or are vulnerable because of illness, or who had otherwise excluded or children who are at risk of permanent exclusion, or children receive. There is no requirement for AP free schools to have a PAN, or to admit children in year 7 or 12. However, AP free schools may also choose to admit children in other years, but they must number less than 50% of pupil numbers.

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Your admission arrangements, you need to consult on your admission arrangements for children with SEN Code of Practice. Once a school has opened, it can't change its admission arrangements, except in limited circumstances. If the school is oversubscribed, it is mandatory to be failed to carry out one of its important duties under the Education Act, Section 88(3) of the Act.

If parents disagree with a school being named in their child's EHC plan, they can appeal to the First-tier Tribunal (Special Educational Needs and Disability) and ask for a different school.

If a special free school is allowed within its funding agreement to admit children with EHCP, it will be required to consult on its admission arrangements, and set out in an admissions policy. All complaints about the admissions code cases could contacts will be able to provide more information.

10.13 Admissions process free schools

Admissions process (AP) free schools must be principally concerned with providing education for children who have SEN or are vulnerable because of illness, or who had otherwise excluded or children who are at risk of permanent exclusion, or children receive. There is no requirement for AP free schools to have a PAN, or to admit children in year 7 or 12. However, AP free schools may also choose to admit children in other years, but they must number less than 50% of pupil numbers.

Children of compulsory school age cannot be admitted to an alternative provision free schools being referred by commissioners (local authorities or schools) unless they are permanently excluded.

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Your admission arrangements, you need to consult on your admission arrangements for children with SEN Code of Practice. Once a school has opened, it can't change its admission arrangements, except in limited circumstances. If the school is oversubscribed, it is mandatory to be failed to carry out one of its important duties under the Education Act, Section 88(3) of the Act.

If parents disagree with a school being named in their child's EHC plan, they can appeal to the First-tier Tribunal (Special Educational Needs and Disability) and ask for a different school.

If a special free school is allowed within its funding agreement to admit children with EHCP, it will be required to consult on its admission arrangements, and set out in an admissions policy. All complaints about the admissions code cases could contacts will be able to provide more information.

10.14 16 to 19 free schools

As an academy trust you are responsible for admissions to your free school sixth form, and must:

- making sure the admission arrangements are fair, objective and transparent
- managing applications to the institution (in most cases you will need to use the UCAS system, and provide information about your admission arrangements and application process)
- organising an independent admission appeals process

As 16 to 19 free schools are subject to the school admissions code, your free school is not covered by the School admissions code. However, its admission arrangements must be fair, clear and objective, and must include application deadlines and information about how and when offers will be made, and how and when offers will be made. Admission arrangements, whether there will be interviews, and how and when offers will be made, and how and when offers will be made.

Admission arrangements should be fair and transparent. Arrangements should therefore be as straightforward as possible and clear how offers are made.

Admission arrangements, including application forms, must be clear, fair and objective, and must comply with the admissions code.

Promoting integration between people from different ethnic, religious and socio-economic backgrounds is a key aim of free schools. Your admission arrangements should not unreasonably discourage parents from applying to the school, the school's intake might not represent the diversity of the wider local area. Free schools should be open to all children and families, and should not select pupils based on their ability or aptitude, or discriminate against pupils from a range of backgrounds that represents the diversity of the wider local community to access the school.

10.15 Your admission arrangements

Your admission arrangements, you need to consult on your admission arrangements for children with SEN Code of Practice. Once a school has opened, it can't change its admission arrangements, except in limited circumstances. If the school is oversubscribed, it is mandatory to be failed to carry out one of its important duties under the Education Act, Section 88(3) of the Act.

If parents disagree with a school being named in their child's EHC plan, they can appeal to the First-tier Tribunal (Special Educational Needs and Disability) and ask for a different school.

If a special free school is allowed within its funding agreement to admit children with EHCP, it will be required to consult on its admission arrangements, and set out in an admissions policy. All complaints about the admissions code cases could contacts will be able to provide more information.

The admissions process

You are required to set out admission policy and arrangements (Section 10). Our online process for fair and objective is to clear how decisions will be made, and how and when offers will be made, and how and when offers will be made.

- an admission number for the institution, or admission numbers for courses
- for each year of the institution, the number of places available, and the number of places available
- clear consultation criteria
- details of how and when applications can be made
- an application form
- a closing date
- details of your independent appeals process

Oversubscription criteria

If you have more applications than places, you will need to apply clear oversubscription criteria to decide who will be offered a place. For 16 to 19 academy, you have a great flexibility, subject to the school admissions code, to set your own criteria, which could be, for example, based on the GCSE grades you require for your sixth form, or on a combination of GCSE grades and other factors.

You can set specific requirements for specific courses, and you can turn down applications from students who do not meet the requirements for specific academic requirements. Many sixth form colleges have admissions tutors who help making the application process for new students, you do not want to make it too difficult for students to apply. If you are considering using a tutor system, you can set it before applying, and make it clear in your admission policy.

You are required to admit all students with an EHC plan naming the free school. Although you are not required to admit students who have applied to the school within your oversubscription criteria to lowest offer children and previously looked after children.

Sixth form admissions process

Your admissions process should be fair, clear and objective, and should be fair and clear. You need to think carefully about these and make sure they are the most appropriate for your students. Your admissions process should be fair and clear, and should be fair and clear. Your admissions process should be fair and clear, and should be fair and clear.

Offering places

Once your application deadline has passed and you have applied the admission criteria, you can choose to make either conditional or unconditional offers. Before your funding agreement is signed, you should only make conditional offers, in case there is any delay in opening. You do not need to have signed your funding agreement to make conditional offers, but you should advise your prospective students that they may wish to have an 'insurance' place.

At the point DfE is ready to enter into a funding agreement with you, your lead contact will want 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. Information about 'expressions of interest' will generally not suffice.

Finalising choices

Unlike a school with a sixth form where students can move into Year 12, you need to create opportunities to engage with students after you have offered them a place. It is beneficial 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 will help you plan timetables and teaching loads and helps ensure students have a strong start at your institution. Subject to government guidance on social distancing we suggest you host a 'getting ready' day for students, much like a secondary school would hold an induction for students moving from primary schools.

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

Waiting lists

You should keep a clear, fair and transparent waiting list and be clear as to how long you will keep it. Our advice is that you should 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. Students on the list should be ranked in line with your published oversubscription criteria.

Appeals

Students who have not been offered a place at your free school should 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.

Local authorities, as well as other organisations, 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, you need to make sure they understand that as a 16 to 19 academy you do not have to abide by the school admissions code or the school admissions appeals code.

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

In operating your admission arrangements, you can request proof that the information provided in the application form is valid. For example, you can ask for 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. 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

In the pre-opening period, we advise that you include your 16 to 19 free school's proposed admission arrangements as part of your Section 10 consultation. Once you have taken account of any responses to your consultation and published your final arrangements on your website and we have signed your funding agreement, you should not make any changes to the arrangements until the application process is over for the year. It 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 2021 admissions should therefore be published in September 2020, or as early as possible after that if this is not achievable.

It is possible for people to submit complaints about your policy to ESFA, which will ensure that the policy is fair, clear and objective, in accordance with the funding agreement.

10.15 Further information

- Table 7 Admissions: checklist of activities Annex A
- School admissions code
- School admission appeals code
- Free schools admissions guidance
- Alternative provision statutory guidance

1 To note: temporary changes have been made to the handling of admission appeals during the Coronavirus (COVID-19) pandemic. These changes are set out in The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020. Non-statutory guidance has also been published to support admission authorities in managing their admission appeals.

11. Religious character

11.1 Summary

If you want particular beliefs to be reflected in the life of your school, and specifically in your curriculum, staffing and admissions policies, we require you to seek a 'religious designation'. This is a legal recognition that your school will have a religious character. A faith-designated school has the following freedoms which will allow you to maintain and develop the religious character of the school:

- apply up to 50% of pupil admissions by reference to faith (when the school is oversubscribed)
- appoint teachers by reference to faith
- deliver religious education and collective worship according to the tenets of the faith of the school

Your school's religious designation does not come into force until you have signed your funding agreement with the Secretary of State and the legal process for religious designation has been completed.

It is important to note that the freedoms set out above are not available to free schools that wish to register as having a 'faith ethos' (a part of the independent school registrations process).

