

Converting a state boarding school to academy status

What are the state boarding schools?

State boarding schools are local authority maintained schools which charge parents/carers an additional fee to board their children. The boarding facilities may be offered for the week days only, for term time only or all year round. The funding provided by the local authority is used to pay for the normal costs of operating the school, e.g. teaching staff salaries, books and equipment and the upkeep of school buildings. The school and parents/carers then enter into a contract with the school for the provision of boarding facilities for the students on a 'no profit/loss' basis, i.e. only the cost of providing the boarding is charged with no profit being derived from the provision of boarding facilities.

Is the boarding status a barrier to converting academy status?

Many state boarding schools are considering converting to academy status in order to further extend their independence from local authority control. By their very nature, the schools have always operated somewhat apart from their local authority; and enjoyed greater direct links with central government and non-residential schools. However, conversion is not without its issues for state boarding schools and, in particular, careful consideration should be given to the issue of VAT, boarding fee issues and remittance and pension liabilities before any state boarding school governing body resolves to become an academy.

VAT

Unlike maintained schools, academies are not exempt from VAT and therefore have to pay VAT on most goods and services provided to the academy. However, boarding schools traditionally commission more VATable services and goods due to their boarding facilities and boarding schools converting to academy status will therefore find the costs of running the school and boarding facilities increasing by 20% overnight.

Currently, all academies are able to claim the amount of VAT incurred back from HMRC at the end of the financial year, but state boarding schools converting to academy status will need to budget for the lag between incurring the VAT and reclaiming it from HMRC which will inevitably impact upon cash flow.

Boarding fee issues

Unsurprisingly, the key concern for most maintained boarding schools is whether they will be able to continue operating their boarding facilities without significant change. There are several points of contention between state boarding schools and the DfE, some of which have been resolved and some which rumble on.

Fees charged

Whilst no limit has been set for the amount of fees that can be charged, state boarding schools are bound to only charge the costs to the academy trust of providing the boarding facilities. This amount can include both direct costs (e.g. food, utilities) and also indirect costs (e.g. extra staff and security, maintenance of dormitory

buildings) as well as capital costs (e.g. depreciation). Whilst this mirrors the current law for state boarding schools, the inability to charge any premium prevents the school from creating a surplus in order to offset any remittance for pupils whose parents/carers find themselves in financial difficulty.

Fee remittance

State boarding schools sometimes face circumstances where parents are unable to afford to pay part or the whole of the boarding fees for their child attending the school. In the case of a state boarding school, section 458 of the Education Act 1996 requires the local authority to remit boarding fees where:

- the local authority places a child at the school and, in the opinion of the local authority and taking into account the needs of the child, no other school could provide the same level of education; and
- if fees are payable to the local authority, where financial hardship would be suffered by the parents/carers.

In boarding academies, currently it is up to the academy trust to satisfy both limbs of section 458 and as such the financial burden of such remittance falls on the academy trust itself. Most boarding schools do not have large charitable funds to dip into meaning that if just one pupil's parents find themselves unable to pay the fees, the academy trust's ability to continue to provide boarding facilities could be endangered. Indeed, as the academy trust is not permitted to build up a surplus from those parents who can afford to pay in order to help offset remittance for other pupils and at a time when many schools are under pressure to keep their boarding fees competitive, there may, in some cases, simply not be sufficient funds to satisfy the requirements of section 458.

The DfE have agreed to indemnify any boarding school converting to academy status against the potential risks identified above. This indemnity will last until the legal position is changed, as proposed in the current education bill. Section 59 of the education bill puts the obligation back on the local authority rather than the academy trust, to make the necessary assessments and, if necessary, to subsidise the fees payable by the parents/carers.

Non-payment of fees

The relationship between a state boarding school and parents regarding the payment of boarding fees is a contractual one so that schools can pursue parents for the non-payment of these fees as if it were a debt. However, in some circumstances, the school may decide that the costs of pursuing such a claim outweigh the benefits and the school may wish to simply write the debt off.

The standard funding agreement for academies requires the academy trust to obtain the DfE's consent before writing off debts of more than a certain modest amount and requires the academy trust to demonstrate what steps it has taken to try and recover the debt. To compound the problem, the academy trust cannot remove a boarding pupil from the roll where its parents/carers fail to pay the fees and must allow the pupil to remain as a

day pupil. This might force an academy trust to consider pursuing parents and carers more vigorously for outstanding fees. In addition, for boarding academies whose day pupil vacancies fill up more quickly than their boarding pupil vacancies, care will need to be taken to ensure that parents/carers do not attempt to fraudulently take up a boarding place with the intention of then refusing to pay the fees in order to covert their child to a day pupil.

Pension liabilities

As with all other academies, boarding academies will take on any pension liabilities for non-teaching staff who are members of the local government pension scheme and whose pension fund is in deficit and be expected to make good that liability, usually within 20 years of the transfer of staff. Whilst this liability is of potential significance for every academy, it is of particular importance for boarding academies whose high levels of pastoral care means they employ greater numbers of non-teaching staff than almost any other type of school. It is understood that the DfE are working to resolve this issue and it is hoped that a solution will be forthcoming. In the meantime, however, state boarding schools should be aware that a potentially significant liability will be transferred onto the academy trust's balance sheet at conversion and take care to analyse appropriate actuarial reports as part of the conversion process.

Conclusion

Whilst the above issues need careful consideration before any state boarding school decides to become an academy, it is clear that the DfE are working hard to resolve those issues of specific concern to this sector. In the meantime, schools will want to consider whether the above issues are, in any event, outweighed by the benefits of being a truly independent boarding academy.

talk to us...

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Winner 'Legal Advisors of the Year 2011' at the Education Investor Awards. Browne Jacobson is *'ahead of the curve in terms of knowledge of the education sector, and able to translate changed policy and law into practical legal advice'*; it is *'really rooted in the sector, with a genuine passion for education that marks it out from other heavyweights in the field'*

