



Department
for Education



Memorandum of understanding between the Catholic Church and the Department for Education

April 2016

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Purpose of this document

This document sets out the key principles to inform the working arrangements between Department for Education (“DfE”), the Catholic Education Service (“CES”) and Catholic Dioceses in relation to Catholic schools becoming academies, and any action to support, challenge or intervene in any underperforming Catholic school. In this document the term “Catholic school” includes maintained schools and academies, unless the context otherwise requires.

Catholic schools are subject to education legislation, and they, their dioceses and their Trustees are also subject to charity law. The DfE and the CES recognise that, in addition, Catholic schools are legally subject to any relevant Trust Deeds and Catholic canon law.

This document should be read alongside any relevant guidance, such as Schools Causing Concern Guidance, which should be interpreted in a way which is consistent with this document. This document replaces any previous Memoranda of Understanding on this subject that have been agreed with the Catholic Church.

Who should read this document?

Regional Schools Commissioners (“RSCs”), Local Authority officers, DfE and Education Funding Agency (“EFA”) officers, Catholic Diocesan Schools Commissioners, the CES and governors and leaders of Catholic schools.

To note

‘Diocese’ is the territorial division of the Catholic Church led by a Diocesan Bishop, who is responsible for all Catholic schools in his area. Each Diocese will have a Diocesan Schools Commission (sometimes called a Diocesan Education Service or similar) led by a Diocesan Schools Commissioner (sometimes called a Diocesan Director of Education), who will exercise the Diocesan Bishop’s education functions on his behalf. Dioceses are independent charitable foundations, governed by charity law and their own constitutions, and are not themselves part of State provision of education, rather they are partners with the State.

Regional Schools Commissioners are currently delegated to take the majority of decisions relating to academy conversions, intervention and sponsorship in each region, on behalf of the Secretary of State. However, the Secretary of State also delegates certain functions to DfE officials and the EFA, and it is possible for these delegation arrangements to change further. Therefore, throughout this document references to the DfE include RSCs and the EFA and references to RSCs include the DfE and the EFA.

It is important that those reading this document understand the extent, nature and history of the Catholic Church’s involvement as major providers of state funded schools, in

partnership with the State. It is, therefore, essential to read and understand the background information contained in the attached Annexe.

This Agreement may need to be reviewed should circumstances or legislation change and will be reviewed at the request of either the DfE or the CES.

Key Principles - General

1. The DfE values and is committed to sustaining the formal and legal partnership between the Catholic Church and the state in education, through which young people across the country continue to benefit from the combination of high quality education, ethos and character development provided by Catholic schools.
2. While the education system continues to evolve, the DfE remains committed to securing the religious character and ethos of every Catholic school and to preserving the diocesan family of schools.
3. The Catholic Church and its Dioceses are committed to ensuring every pupil attending a Catholic school receives the best education possible, and to taking swift and decisive action in response to any concerns about the current or future performance of a Catholic school.
4. The DfE and the CES agree that the initial communication of national policy changes should be made nationally through the established channels, rather than at a local level through RSCs. The DfE, therefore, commit to communicating all changes of policy directly to the CES in the first instance for onward communication by the CES to Dioceses.
5. The relationship between RSCs and Dioceses relies on both parties' ongoing commitment to consistency and transparency in decision making. This Memorandum is intended to guide and support RSCs and Dioceses in fulfilling that commitment. Both parties will be expected to act in accordance with the principles and protocols described by this Memorandum.
6. This includes an expectation that RSCs and Dioceses will seek to develop a shared understanding of each other's approach and ways of working with schools, and where possible, to align them. RSCs and Dioceses will also be expected to seek to share information about Catholic schools at the earliest opportunity, in particular any concerns about underperformance.
7. The first point of contact in relation to any matter that concerns a Catholic school is the Diocesan Schools Commissioner.
8. It is only the Diocesan Bishop who can determine whether a school is Catholic and the requirements necessary to secure its religious character and ethos, in relation to which control of governance is essential.