11.2 Applying for a religious designation

For your school to have a religious designation, 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 to be occupied by the school will be provided on trust in connection with:
  - the provision of education
  - 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

In advance of approving a religious 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 managed in accordance with the tenets of your faith.

To apply for religious designation, you need to complete the FSRDApp1 form and return it to your lead contact for processing as soon as possible. The guidance can be found via Religious character designation: guide to applying.

Please note that 16 to 19, special and AP free schools cannot be designated as having a religious character, although they may have an ethos or worldview that is reflected within the vision and values of the school.

Faith-designated free schools with nursery provision are able to reflect their religious outlook within the life of the nursery, for example, by celebrating religious festivals or using stories based on religious texts. They are not permitted to apply any faith criteria for admissions to nursery places, and the nursery must abide by the same requirements in the funding agreement and regulations as apply to the rest of the school.

11.3 Additional responsibilities for faith free schools

The government is keen for all schools to support inclusivity and integration between communities. All schools must be inclusive, whatever their religious character or ethos. Trusts that are opening a faith designated free school will be expected to provide evidence of their commitment to inclusivity and community cohesion and plans to support this, which will be tested rigorously throughout pre-opening. There are a number of ways you could demonstrate your commitment to inclusivity:

- plans to develop a sustained and structured linking programme with a school of a different or no religious designation, to create meaningful relationships between young people of different faiths (or no faith) – linking could include sharing teachers and resources, conducting joint lessons, assemblies or sporting activities
- having diversity on the trust's board by including one or more members or trustees who is of another faith or no faith
- setting up a mixed-faith trust with schools of different faiths or no faith that will be used to expose pupils in your faith designated school to peers from different religious and ethnic backgrounds

We expect faith-designated free schools to appeal to a wide range of parents and pupils. You therefore need to ensure that your school policies are inclusive, your school is welcoming to pupils of other faiths or no faith and that your school is likely to attract applications from all parts of the local community, not just those of your faith. This includes ensuring that your school policies and curriculum would not deter pupils from other faiths or no faith from applying for a place at the school, nor prevent their children from playing a full part in the life of the school. Policies that might deter applicants from other faiths or no faith a combination of the following:

- lessons taught in community languages
- large proportions of curriculum time devoted to faith-related studies
- restrictive dietary requirements
- any separation of pupils, including when they are eating
- the mandatory wearing of symbols or clothing associated with your faith or world view

Parents have the right to withdraw their children from religious education at any age and from collective worship until the age of 16. From the age of 16, the right to opt out of collective worship passes to the pupil.

Like all free schools, you must also adhere to the conditions set out in your funding agreement. You will also need to demonstrate a commitment to ensuring that your curriculum and ethos will prepare pupils for life in modern Britain.

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

Most faith schools will be formed by groups that look to a religious body or organisation for guidance on how their religious character should be expressed in the life of the school. Therefore, in most cases you will have a 'religious authority' who will have two consultation roles:

- identifying who will conduct the inspection of your school's religious education and collective worship (commonly known as the Section 48 inspection)
- providing advice on admission arrangements and specifically consulting with them on how you should define suitable adherence to your faith in your admission arrangements

In relation to inspection of your denominational education or collective worship, the faith bodies that provide inspection services are:

- 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

It is not compulsory for you to use these faith bodies to carry out these inspections but you are required to consult with the appropriate body (if one is listed) before you opt to organise it independently. There is a protocol that you must follow in order to claim grant funding towards the cost of inspection. You will need to draw up a framework and provide details and assurances about the independence of the inspectors you are using and submit the framework and inspection report to DfE before any grant can be considered towards the cost of inspection. Contact your lead contact for advice.

The religious authorities in relation to admission arrangements are listed in Schedule 3 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) 2012

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 get in touch with your lead contact for advice.

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

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.

Those groups opening a free school designated with a Church of England religious character will also need to agree to the church supplemental agreement alongside their funding agreement. This document provides more detail on the roles of the diocesan board, the trust and DfE and how they will work together on issues relating to land, intervention and support and termination.

11.5 Recruiting teachers before the school obtains religious designation

Being a designated faith free school gives you limited exemptions from the Equality Act 2010 - (see section 11). This includes being able to give preference to recruiting teachers of the faith.

To be designated officially, you will need to have signed a funding agreement with the Secretary of State and have successfully applied for designation. If you wish to appoint teachers before this point (before you are designated), you will need to be able to demonstrate that adherence to a particular faith is a genuine occupational requirement (such as for 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 and signed a funding agreement.

11.6 Free schools that register a faith ethos

If you want your school to reflect a distinct ethos aligned with a particular religion, you can register that your school has a religious ethos. The ethos could then be reflected within the vision for the school, the values the school represents and the importance placed on particular beliefs.

Unlike schools that are faith designated, schools registered with a religious ethos are not entitled to any of the freedoms of designated faith schools, except in the appointment of senior leaders where the faith of candidates can be taken into account.

As with all other schools, your school will be expected to be inclusive in its outlook and practices and be likely to attract applications from pupils of no faith and other faiths. Your lead contact will expect to see evidence of actions you are taking to encourage applications from the wider local community.

Throughout pre-opening, we will expect groups who are proposing a school that will have a religious ethos to be able to explain clearly how faith will (or will not) manifest itself in, and influence, the curriculum, school policies and the look and feel of the proposed school. We will also expect you to be able to demonstrate how you will make this clear to parents and pupils.

Schools with a faith ethos, in common with all schools without a religious designation, can apply to be exempted from the requirement to provide broadly Christian collective worship. This may be where the belief of the majority of its pupils or the local community is such that another faith would be more appropriate.

11.7 Further information

- Table 8 Faith: checklist of activities (Annex A)

12. Equality duties

12.1 Free schools' duties under the Equality Act 2010

Every child in this country should have the opportunity to get the very best education, giving them knowledge and skills that set them up for life.The free schools programme supports equality of opportunity, through opening high-quality new schools in the areas where they are most needed.

The Equality Act 2010 provides a single, consolidated source of discrimination law. The Act makes it unlawful for your trust to discriminate against, harass or victimise a pupil or potential pupil based on protected characteristics:

- in relation to admissions
- in the way it provides education for pupils
- in the way it provides pupils access to any benefit, facility or service
- by excluding a pupil or subjecting them to any other detriment

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 3 limbs of the Public Sector Equality Duty (PSED). These are:

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

Meeting your obligations under the Equality Act is a continuing obligation on your trust and must be considered throughout the pre-opening phase and once the school is open.

The Secretary of State has a statutory duty to consider the potential equality impact (positive and negative) of his or her decisions, before deciding whether to enter into a funding agreement with you.

12.2 Summary of the main tasks

Throughout the pre-opening period, you must consider how the decisions you make will affect people due to their protected characteristics.

The protected characteristics are:

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

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

A person's age is also a protected characteristic in relation to employment and the Act extends this (except for children) to the provision of goods and services, but age as a protected characteristic does not apply to pupils in schools.

12.3 How we will work with you

When making all your important decisions in pre-opening you must ensure you comply with the PSED. Your lead contact at DfE will be looking for evidence that it is being considered throughout the pre-opening phase.

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

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

- details of your marketing plan, to show how you will engage with local communities to meet your duties to promote community cohesion
- 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

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 the protected characteristics.

12.4 School food

Since September 2014, all government-funded schools (including academies) must offer free school meals to every infant pupil. DfE is expecting all infant pupils to be offered a nutritious and, where possible, a hot free meal.

The Children's Food Trust (CFT) and the Lead Association for Catering in Education (LACA) run a free support service for schools that need help providing these universal infant free school meals (UIFSM). The support service can be contacted on 0800 680 0080, or by email at info@childrensfoodtrust.org.uk.

Schools are encouraged to promote healthy eating and provide healthy and nutritious food and drink. The Requirements for School Food Standards Regulations 2014 apply to all government-funded schools (including academies). Guidance on school food standards is available online. A summary of the standards and a practical guide are available from the School Food Plan website.

12.5 Further information

- Table 10 Equalities duty: checklist of activities
- Section 149 of the Equality Act 2010
- Equality Act 2010: advice for schools

13. Staffing, education plans and policies

13.1 Introduction

During the pre-opening phase, you will need to turn the detailed staffing and education plans in your application into reality to ensure that everything is in place to open successfully, from recruiting high-quality staff to having high-quality education policies and schemes of work in place. You will need to ensure joint planning of finance, curriculum and staffing throughout the process, to deliver an affordable curriculum that meets pupils' needs.

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 (ROM) with DfE 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 the third year after opening.

You will also need to consider how you will ensure a manageable and sustainable workload for all staff as the school expands to aid recruitment and retention by ensuring that demands of staff are proportionate and reflect most efficient and effective practice.

13.2 Summary

An external expert (EE) will be allocated to your project and will provide advice through your lead contact. EEs are external contractors and highly experienced education professionals who have worked in senior education roles, typically as heads of outstanding schools or as Ofsted HMIs or inspectors.

Appointing a high-quality principal designate is probably the most important thing you will do as a trust during pre-opening. The recruitment process should not take place before the provisional opening date has been confirmed. 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. It may take more than one recruitment round before a suitable candidate is appointed and this presents a risk to the successful opening of your school. You must escalate to your lead contact if you are experiencing difficulties recruiting a principal designate.

All serving headteachers and teaching staff will be bound by contractual resignation dates and you will need to factor this into your recruitment plans. Appointments made before a funding agreement is in place should be conditional on the trust entering into the funding agreement and the school opening.

As a trust, you have statutory duties in terms of the policies that need to be in place before opening. DfE has published a guide for schools (including free schools) about these duties. EEs do not routinely sign off education plans and policies but may ask to see some depending on our level of engagement with your project. EEs will always review the pupil assessment, recording and reporting policy and safeguarding policy.

It is important that as an academy trust you fully understand your responsibilities for safeguarding the children in your care. You should consult DfE's Keeping children safe in education(KCSIE), Working together to safeguard children and What to do if you're worried a child is being abused: advice for practitioners guidance documents.

Your lead contact will ask you to report on recruitment of staff (in the context of pupil recruitment and financial plans) and on the development of 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 (ROM).

In creating a culture that promotes flexible working, you have the potential to create new, innovative opportunities for addressing teacher supply, alongside promoting greater diversity in the workplace especially as the schools grows. To support you to implement effective flexible working practices DfE for Education has published a suite of resources including guidance (2017), and case studies information on the benefits of flexible working (October 2019).

13.3 Risks

Inspected schools that have not had a change in principal designate are more likely to receive a 'good' or better Ofsted judgement than those that have, so it is vital that you find the right person for the job. It may take a few attempts to recruit a suitable principal designate so it is sensible to consider when to begin the recruitment process very carefully as serving headteachers and teaching staff are bound by contractual resignation dates.

Over half of free school principal designates are new to the role. Where a principal designate candidate has no leadership experience or is a direct appointment, a benchmarking exercise should be carried out by an EE who will advise on the suitability of the candidate for the role. You should also think about the support and mentoring programme that you will provide to support them.

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 need for caution when recruiting senior or middle leaders. Having little relevant leadership experience can significantly limit leadership capacity at a time when it is needed to establish and implement school improvement systems.

Once you have your principal designate in place, it is important to get your wider tracking and assessment systems in place. Failure to do this may affect your ability to get a good Ofsted judgement.

13.4 Essential information you'll need to provide to us

You'll need to provide DfE with details of your:

- proposed staffing structure
- pupil assessment, recording and reporting policy

- safeguarding policy
- the education plans or policies that are requested by your lead contact or EE

13.5 Summary of main tasks

Appointing a principal designate

Principal designate appointments can be made either through open national recruitment or as a direct appointment (without advertising). Given the importance of the appointment, you must fully involve your EE in any open national recruitment of the principal designate. Trusts must also notify their lead contact before going against advice from their EE.

Your EE will:

- work with you to provide advice on the job specification role, skills or specialisms – talking through and agreeing the job specification
- support you by being a panel member by reviewing and sifting applications and agreeing the final candidates to be interviewed
- support you by being a panel member providing advice after the sifts and interviews on the choice of candidate, influencing the recruitment approach to ensure this is fair and transparent

In exceptional circumstances (such as where an experienced trust is behind the project), we may agree that an EE does not need to be involved. Your lead contact will discuss this with you.

Direct appointments can be made where appropriate but, as an academy trust, you will need to be able to show how the appointment was transparent and fair.

Once you have identified a suitable candidate, DfE may suggest that they undergo a benchmarking exercise. This will involve the candidate being interviewed by your EE and having their performance assessed against relevant leadership standards. The results can then be used to inform the design of a development programme, which you can then take forward with the principal designate.

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 educational recruitment firms and universities run assessments for school leaders.

NSN has produced a resources to help you recruit your principal designate. This includes detailed advice based on the experience of successful free schools.

The principal designate of a free school forming a trust with only one school will also be the accounting officer (in trusts with more than one school the accounting officer will be the CEO or senior executive leader (SEL) of the trust). The role of the accounting officer includes a personal responsibility to the ESFA's accounting officer and to Parliament for the financial resources under the free school's control. Further information about the role of the accounting officer can be found in section 3.

You will need to send a copy of the principal designate's contract to your lead contact when an appointment has been made. This is to ensure DfE is aware of any costs that could be incurred as a result of the principal designate's salary being underwritten.

Serving headteachers and teaching staff are bound by contractual resignation dates. Appointments made before a funding agreement is in place should be conditional on you entering into the funding agreement and the school opening. You must escalate to your lead contact if you are experiencing difficulties appointing high-quality teaching staff.

We recognise that you 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, DfE will underwrite the salary costs, plus on- costs, should the free school not open, or if its opening is deferred by a year.

! We will only underwrite the principal designate salary once the provisional opening date has been confirmed and we have started to release PDG beyond the initial allocation.

The salary would be underwritten for up to 2 consecutive terms from the point at which the decision is taken not to proceed. You can share this letter with your principal designate to this effect.

Finalising staffing structure and recruitment

You will also 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 important posts, including senior leaders, who must be carefully budgeted for. You might find it useful to consider the top 10 planning checks for governors, and the integrated curriculum and financial planning resources which provide some tools to help ensure that you are making the best use of resources when planning your staffing and curriculum. Further practical resources for school leaders and teachers to help reduce workload can be found at reducing teaching workload.

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 and to regularly consider 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 is 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 have recruited.

Most free schools advertise for staff in both national and local press. Some find holding their own recruitment fairs a good way of attracting staff. Others have used agencies or organisations with talent pools, but these will often charge schools for this service. Many of the major education recruitment agencies have access to pools of staff. Your EE may also be able to advise you on what you could do to attract good staff. When considering options, bear in mind the principle of effective school resource management, as stated in the school resource management (section 4.9).

Teaching Vacancies is a free, national service for searching and listing teaching roles. It is available to publicly funded schools in England. DfE developed the service to address school leaders' concerns about the level of expenditure on teacher recruitment advertising. By using the service, schools can save money on recruitment advertising.

Access to Teaching Vacancies for schools in pre-opening is currently being developed and your lead contact will let you have details of how to do this once it has been finalised.

Social distancing guidelines may mean it is not possible for schools to hold face-to-face recruitment processes. Interviews should either happen remotely, for example, via an online video or telephone interview, or be delayed to a later date. Schools will need to ensure that all employment laws are met and that applicants have equality of opportunity throughout the selection process. We trust schools to use their judgment in implementing this.

The supply teachers and agency workers deal supports schools to reduce costs when recruiting supply teachers and other agency workers. This deal provides easy access to supply teacher agencies and shows mark-up in a wholly transparent way. As part of the deal, agencies cannot apply fees for making temporary staff permanent after 12 weeks if given 4 weeks' notice and administration time is reduced, as rigorous background checks must have been conducted on all staff in line with our statutory guidance Keeping Children Safe in Education.

All serving headteachers and teaching staff will be bound by contractual resignation dates and you will need to factor this into your recruitment plans – see more information about this. 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. As it may take a few attempts to recruit a suitable principal designate, it is sensible to consider when to begin the recruitment process very carefully, factoring in that you will need confirmation of your provisional opening date first.

13.6 Free school freedoms for appointing staff

As the employer, you are responsible for appointing staff. If you are working with an education provider, you may pass the responsibility on to them but you may still want to be involved in the recruitment process, as you will be the legal employer of all staff. As academies, free schools 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 – for comparative purposes national pay scales are set out in the school teachers pay and conditions
- you are not required to employ staff with qualified teacher status (QTS), with the exception of the SEN coordinator (SENCO) and the designated lead for children in care. However, this freedom does not apply to special free schools
- your principal designate is not required to hold the National Professional Qualification for Headship (NPQH)

If your free school includes nursery provision, you will need to ensure that your staff: child ratio meets the minimum requirements outlined in the early years foundation stage framework (EYFS). Exact ratios depend on the age of the child, the level of qualification of the staff and the type of setting. Your lead contact and EE will need to satisfy themselves that your planned staffing numbers meet these requirements.