Key principles for engagement between the Department for Education and Catholic Dioceses regarding Catholic schools or academies:

The following provides a number of key principles to inform the working arrangements between the DfE, the CES and Catholic Dioceses. These principles are:

- a) RSCs and Diocesan Schools Commissioners will meet regularly at least once per school term, and more frequently if necessary, to establish a good working relationship, to share information, and discuss matters of mutual interest.
- b) Where there is cause for concern in any Catholic school or academy, the DfE will contact the relevant Diocesan Schools' Commissioner.
- c) If a Catholic educational establishment has been identified as a potential sponsor, by the DfE or relevant local authority, for any school whether Catholic or not, then the DfE will contact the relevant Diocesan Schools Commissioner about this proposal at the earliest opportunity.
- d) A Catholic school or academy trust company cannot become a sponsor without the express consent of the Diocesan Bishop.
- e) An appropriate solution will be sought for any Catholic school, where there is cause for concern, in consultation with the Diocese.
- f) Any solution will secure robust accountability to ensure that the school's performance will be transformed and ensure sustainable improvement. The Diocesan Bishop will hold the foundation governors or foundation directors, in the majority, to account and may issue a directive which will be binding upon them.
- g) Any academy solution for a Catholic school where there is cause for concern will also reflect and protect its existing designation and the ethos of that school.
- h) The Diocesan Schools Commissioner will share their knowledge of the educational establishments across the Diocese in order to facilitate the development of an appropriate solution. Many factors at a local level may influence the most effective way of supporting a school causing concern and these will be considered by the Diocese in formulating their preferred solution.
- i) Dioceses recognise that in certain circumstances the law requires an Academy Order to be made and the Diocese will work with the RSC to agree an appropriate solution within the legal parameters.
- j) During the process of agreeing solutions for Catholic schools where there is cause for concern, the DfE will have regular, on-going contact with the CES to resolve any issues at a national level. This will be in addition to local dialogue with Dioceses. It is recognised that any information provided will be shared between the CES and Catholic dioceses.
- k) Where there is cause for concern in any Catholic school or academy, a 'sponsor' will be agreed where local circumstances indicate that this would be an appropriate way forward and in consultation with the relevant Diocese. Where a sponsor is being sought, the presumption will be that the Diocese's preferred sponsorship arrangements will be accepted if the Secretary of State is satisfied

that the sponsorship package contains the appropriate capacity and expertise to address the needs of the particular school causing concern.

Protocols guiding RSCs and Dioceses' engagement with Catholic schools

1. Local authority maintained Catholic schools wishing to become academies

- a) The DfE respects the statutory right and requirement for Diocesan and Trustee consent, to allow a Catholic school to become an academy.
- b) The DfE acknowledges that any decision as to whether consent will be forthcoming will be made by the Diocesan Bishop in accordance with his canonical responsibility in relation to the provision of Catholic education across his Diocese, and in accordance with his requirements in relation to how that provision will be provided through the diocesan family of Catholic schools.

2. Catholic academies wishing to become sponsors

- a) The availability of strong academy sponsors is central to driving up performance in a school-led system. Schools that become sponsors benefit from freedom to innovate and find efficiencies across the group of schools they manage. They are expected in return to embrace their responsibility as sponsors, to taking on and helping underperforming schools to improve.
- b) The DfE is keen to welcome good and outstanding Catholic schools into the family of academy sponsors, recognising the need for Dioceses to retain proper oversight, particularly to ensure that such decisions are entirely compatible with the trust deed of the schools and their religious character.
- c) The DfE acknowledges that a Catholic school cannot become a sponsor without the express consent of the Diocesan Bishop and will ensure that such consent will be forthcoming before considering any application. The RSC will contact the relevant Diocesan Schools Commissioner as soon as a Catholic school has been identified as a potential sponsor.
- d) Where good or outstanding Catholic schools express an interest in becoming a sponsor the RSC will expect the school to seek and secure the support of their Diocese before applying, and for the application to confirm:
 - i. The school's commitment to taking on and helping underperforming schools to improve
 - ii. Confirmation of what role the Diocese will play in the governance of the new multi-academy trust to satisfy the RSC that:
 - the autonomy of the MAT in relation to how it carries out school improvement activities will be maintained; and
 - the faith ethos of the school and the new MAT continues.

3. Intervention in inadequate local authority maintained Catholic schools where the law requires an Academy Order

- a) On receipt of an inadequate judgement relating to a local authority maintained Catholic school, the RSC will contact the Diocesan Schools Commissioner at the earliest opportunity, to discuss with the Diocese an appropriate solution, recognising the additional legal duties which are imposed when an Academy Order is made.
- b) Any solution regarding the appropriate support to be provided will be arrived at following full consultation and with the agreement of the Diocese.
- c) The DfE acknowledges that any solution must ensure the protection of the religious character of the school, acknowledging that for a school to continue to be a Catholic school the Catholic Church must retain control of governance, in accordance with canon law.
- d) The Diocese acknowledges that a 'sponsor' will be agreed where local circumstances indicate that this would be an appropriate way forward and in consultation and with the agreement of the Diocese.
- e) The DfE acknowledges the presumption that the Diocese's preferred sponsorship arrangements will be accepted if the Secretary of State is satisfied that the sponsorship package, which includes any additional support provided or brokered by the Diocese, contains the appropriate capacity and expertise to address the needs of the particular school causing concern.
- f) The DfE also acknowledges that, sponsorship arrangements must ensure that control of the school, particularly through the governance arrangements, remains with the Catholic Church.

4. Re-brokerage of underperforming Catholic academies

- a) Where a sponsored Catholic academy is underperforming and, in the view of the RSC, requires urgent remedial action, the RSC will engage with the Diocese, through the Diocesan Schools Commissioner at the earliest opportunity.
- b) We would expect to look first to any other Diocesan or strong Catholic school-led MATs with capacity to take on a re-brokered Catholic school.
- c) Should the RSC determine that local Catholic MATs/sponsorship arrangements do not have the capacity to take on and quickly improve the underperforming Catholic academy, then, with the involvement of the Diocese, the RSC may look to agree alternative arrangements which will ensure that the control of the school, particularly through the governance arrangements remains at all times with the Catholic Church.

5. Coasting schools

- a) If, a school's results indicate that a Catholic school is coasting the RSC will notify the Diocesan Schools Commissioner alongside the school.
- b) Having considered the school's plan for improvement, the RSC may determine that the plan is sufficient and no further intervention will be needed.
- c) Should the RSC determine the plan not to be sufficient the RSC will contact the Diocesan Schools Commissioner to discuss the most appropriate school improvement solution. The RSC will respect the need for any intervention to secure the religious character and ethos of the school and that the Catholic Church must retain control of the school, particularly through its governance arrangements.
- d) In a situation where it is agreed that the most appropriate school improvement solution is an academy solution, the same principles, as set out in this Memorandum, will apply as for inadequate Catholic schools, including on consultation and sponsorship.

6. Issuing of a Performance, Standards and Safety warning notice to a local authority maintained Catholic school

- a) As soon as any concerns have come to the attention of the RSC which might lead to the issue of a performance standards and safety warning notice to the governing body of a maintained Catholic school the RSC will, before issuing the notice, fully engage with and consult the Diocesan Schools Commissioner. This is to allow for action to be taken by the Diocese, as necessary, to avoid the need for any notice to be served.
- b) Where the RSC issues a performance standards and safety warning notice to the governing body of a maintained Catholic school (in accordance with the process set out in the statutory Schools Causing Concern guidance), the RSC will, at the same time, give a copy to the Diocese.

7. Issuing of a termination warning notice to a Catholic academy

- a) As soon as any concerns have come to the attention of the RSC which might lead to the issue of a termination or termination warning notice to the governing body of a maintained Catholic school the RSC will engage with and consult the Diocesan Schools Commissioner. This is to allow for action to be taken by the Diocese, as necessary, to avoid the need for any notice to be served.
- b) Where the RSC issues a termination notice, or a termination warning notice to a Catholic academy (in accordance with the process set out in the academy's funding agreement with the Secretary of State and as set out in any Church Supplemental Agreement) the RSC will notify the Diocesan Schools

Commissioner of their intention to act, and their reasons for doing so. The RSC will then allow the Diocese a reasonable opportunity to make representations, including any actions the Diocese intends to take to remedy any failing of the academy, which the RSC will have due regard to before finally taking any action.

8. Interim Executive Boards appointed to local authority maintained Catholic schools

- a) Any obligations on the governing body in relation to maintaining the Catholic character of a school will also apply to an IEB.
- b) Before an RSC can exercise their power to establish an IEB to a Catholic school, they must consult the Diocese. The RSC will contact the Diocesan Schools Commissioner at the earliest possible opportunity when consideration is being given to the establishment of an IEB in any Catholic school.
- c) Acknowledging that in order for a school to remain Catholic in accordance with canon law control of the Catholic Church is required, we would expect that consultation to provide an opportunity for the Diocese to nominate sufficient members of the IEB to retain a majority of Church nominations and for RSCs to accept those nominations, providing they agree with the Diocese's assessment that the nominated persons have the capacity and skills required to fulfil their role on the IEB. In the event that the RSC does not agree the Diocese's recommendations, the Diocese will be given the opportunity to make further nominations so as at all times to retain a majority of Church nominations. These same principles would apply where the RSC is exercising any powers of intervention in relation to an IEB established by a local authority.
- d) Where any IEB – established by either the local authority or the RSC - is established in a Catholic school and the RSC has concerns about an IEB member nominated by the Diocese and removes them, the RSC will seek the nomination of a replacement IEB member from the Diocese. Again, RSCs will be expected to accept such a nomination, providing they agree with the Diocese's assessment that the individual has the capacity and skills required to fulfil their role on the IEB.