13.7 Free schools' statutory responsibilities

There are some statutory requirements on free schools with regard to staffing:

- the SENCO and designated lead for children in care must hold QTS
- as an employer, you have a statutory duty to enrol all your staff membership into either the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS) (pension contributions must start with employment, so you should ensure that pension provisions are in place for staff taking up their post prior to the free school opening (during pre-opening))
- with regards to the TPS, you must comply with the TPS Regulations, including making sure those who are eligible are enrolled and also comply with the requirements of the TPS administrator, Teachers' Pensions (TP), for example, to provide data, information, contact details and timely pension contributions – you should contact TP as early as possible for help and guidance on these issues
- if your 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 – you can find out more in section 11.

13.8 TUPE (The transfer of undertaking (protection of employment))

TUPE Regulations 2006 (amended 2013) (TUPE) protects employees by providing for their automatic transfer by operation of law under their existing terms and conditions when their work activities transfer from one employer to another. It only applies to employees; it does not apply to volunteers and it does not apply to agency workers (other than in respect of information and consulting obligations).

We would not usually expect TUPE to apply to a free school, if it is not replacing an existing school. Most free schools are new and additional schools; the only exception to this basic position is where existing provision (such as existing alternative provision or independent schools) convert to become a free school.

TUPE will usually apply where an existing independent school closes down and re-opens as a free school, but you may wish to take legal advice to confirm the position. The headteacher of the existing school would also generally automatically become principal designate of the free school unless there is a major change in respect of organisation of the provision of education services, again, it is advisable to take legal advice in these situations.

The TUPE regulations place a statutory obligation on the employer to inform and consult prior to a transfer taking place. The employer will need to inform their employees' representatives (the recognised union or, if there is not one, elected representatives) of certain matters in writing:

- the fact that the transfer is to take place
- the date of the transfer and the reasons for it
- the legal, economic and social implications of the transfer for any affected employees and any measures which the employer envisages it will take in connection with the transfer, in relation to any affected employees

There is no set period for the information and consultation process but it has to be long enough before a transfer, to enable the employer of any affected employees to consult the appropriate representatives. You should aim to provide the information and to start consulting as early in the process as possible. As a rough guide, we suggest this should be not less than 30 days before the transfer, but this is for the trust to determine.

If you know that staff will need to transfer, you will want to have information from the outgoing employer about the employees and any liabilities you may be taking on. The outgoing employer (the 'transferor') is legally obliged to notify you (the 'transferee') of employee liability information of any person employed who would be in scope to transfer. This includes:

- the identity and age of the employee
- the particulars of employment for the employee
- any relevant information such as disciplinary procedures taken against the employee
- any information on court or tribunal claims that the transferor has reasonable grounds to believe may be brought after the transfer
- information as to any collective agreements which will have effect after the transfer that are relevant to transferring employee

Even staff who are in the process of being disciplined will transfer, if in scope, and the transferee will then continue the disciplinary process to its conclusion. Staff can object to the transfer, but if they do so unreasonably, they will lose any right to claim compensation for unfair dismissal or any redundancy rights. The basic assumption is that they are expected, if they are in scope, to transfer to the new organisation. They do so with their continuity of service protected and their terms and conditions protected. After a year, it is possible to harmonise terms and conditions, but only by agreement.

Some matters do not transfer, such as criminal liabilities and terms in relation to pensions. Again, specific legal advice may be necessary. Determining the application of TUPE is complex because a number of factors need to be considered. Each project is different and dealt with on a case-by-case basis. Trusts should always consult their own legal advisors regarding any potential TUPE issues.

13.9 Developing an education brief

It is good practice to put all strategies and statements together into one document, the education brief, that provides detail of how your school will operate. This can be distributed to staff and governors before opening, so that everyone in the organisation understands the vision for the new school, the way that the school will operate, the educational programme that will be delivered, the goals that the school wishes to achieve and its ambitions for the future.

It is important to be clear about what the essential elements that constitute a good brief are, how they may be constructed, and the audience or audiences it will be for and the purpose it has. It is also important to state how it may be put into practice and owned by the entire school, including the trust, governing body, the senior leadership team, staff and pupils and their parents. Details of what the education brief should contain are provided here.

A well-developed education brief will do the following:

- inform your pre-opening planning and timescales
- take you through your Ofsted pre-registration inspection successfully
- help you choose the right staff and governors, and show how you will retain them, with particular regard for developing a manageable and sustainable workload as the school expands - refer to the workload reduction resources which includes a helpful toolkit produced by DfE to support you
- help you create a whole school approach to mental health and wellbeing, and to ensuring that staff wellbeing policy is integrated within the school's culture
- ensure you are effective, safe and secure and achieving from first day of opening
- be accessible and written in a way that you feel confident in sharing it with a wide range of audiences, internally and externally
- be focused on pupil outcomes from the start
- prepare you for your first Ofsted section 5 inspection and help you achieve a good or outstanding judgement

The education brief also provides valuable evidence and reassurance to your lead contact that you are offering a high quality and inclusive educational offer, and that the school is on track to be educationally viable. This will inform their judgement to recommend the Secretary of State to enter a funding agreement.

13.10 Developing education policies

You have statutory duties in terms of the policies that need to be in place before opening. DfE has published a guide for schools (including free schools) about these duties. This includes details of the policies that your school must have and how frequently they must be reviewed.

Policies may fulfil one or more of 4 requirements:

- a statutory requirement of education law or other legislation impacting on schools
- required prior to the funding agreement and are also a statutory requirement
- required for the Ofsted pre-registration inspection
- related to teaching and learning and may be requested during an Ofsted inspection post-opening

It is imperative that policies are in place by their respective deadlines.

You will 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 (normally in the third year 3 after opening). In the checklist of tasks, we have set out what needs to be done as a minimum, and by when, in the run up to opening. The checklist is not exhaustive but will give you an idea of what may be required, and when.

Closing the attainment gap for disadvantaged pupils is a priority for DfE. Your education plans and policies should reflect the local context in which your school will operate and be designed to improve outcomes and enhance the life chances of children in the local community.

When planning your curriculum, you should ensure that this is aligned with the needs of children in the local area where your school will operate, including how you will address the specific forms of disadvantage affecting pupils. For example, if your school will be situated in an area where a high proportion of pupils speak English as an additional language, you should ensure that your approach towards literacy reflects this. You should also consider how your approach to teaching and learning will ensure the curriculum is delivered in a robust and effective manner and meet the needs of your expected intake.

When planning assessment monitoring and tracking processes you should pay attention to the advice for schools and governing boards in the making data work report (published November 2018) to ensure excessive data burdens are avoided.

If your free school includes 16 to 19 provision, you might want to consider offering T levels. T levels are high-quality, rigorous, level 3 classroom-based technical study programmes that will sit alongside Apprenticeships within a reformed skills training system. They will support entry to skilled employment in technical occupations and progression to higher education options (including higher technical qualification, higher apprenticeships, degree apprenticeships and technical degrees).

The first 3 T levels will be available from 2020 from a small number of providers, and these T levels will be for specific occupations in 3 industries: digital production, design and development (digital industry), design, surveying and planning (construction industry), and education (education and childcare industry). As T levels are rolled out, we expect the majority of funding for 16 to 19-year-old students studying level 3 qualifications to be directed to T level and A level programmes. More information can be found at introduction of T-levels.

Many free schools and academies have also found the overarching structure of the education brief (available in Annex E) helpful, as this brings together all of the school's strategic and detailed education plans and policies.

Exemplar education plans and policies are widely available. Exemplar policies are available on the pre-opening section of the NSN website. 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.

Education plans and policies are not routinely signed off by DfE. We may ask to see some, but this will depend on our level of engagement with your project. EEs will always review the pupil assessment, recording and reporting policy and safeguarding policy.

Non-faith free schools, like other non-faith academies and schools, may apply for an exemption (called 'a determination') from providing a 'broadly Christian' daily act of collective worship. Broadly Christian can be replaced with an alternative daily act of collective worship that better reflects the faith background or backgrounds of the academy's pupils. The determination lasts for 5 years. If you wish to apply for this status, please contact your lead contact who will provide you with the relevant application pack.