9. Diocesan requests for RSC intervention

- a) The DfE is committed to assisting Dioceses and Catholic schools in acting swiftly to address any risk of underperformance. Where a Diocese has concerns about performance in a Catholic school, and believes that the school and/or the local authority lacks capacity or intent to act, the Diocesan Schools Commissioner will inform the RSC.
- b) RSCs will always take seriously and act quickly on such concerns and will work with the Diocese to agree on what action is required to ensure the school's performance improves, and work in partnership to carry out that action.

10. Catholic MATs with insufficient capacity to provide support to a school requiring an academy solution

- a) Where there is insufficient capacity within Catholic MATs to take on sponsorship of an under-performing school, the RSC and Diocesan Schools Commissioner will discuss bespoke solutions. This may include a sponsorship solution which enables the school to convert to become an academy and ensures appropriate school improvement capacity, at all times recognising that the governance arrangements must ensure that the Catholic Church retains control. This may be achieved through an agreed delegation of the school improvement function to another local MAT or co-opting directors with a strong track record of school improvement onto the MAT for a period to be agreed with the RSC, at all times recognising that the majority of foundation governors and directors must be retained.

11. Governance arrangements

- a) The DfE expects the multi-academy trust model to be the principal collaborative model used by all academies, including Catholic academies. We respect the right for any single or multi-academy trust or Diocese to establish their own 'umbrella' arrangements to further facilitate collaboration, but the Secretary of State's relationship and accountability will be through the academy trust company, which will remain responsible for key decisions relating to the running of the academy trust company and its schools, including but not limited to governance, finance, staffing and curriculum.
- b) The DfE recognises that, notwithstanding the legal contractual relationships, the academy trust company of a Catholic school is accountable to its Diocesan Bishop and Trustees.

12. Mediation

- a) There may be instances where an RSC and a Diocese are unable to agree a way forward. Where this is the case, the expectation will be that the RSC and Diocese will engage with the CES, who will facilitate further discussions to find a solution.

Annexe

Background

The history

The Catholic Church has been a provider of education in England for centuries. The first schools in this country were established by the Church and, prior to the Reformation, it was the only provider of schools in England.

Following the re-establishment of Catholic Bishops in England in 1850, the Bishops of England decided that their first priority was the education of the poor and therefore encouraged Catholics to build schools before churches. Catholic schools were built across England from that time on.

The 1944 Education Act enabled the Catholic Church to become a key educational partner with the State in the provision of voluntary aided schools; thus was established the 'dual system'. This system has been in place for nearly 70 years and has provided Catholic parents, and other parents where sufficient school places were available, with the choice to send their children to a Catholic school if they so wished.

Catholic educational provision

Catholic maintained schools were until the introduction of the 'new style' academies under the Academies Act 2010, almost without exception voluntary aided schools provided jointly by the Catholic Church and the state. Usually, the school buildings and the land upon which the schools are built are held in a trust managed by the Catholic Church. The day to day running costs of the schools are paid for by the state.

Since the introduction of the Academies Act a number of Catholic VA schools have become Catholic Voluntary Academies. There are 427 Catholic academies¹. There are also a number of other Catholic independent schools. There are 20 dioceses with schools in England, each of which has its own Diocesan Bishop (in the five senior Sees, the Diocesan Bishop has the title 'Archbishop'). Canon law provides that the Diocesan Bishop has the right to watch over and inspect the Catholic schools situated in his

¹ As at 1st November 2015.

territory. He also has the right to issue directives concerning the general regulation of Catholic schools (Canon 806§1²)

The Diocesan Bishop holds canonical responsibility for the provision of all Catholic education within his diocese, including maintained schools, academies, free schools and other independent schools. His oversight is to ensure that the Catholic life of the school is being upheld. The Diocesan Bishop's canonical responsibilities are normally carried out by the Diocesan Schools' Commission on his behalf. The rights of Diocesan Bishops are recognised in statute, including the right to carry out s48 inspections (which take place in addition to s5 inspections). A grant towards the cost of these inspections in both maintained schools and academies is provided by the state.