Academies (including free schools) are required by law to publish specific information on their website. Guidance as to what must be included can be viewed at what academies and free schools must publish online. You must also ensure that you have the following documents in place prior to opening.

A scheme of work

This should set out details of the programme of learning, must be written for each subject, or programme or study. These are usually prepared by the subject head of department, or subject or phase co-ordinator in a primary setting.

A school development plan for the opening year

This is a strategic document, typically constructed by the principal designate and senior team, which sets out the main objectives that the school wishes to achieve within the first years. This includes success indicators, actions, staff responsible, timelines and costings for the opening and subsequent years.

> Guidance on how to safely teach children in primary schools during restrictions associated with the coronavirus (COVID-19) outbreak can be found planning what to teach and how: planning guide for primary schools.

13.11 Promoting integration and community cohesion

The government is committed to building strong integrated communities where people, whatever their background, live, work, learn and socialise together, based on shared rights, responsibilities and opportunities. Schools have a duty to promote community cohesion and integration, with a view to ensuring all children and young people are prepared to participate fully in life in modern Britain. There are a number of practical activities that you could undertake in your school to promote this, to support pupils to mix with those from different backgrounds and equip them with the skills, knowledge and confidence to contribute to the local community as active citizens. You may wish to consider these suggestions.

Establishing sustained and structured linking arrangements with another school

This can help to promote sustained social mixing and create meaningful relationships between pupils from different backgrounds with the aim of fostering more positive attitudes, build understanding of different communities and cultures, and break down barriers to greater integration.

You may find it useful to engage with the linking network, who can provide support and training to help you establish a meaningful and structured linking programme with a suitable school. The connecting classrooms programme also provides opportunities to partner internationally with schools in different countries. Activities or initiatives to support pupils from different backgrounds to mix with each other within the school, for example sport days, arts competitions and music events that bring together pupils from across the school.

Promoting British values

Programmes, activities or trips aimed at promoting the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs. This will help pupils to value differences, challenge prejudice, discrimination, stereotyping and intolerance of others, and understand the diversity of both the local community and wider society.

This can include activities within classrooms to teach these values, as part of a broad and balanced curriculum and including through the teaching of spiritual, moral, social and cultural (SMSC) education, for example, through subjects such as religious education, citizenship, personal, social, health and economic education (PSHE), and relationship and sex education (RSE), as well as activities outside of the classroom.

13.12 Youth politics or civic engagement

This can help to get young people to think about the role they could play as active citizens in modern Britain. This should be linked to plans for lessons on and ethos around democracy, elections and political systems. Activities could include youth parliaments, school council and mock elections.

Active citizenship' activities, such as volunteering opportunities in the local community, national citizen service, or youth ambassador schemes, to build links between pupils and the local community.

Career programmes and policies

These could focus on improving links between pupils and local employers and encouraging apprenticeships. Large employers often have schemes targeted specifically on broadening access to disadvantaged and more diverse groups, which you may wish to explore.

Different areas will face different barriers to and opportunities for promoting integration and community cohesion. You should consider the appropriateness of your approach towards promoting integration and community cohesion through your education plans and policies based on the characteristics of the local area where your school will be based.

13.13 Measuring pupil performance

In order to demonstrate that your pupils are making progress, you will need to establish a baseline of pupils' current levels of attainment upon entry to your school. As such, you will need to develop a system for baselining before your school opens, otherwise you won't be able to demonstrate that your pupils have made progress. You will also need to implement a system of assessment that enables you to measure pupils' performance and a strategy for improving this.

Once your school opens, it is important that you review your success measures and expectations regularly, to improve your school's performance. This could include benchmarking your assessment data with other schools. As with your system for baselining and assessment, you should ensure that you have developed a robust plan for reviewing your school's performance before your school opens.

When designing your plans for measuring pupil progress, you should ensure that they consider how you will approach the following requirements:

- identify the learning needs of your disadvantaged pupils and inform approaches for tackling the individual issues faced
- use appropriate and proportionate data to inform teaching and drive progression and attainment for all pupils - you should refer to the recommendations of DfE's report making data work to support you in this
- monitor and evaluate whether your approaches for disadvantaged pupils are working
- focus on measuring and improving quality of teaching in the classroom
- involve parents and report progress to them

13.14 Safeguarding

Schools and their staff form part of the wider safeguarding system for children. Safeguarding and promoting the welfare of children is everyone's responsibility. School staff are particularly important, as they are in a position to identify concerns early and provide help for children to prevent concerns escalating.

It is vitally important that as an academy trust you fully understand your responsibilities for safeguarding the children in your care. You should consult DfE's keeping children safe in education(KCSIE), working together to safeguard childrenandwhat to do if you're worried a child is being abused: advice for practitioners guidance documents. All governing bodies must have regard to this guidance, that means they should comply with it unless there is good reason not to. When the school opens, we would expect it to be meeting the requirements as set out in KCSIE.

Every school must have a single central record (SCR) (for example, in an excel spreadsheet, along with documentation in personnel files). This should record in one central place specific information on every adult employed by the trust or coming into regular contact with children on a voluntary basis. This is a statutory requirement. A senior administrator or gatekeeper should maintain the SCR. The SCR must include for each adult employee, governor or volunteer whether the following checks have been carried out or certificated obtained, and the date on which each check was completed or a certificate obtained:

- an identity check
- a barred list check
- an enhanced DBS check or certificate
- a prohibition from teaching check
- further check on people living and working outside the UK
- a check of professional qualifications
- a check to establish the person's right to work in the UK

You can also find more information about what Ofsted will expect to see in place when you are inspected in their guidance inspecting safeguarding in early years, education and skills. This includes specific references to the SCR. There are serious implications if a school fails to provide a complete an up-to-date SCR when requested. The school can be closed immediately if the SCR is not produced, and staff can be sent home if it is incomplete. The safeguarding checklist in Annex F summarises these requirements and is a useful aide to keep on top of what needs to be in place.

13.15 External experts (EEs)

EEs are contracted by DfE to provide expert educational advice. Access to an

EE will only be through your lead contact.

You will need to have your own educational expertise in place to support you as a trust. As a minimum the EE contracted by DfE will usually do the following:

- attend and contribute to the kick-off meeting
- be involved in the process of appointing the principal designate
- be involved in the process of appointing the chair of governors (unless already appointed) and comment on the quality of the governance plans
- comment on the build-up of the senior staffing structure
- comment on the quality of the education brief (available in Annex E) and education policies, in particular safeguarding and assessment
- attend and contribute to the readiness to open meeting

There is a differentiated approach to DfE's support across free school projects. The EE will be contracted to provide the support on a needs basis. The factors we will take into account in determining the level of EE support include the experience within your group and the complexity of your vision for the school. For example, if your educational expertise is limited, or the group has not set up a new school before, we may contract additional EE support.

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

After opening, an EE will be contracted to provide professional advice and challenge, via your lead contact, to ensure that your school is delivering a high standard of education to your pupils. An EE may be contracted to undertake first, fourth and sixth term visits to your school, reporting to DfE on your progress until your first Ofsted inspection. You should ensure you check the Ofsted website regularly to keep up-to-date with any changes to the inspection framework.

14. Funding agreement

The funding agreement is the legally binding contract between the trust and the Secretary of State, which contains the terms and conditions upon which a free school is funded.

Entering into a funding agreement is an important decision for both parties so requires careful consideration. Your regional schools commissioner (RSC) will need to be sure that your trust is ready to enter into the agreement and is likely to establish and maintain a popular and successful school.

The contract sets out what the trust needs to do. This includes, for example, a requirement for admissions to be consistent with relevant admissions law. The trust must meet these (and other) requirements in order to receive funding. The funding agreement also sets out the circumstances in which a funding agreement can be terminated.

The Secretary of State will consider signing a funding agreement only if you are able to develop your plans to the required standard during the pre-opening phase. For mainstream (primary, secondary and all-through) schools, the ideal is to enter into a funding agreement at least one month before the relevant national admissions offer day in the year in which the school is due to open, to give parents receiving offers the confidence that the school will open that year. However, the Secretary of State will not enter into a funding agreement until he or she is confident, on the basis of advice from the relevant RSC, that the school will be good, viable, sustainable and successful, able to open on its proposed date, sufficiently secure about its permanent site, and that any conditions set during pre-opening or following assessment have been met. The Secretary of State can cancel or defer a project at any point during the pre-opening phase, even after your funding agreement has been signed, if your anticipated pupil numbers are not at a previously agreed level or if he or she considers that the school would provide an unacceptably low standard of education.

The Secretary of State does not enter into a funding agreement in respect of a nursery which is part of a free school, because nurseries receive their revenue funding from the local authority or fees charged to parents for provision above the 'free' entitlement. However, provisions around the use of the land for the nursery may need to be included in the funding agreement. Further information on nursery revenue funding arrangements is included in funding for free school nurseries.

The funding agreement checklist, available in Annex A, sets out a non-exclusive list of the main tasks you will need to complete in order to begin the process of agreeing the funding agreement for your school.

14.1 Why DfE uses model funding agreements

DfE produces model funding agreements for all types of academy, including free schools. There are different models available to reflect the requirements of different types of free school at the academy and free school funding arrangements. Using model funding agreements helps DfE ensure consistency across free schools.

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 that reflect the specific circumstances of that school, such as 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.

14.2 When you should begin the process for entering into a funding agreement

The timing for entering into a funding agreement will vary depending on the project. Your lead contact will decide the appropriate time for your project. Funding agreements are usually signed when a project has achieved all its main milestones and the lead contact judges that the schools is likely to be good and viable upon opening.

There are a small number of circumstances in which we might consider entering into a funding agreement before all these main milestones are completed. The most common circumstances are:

- when entering into a build contract for a permanent site
- to enable schools to enter local authority co-ordinated admissions

We aim to have all funding agreements in place by the following dates in the year when your school will open, although this will depend on whether the project has achieved its main milestones and is on course to be good and viable upon opening:

- for mainstream schools, one month ahead of national offer day (1 February for secondary schools and 15 March for primary schools)
- for special schools, in sufficient time to enable the school to be listed on a child's EHC plan, which local authorities need to review by no later than 15 February
- for AP schools, one term before they open (by mid-April for September openers)

Your lead contact will normally want to arrange a formal checkpoint meeting with your trust to ensure that everything is in place to enable the Secretary of State to sign the funding agreement.

14.3 Statutory duties

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

The trust must consult under Section 10 of the Academies Act 2010 – see section 11 for full details. The trust must also have due regard to Section 149 of the Equality Act 2010.

Section 9 of the Academies Act 2010 requires the Secretary of State to complete an assessment of the impact the opening of the free school would have on maintained schools, academies, institutions within the further education sector and alternative provision in the area. The Secretary of State is also required under Section 149 of the Equality Act 2010 to have due regard to needs of the PSED in the opening of the free school before the funding agreement can be signed. These processes will be undertaken by your lead contact.

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 this decision, the Secretary of State will consider these following criteria.

1. 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?
2. Whether the school has recruited enough pupils to be financially viable; will it be full by the time all year groups will be present?
3. Whether the admission arrangements for the school are compliant with the School admissions code.
4. Whether the board of trustees will be capable and effective. Does the proposed board include trustees with appropriate educational, financial and business experience or expertise? Are there arrangements in place to manage conflicts of interest?
5. Whether the school will open on an appropriate, value for money site.
6. Whether the school is financially viable and efficient in its use of resources to promote pupil outcomes. 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?
7. Whether the school's plans for promoting community cohesion are appropriate and likely to be effective for the local context where the school will be based.

14.4 How to enter into a funding agreement: process and people involved

1. DfE sends the trust a signature-ready version of the relevant model funding agreement tailored to school's specific circumstances.
2. The trust consults their lawyers (as necessary) on land specific clauses. All other clauses are non-negotiable.
3. DfE provides advice to the Secretary of State on whether to enter into a funding agreement with the trust.
4. The trust confirms with DfE that they are ready to sign the funding agreement.
5. DfE communicates the Secretary of State's decision to the trust.
6. The trust prints and signs a hard copy (with each Annex attached to it) and sends it DfE.
7. If the funding agreement is approved, DfE arranges for it to be signed and sealed and sends a hard copy back to the trust.

The Secretary of State will not negotiate terms for individual projects and will not accept amendments to the model funding agreement, but see section 14

To ensure the funding agreement is executed correctly, trusts must arrange for 2 trustees to sign the copy (or one trustee and a witness). In addition, trusts should leave the document undated when they send it to their lead contact – DfE will date the document at the point it is signed and sealed.

14.5 Duration

The timings for the process will vary, depending on individual projects. However, the stage that most often holds up the process is agreeing the final version of the funding agreement. It is for that reason that we ask trusts to focus only on the school-specific clauses (as highlighted by your lead contact). We cannot guarantee that the trust will get their signed funding agreement on the timescale agreed if DfE is not confident that the proposed school will be successful.

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, which may include being in line with the local authority admissions process. While we cannot guarantee that 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.

14.6 Arrangements for trusts with more than one school

Trusts with more than one school require different funding agreements to trusts with only one school. While a s trusts with only one school will have one funding agreement for its single free school, trusts with more than one school require a master funding agreement to cover all schools within the trust, alongside supplemental funding agreements for each individual school. Model funding agreements (single, master and supplemental) are available for mainstream, special, 16 to19 and alternative provision free schools on the gov.uk website. The master funding agreement contains general clauses (such as freedom to set the duration of the school day and year) whereas the supplemental agreement covers those clauses which are specific to the individual school.

If you are an existing trust looking to open a new free school, the models for trusts with more than one school (master and supplemental) will apply to you. Your lead contact will be able to advise on which model will need to be used.

15. Inspections and registration as an independent school

15.1 Introduction

This chapter summarises the process whereby proposed free schools are formally registered as independent schools based on advice from Ofsted.

15.2 Summary

Your free school must undergo an Ofsted pre-registration inspection and be registered on Get information about schools(GIAS), DfE's formal register of schools, before it can legally open.

16 to 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.

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

! If restrictions remain in place associated with the coronavirus (COVID-19) outbreak, it may not be possible for inspectors to carry out face-to-face interviews or to visit the premises of proposed schools as they usually would during a pre-registration inspection.

> **Example**
>
> For example, for schools opening in 2020, Ofsted carried out remote inspections, reviewing documents and undertaking telephone conversations with project groups. Your lead contact will provide you with more information about how your inspection will be carried out depending on the circumstances at the time.

15.3 Risks

You must keep to the deadlines set out in this document or provided by your lead contact if your school is to open on time. If in doubt, please speak to your lead contact.

15.4 Why you need an Ofsted pre-registration inspection

In order to be added to GIAS and legally allowed to open, the Secretary of State must decide whether or not your free school, when open, is likely to meet the relevant Independent Schools Standards outlined below. Guidance on the standards is available in the independent schools standards guidance. The Ofsted pre-registration inspection informs this 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
- part 8: leadership and management

Part 1 of the regulations (quality of education) does not apply to free schools in pre-opening. Your education plans and policies will be considered throughout the pre-opening phase and in particular during your readiness to open meeting with with DfE.

The pre-registration inspection is not like a full inspection, which you will be subject to once open. Instead, it seeks to establish whether the proposed school is fit to open as measured against the standards outlined above.

The full regulations are available at The Education (independent school standards) Regulations 2014.

15.5 Registering a nursery with Ofsted

A nursery does not need to be registered separately with Ofsted and will be inspected as part of the free school's pre-registration inspection, in the following circumstances if it is provided by:

- the school, is contained within the school's age range, and is for children aged 2 years or older[2], as it will be covered by the free school's own registration
- a subsidiary company that is completely owned and controlled by the free school

If the nursery is run by a subsidiary company that is independent from the free school, or if the free school does not exercise a high level of control over it, it is likely that the subsidiary company will need to register the childcare separately. Your lead contact will advise you if this is the case.

Where separate registration is necessary, Ofsted will conduct a number of background checks and a separate pre-registration visit. Following this, it will be inspected under the arrangements set out in Ofsted's early years inspection handbook. Ofsted will also register the nursery provision on the Early Years Register and Childcare Register.

Further detail on registering a nursery is available in the Ofsted guidance on registering school-based childcare provision.

15.6 Timing of pre-registration inspections

Your lead contact will discuss with you when your inspection should happen. Your Ofsted inspector will then contact you directly to confirm the date of inspection. You will be given notice of when your inspection will take place and you will be expected to make yourselves available on that date.