Canon law provides that each Diocesan Bishop has strategic responsibility to commission sufficient places in Catholic schools to meet the needs of baptised Catholic children resident in his area. A Catholic school is one which is recognised as such by the Diocesan Bishop. Essentially the definition of a Catholic school in canon law requires that it is controlled by the Catholic Church.³ That control is normally established where the diocese or a religious order owns the school and appoints the governing body, or at least a majority of it. In addition canon law provides that no school, even if it is Catholic, may use the title 'Catholic' without the consent of the Bishop or Archbishop.⁴ All Catholic schools are subject to the jurisdiction of the Diocesan Bishop, even those that are not in diocesan trusteeship.

In Catholic VA schools, the Diocesan Bishop's oversight is exercised through his Diocesan Schools Commission in close partnership with the local authority. This recognises that in VA schools, it is the local authority which holds the statutory responsibility for monitoring effectiveness and intervention, and to inform the diocese when a school gives cause for concern. In Catholic Voluntary Academies, the Diocesan Bishop's oversight is exercised through his Diocesan Schools Commission in close partnership with the relevant Catholic academy trust company. This recognises that in academies, it is the academy trust company which holds responsibility for monitoring effectiveness and intervention, and to inform the Diocesan Schools Commission when an academy gives cause for concern.

Most Catholic schools, and the land they are built on, are owned by the Diocese. They are held in charitable trust by diocesan Trustees, appointed by the Diocesan Bishop. The role of the diocesan Trustees is to safeguard the interests of the Catholic community as a

² Canon Law is the ecclesiastical law which all Catholics are expected to follow. In relation to education, Canon 806 §2 states that '*Directors of Catholic schools are to take care under the watchfulness of the local ordinary [Bishop] that the instruction which is given in them is at least as academically distinguished as that in the other schools of the area.*'

³ Canon 803§1

⁴ Canon 803§3

whole in the Diocese and to serve its needs. Other Catholic schools, mainly owned by religious orders, have their own Trustees, but are nevertheless within the authority of the Diocesan Bishop.

As can be seen from what is set out above, decisions about the future of any Catholic school, particularly any decisions that relate to structural changes, including changes to governance arrangements, require both the consent of the Diocesan Bishop and the Trustees.

Put simply, in order to be a Catholic school it must be controlled by the Catholic Church and be recognised as such by the Diocesan Bishop. The Diocesan Bishop, in canon law, has the strategic responsibility to provide Catholic education across his Diocese and, therefore, is responsible for any decisions about Catholic schools across his Diocese.

The Trustees provide the land and buildings for the use of Catholic schools for the purposes of the governing body conducting the school on their behalf under the supervision of the Diocesan Bishop. The school occupies the premises subject to the Trustees' objects and any other parameters laid down by them. Whilst the Trustees permit the school to occupy their site for the time being, they do not give the school any right to occupy and ultimate control of the site and any decisions relating to the land and buildings rests with the Trustees.

Standards in Catholic schools

As an integral part of its educational vision for the holistic formation of children and young people, the Catholic Church expects its schools and academies to promote and uphold high academic standards. The Catholic Bishops' Conference of England and Wales have reminded all those involved in Catholic education that:

“The Catholic Church in England and Wales is rightly proud of the high academic standards achieved in so many Catholic schools. However it is aware that some schools fall short of the standard expected by both Government and Church (cf. Can. 806 §2⁵). Therefore the Bishops' Conference mandates the Catholic Education Service for England and Wales (CES) to develop strategies alongside Diocesan Schools Commissions and within the wider Catholic sector to ensure that Catholic Schools in difficulty can be helped to improve rapidly so as to offer an excellent Catholic education to our children.”⁶

Department for Education (DfE) data consistently show that in English and Maths at the end of Key Stage 2 (KS2) and at GCSE, Catholic schools typically outperform the

⁵ *ibid*

⁶ Catholic Bishops of England and Wales, *Academic Standards in Catholic Schools* (<http://www.cesew.org.uk/standardnews.asp?id=11120>, 18 November 2011).

national average by 5-6 percentage points⁷. Also, the number of Catholic schools rated good or outstanding by Ofsted is consistently 9-10 percentage points above schools nationally.

⁷ Department for Education official statistics.



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