Inspections, for free schools opening in September, will take place in May and June. For free schools opening at other times during the year, inspections will usually take place in the term prior to opening.

Free schools that have made the most progress towards opening will be prioritised for early inspection, while those that would benefit from having 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 more time to put right any issues identified by Ofsted before your opening day.

15.7 What you need to do ahead of the inspection

You will need to provide 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 DfE guidance 'preventing and tackling bullying', however, you may still find it useful to consider the advice
  - safeguarding and promoting the welfare of children who are pupils at the school (this should be compliant with the relevant health and safety law)
  - safeguarding and promoting the health and safety of pupils on activities outside the school which has regard to DfE's guidance – health and safety: advice 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 2014
- evidence that the school has appropriate procedures in place for undertaking Disclosure and Barring Service (DBS) checks of staff and recording the results

You may need to provide these documents to your lead contact or directly to Ofsted. Your lead contact will advise at the time.

> 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. DfE's due diligence process means DBS checks will have been, or are being, undertaken on trust members and trustees. Before registration can take place, as a minimum, the chair of trustees must hold a valid DBS certificate, counter-signed by DfE. We expect DBS checks on all trustees and other members to be well underway, if not complete, ahead of registration.

Your lead contact will advise on the deadline by which the documentation is required. It is essential that documents are received by the deadline to give Ofsted inspectors time to consider the information.

! If you do not submit the necessary documentation in time, your inspection may be delayed.

Ofsted will contact you directly to advise you of the inspection date and give 5 working days' notice.

15.8 Compliance with the regulatory reform (fire safety) order

You will need to be able to demonstrate to Ofsted 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.

You will need to inform the local Fire and Rescue Service ahead of opening, although the fire service may decide not to inspect the premises immediately. Note 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 or one or more of the following:

- 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 is in accordance with Building Control Regulations and in compliance with fire safety standards

15.9 The day of the inspection

The inspector will usually spend half a day with a school and will normally need to be met and escorted by the principal designate 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 simply because the principal designate is unavailable.

Depending on the impact of any existing restrictions associated with the coronavirus (COVID-19) outbreak, Ofsted may carry out remote inspections – reviewing documents and undertaking telephone conversations with project groups. Your lead contact will provide you with more information about how the inspection will be carried out and the documentation you will need to supply.

In order to make a judgement about each of the standards, the inspector may ask to see other policies on the day. If for any reason a particular document is not available, whomever 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 that would be desirable but 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.

15.10 After the inspection

After the inspection, the inspector will produce an advice note and a checklist. The advice note is for the Secretary of State You will be given feedback by your lead contact.

In the event that the Ofsted feedback indicates that there are issues that must be addressed, known as 'conditions of registration', you 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. Your lead contact will work with you urgently to address the issues and if necessary, will arrange for the school to have a re-inspection. After the re-inspection, the inspector will produce a second advice note and checklist.

DfE needs to be certain whether any conditions have been met. Only then can your registration on GIAS be completed.

! If you are not registered on GIAS, you cannot legally open.

Ofsted is responsible for publishing the advice notices. Publication usually takes place in the term your free school opens. If you are interested in seeing what an advice notice looks like, you can view previously published advice notices.

You should be careful about 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 providing any judgement of quality. For example, it would be misleading to say that Ofsted have visited and said that you are 'good' or 'outstanding' just because you have no conditions to satisfy.

15.11 Get information about schools registration

Get information about schools (GIAS) is DfE's database of all educational establishments in England and Wales. Being entered on GIAS automatically generates your free school its DfE number and unique reference number (URN), which are used in a variety of circumstances to formally identify the school.

Your lead contact will provide you with a GIAS form which you must complete and return to them.

Once the form has been processed, you will be issued with your URN and DfE number. Your school is initially entered as 'pending approval', which means that the school is not yet registered and is not publicly visible or searchable.

Your school will not be publicly searchable until your school's status is changed to 'proposed to open' and registration is complete. This will happen when you have a funding agreement in place, any pre-opening ROM actions have been addressed (see below) and you have successfully completed your Ofsted pre-registration inspection.

15.12 DfE Sign-in

DfE Sign-in is DfE's portal for systems such as COLLECT (collections online for learning, education, children and teachers) which is used by schools, local authorities and DfE for processing data collection returns, school to school, key to success, ESFA-managed information exchange and GIAS. Access to systems is granted on a user-by-user basis and only those systems that a user has permission to access will be displayed. Not all systems will be available until your free school is open.

Around 2 months before your free school is due to open, your lead contact will be invited to a meeting to go over the details of the pre-opening period, the grant payment and the initial access to DfE Sign in.

Initial approver access will be given to the person you nominate. They will receive their DfE Sign in details once you have their school's status has been changed to 'proposed to open' on GIAS.

Academies (including free schools) and local authorities can have up to 20 user accounts and 2 approver accounts per organisation.

The approver can create accounts for other members of staff and add services to accounts, such as CDM. They also active accounts when they are no longer in use. It is their responsibility and decision as to who they add to the account.

Once registration is complete, it is important that someone at the school takes ownership of the account and ensures that it is maintained and kept up to date. If we do this for you, if you do not confirm your school information in CDM is correct every 60 days, you will get a reminder that you need to review and update your details. This will continue to be issued weekly until you review and confirm details.

15.13 Inspections once open

Once open, maintained, alternative provision and special free schools are inspected under the same arrangements as maintained schools. Therefore, free schools are inspected under the same arrangements that apply to other post-16 providers. The first full inspection of a free school normally takes place during the third year of opening (for schools with boarding provision, this will be the first year).

From September 2019, Ofsted introduced inspections of schools, early years providers and children's social care and skills providers, to make sure that learners are receiving a high-quality education that puts them on a path to future success.

Ofsted inspectors will spend less time looking at exam results and test data, and more time talking to teachers and leaders about how they are delivering a broad, ambitious curriculum. That is, whether they are the outcome of a broad, rich curriculum and learning, or of teaching to the test and exam cramming. Further information is available on Ofsted's website.

Many open free schools have found it useful to buy in support to undertake a trial or inspection ahead of the formal Ofsted inspection to identify any outstanding issues. Many providers offer this service and employ ex-HMIs to deliver it. These external assurance exercises will help address any issues and self-evaluations and inform school improvement plans ahead of your first Ofsted inspection.

15.14 School-to-school support

One of the most effective ways of achieving school improvement is by working with other schools. There are now many opportunities for school leaders and governors to work with and receive support from their peers. Further information can be found in the guidance 'Teaching schools and system leaders: self-support for you and your school'.

15.15 Further information

- Free Schools 10 (Proposers and school governance: checklist of activities (Annex A))
- Independent school standards
- Amendment to independent school standards
- Advice on business for headteachers, staff and governing bodies
- Keeping children safe in education
- Health and safety of pupils on educational visits
- Ofsted advice notes
- Ofsted website

16. The readiness-to-open meeting (ROM)

16.1 Introduction

You may be invited to a readiness-to-open meeting to confirm that all necessary plans are in place and ready for your school to open. This chapter summarises what we will be looking at and what we expect from you and your team. If you are up to opening your school, ROPM may be held face-to-face or via Skype or Microsoft Teams. Your lead contact will advise.

16.2 Summary

ROPM will normally take place before the end of June ahead of opening in September. ROPM are formal meetings between DfE and the trust designed to achieve the following:

- identify issues and risks that might prevent the school from being financially and educationally viable or opening
- assess whether the school's plans for promoting integration and community cohesion are sufficiently robust and fit to be effective for the local context where the school will be based
- identify actions needed to mitigate risks or address issues
- where necessary, enable ministers to take decisive action (such as to delay) before the opening date

Education and validity will be the main focus of the ROPM. DfE will use the meeting to make a judgement on how confident it is that the proposer group will open a successful school.

Attenders from the proposer group should be:

- the chair of trustees (we suggest both the local governing chair and the chair of the board from the trust should attend where appropriate)
- the principal designate (head of school in the executive head may also attend where appropriate)
- any other person who can provide information useful to the meeting, for example the chair of finance committee, or business manager
- only those who hold a governance or leadership role should attend, with a maximum of 3 proposer group attendees

16.3 Summary of tasks

The principal designate will be required to complete a risk report and return it to the lead contact at least 2 weeks prior to the ROPM. The report will:

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

16.4 Risks

Those attending from the proposer group must include the chair of governors (both the local governing chair and trust chair should attend where appropriate) and the principal designate (the executive head can also attend where appropriate).

We will postpone the meeting unless both the chair of governors and the principal designate are able to attend, or if the information we need is returned too late for us to review before the meeting.

16.5 Working with DfE

Your lead contact will discuss the format and aims of the ROPM with you in advance of the meeting. Your lead contact will also ask for information on the content of the risk report to be completed by the principal designate.

The ROPM will be chaired by a senior DfE official and will be attended by your lead contact and, where appropriate, representative or representatives from ESFA. DfE will also ask an external expert to attend. DfE representatives will ask questions about progress, risks and issues in main areas of the project and agree with you what actions might be needed for each relevant issue.

16.6 Further information

- Table 14 Readiness to open: checklist of activities (Annex A)

17. Once your school is open

17.1 The final stage of the pre-opening period

The final stage of the pre-opening phase is to prepare for opening, which includes the moving of your free school project to the ESFA live office who will be the main point of contact for the school on matters relating to finance and governance, and the PSC project director if you are in temporary accommodation or there is a capital work needed on the permanent site.

Once your school opens, you may be allocated a new lead contact who will have responsibility for monitoring your educational performance.

Your lead contact will ensure that the PSC project director and ESFA are fully briefed on your project to ensure that challenges you may encounter in your early days of opening.

The expectation is that once your school is open, you have the freedom, autonomy and responsibility to run it, within the expectations and requirements set out in the academies financial handbook and your funding agreement.

17.2 What ESFA does

The role of ESFA is to provide revenue funding and support delivery of capital funding programmes, as well as seek assurance over the use of public funds from academies of all types, including free schools.

ESFA expects free schools to be managed effectively and their financial management and governance to be robust, with clear lines of accountability for how they spend taxpayers' money. Schools are asked to provide financial returns to ESFA can provide assurance that this is the case and that free schools are meeting the terms of their funding agreements.

ESFA supports a free school's compliance with its funding agreement by responding to any requests that may make the Secretary of State or ministers required by the funding agreement. This may include things such as approval to enter into a lease or to dispose of land.

ESFA's academies financial handbook sets out the responsibilities and requirements relating to academy trusts' financial governance and management. Compliance with the AFH is a condition of your funding agreement.

ESFA publishes a bi-weekly email bulletin. Academies and sixth form colleges can sign up to receive updates and actions for you.

You can also follow ESFA on Twitter @ESFA_academies.

ESFA aims to provide clear and comprehensive information about all their services. ESFA's website has information about how to request clarification on a specific issue relating to your individual academy or academy trust, the enquiry service will be able to help or point you in the right direction.

17.3 How ESFA will work with you

ESFA has published a guide to open contract administration, academy trusts and free schools to introduce you to our areas of work and guide you through the first few months on matters relating to funding, funding agreement compliance, finance and financial assurance.

The GOV.UK website has information about ESFA for academies and specific area for academies and free schools funding, payments and compliance.

The academies financial handbook sets out the responsibilities and requirements relating to academy trusts' financial governance and management. Compliance with the AFH is a condition of your funding agreement.

ESFA publishes a bi-weekly email bulletin. Academies and sixth form colleges can sign up to receive updates and actions for you.

You can also follow ESFA on Twitter @ESFA_academies.

ESFA aims to provide clear and comprehensive information about all their services. ESFA's website has information about how to request clarification on a specific issue relating to your individual academy or academy trust, the enquiry service will be able to help or point you in the right direction.

17.4 Regional schools commissioners (RSC)

As the number of academies and free schools continues to grow, we have considered how the system should respond, to ensure that decisions about the system are taken by those who are close to the schools and children and are area conscious, and that headteacher and leaders should have a stronger influence on those decisions. The best people to do this are outstanding leaders and heads in each region. Local leaders know their areas best and know what is right for academies and free schools locally.

There are 8 regional schools commissioners (RSCs) across eight regions of the country. The RSCs report to the national schools commissioner.

The RSCs and their regions are:

- Sue Ellingham – East of England and North East London
- Carol Grear: East Midlands and the Humber
- Nick Bent: Lancashire and West Yorkshire
- Katherine Cronnell: North of England
- Dame Kate Dethridge: West London and South Central England
- Claire Burton: South-East England and South London
- Harriet Moorshead: South-West England
- Andrew Warren: West Midlands

A headteacher board (HTB) of 8 to 8 elected, appointed and co-opted members advises each RSC. HTBs are responsible for advising and challenging RSCs on their decisions. Collectively, HTB members are academy headteachers and professional leaders.

RSCs take decisions regarding academies and free schools in their regions in the name of the Secretary of State. All decisions are taken in line with the legislation and our published criteria. Further information on RSCs can be found on the DfE website.

RSCs' general responsibilities include:

- taking action where academies, free schools, university technical colleges or studio schools are underperforming
- intervening in academies where governance is inadequate
- taking action where governors or local authority maintained schools to convert to the academy status
- improving underperforming maintained schools by providing them with support from a strong sponsor
- encouraging and deciding on applications from sponsors to operate in a region
- taking action to improve poorly performing sponsors
- advising on proposals for new free schools
- advising on whether to cancel, defer or enter into funding agreements with free school projects
- deciding on applications to make significant changes to academies, free schools, university technical colleges and studio schools

RSCs' main responsibilities in relation to free schools are:

- advising ministers on which free school applications (including maintained, 16 to 19, special and alternative provision) to approve
- advising ministers on whether to cancel, defer or enter into funding agreements with free school projects in a region
- tackling educational underperformance in open free schools, UTCs and studio schools

17.5 Important tasks in the early days of opening

You'll need to:

- prepare for an external report visit in your first term of opening
- ensure that the academy trust has approved an annual budget for the first year of operation and submitted this to ESFA in accordance with the funding agreement
- ensure that the academy trust has implemented the requirements of the Academies Financial Handbook

17.6 Further information

- Table 10 Handover to ESFA: checklist of activities (Annex A)
- ESFA website
- Academies financial handbook
- Schools and colleges funding and finance
- Projects schools building programme
- ESFA updates
- Schools resource management

18. Freedom of Information (FoI)

Free schools are subject to Freedom of Information (FoI) requests as trusts are public authorities under the Freedom of Information Act (FOI) (FOI the Act) in their own right. The FoI provides a right of access to any recorded information held by public authorities. It does this in 2 ways:

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

If the information in scope of the request is about details or impact on the school's operation, it is likely that it will be considered business as usual, then the request will need to be handled under Environmental Information Regulations (EIR). Guidance on this can be found on the Information Commissioner's Office website.

The Act does not give people access to their own personal data (information about themselves such as their health records or credit worthiness). For a member of the public wants to see information that a public authority holds about them, they should make a subject access request (SAR) under legislation that holds the data under the Data Protection Act 2018. However, if you receive an FoI request where the information asked for is the requestor's personal data, you should inform the requestor that the information is exempt under the FoI Act, but at the same time deal with it as a subject access request under the Data Protection Act.

18.1 Summary of the important tasks

DfE cannot advise free schools on how to answer an FoI request. However, if you receive a request, you may want to contact your lead contact, who will, your lead contact, in the first instance, is. They may be able to help you understand what is being asked of you and can point you in the direction of useful resources.

18.2 Other sources of information

It may be helpful, when considering how best to answer an FoI request, to look at what other similar organisations have done. The Information Commissioner's Office (ICO) is overseen by the Information Commissioner's Office (the Independent body with responsibility for the regulation of the Data Act and the Data Protection Act). If you receive requests for information that is already publicly available, you should direct the requestor to where information is published.

Links to further information published by DfE

- Free school opening notices
- Department for education (DfE) (https://www.gov.uk/government/publications/revenue-expenditure-for-free-schools)
- Capital funding for open free schools

19. Checklists

Download checklists (Annexes A to F) from the Free school pre-opening guide.

1. Temporary changes have been made to the handling of admission appeals during the coronavirus (COVID-19) outbreak. These changes are set out in The School Admissions (Coronavirus) (Appeals Arrangements) (England) Regulations 2020 and guidance. The Government has made changes to the school admissions code and the school appeals code as amended to support admission authorities in managing their admission appeals. ↩
2. Schools that take children under two years old must register with Ofsted as its Early Years Register (EYR). ↩