



EDUCATION ANSWERS

Circular | March 2019 | Download the circular as pdf from [here](#)

FROM LEE BOLTON MONIER-WILLIAMS, SOLICITORS - for information

This month's Circular is vital reading:

- **New model articles for church majority and minority MATs**
- **Workshop on the above Friday 8th March [book here](#)**
- **New judgment on law regarding Reverters on School Sites (briefing to follow via [Education Answers Briefings \(public domain\)](#))**

PLUS information and interest for the LBMW network:

- Schools get more power to challenge local authority SEND placements
- New papers on Education Answers regarding Employment, Delegation by Trustees, and serious incident reporting under Charity Law.

New Church Academy Model Articles... IMPORTANT BRIEFING NOTE (available [here](#) on Education Answers).

New Church Model articles were published on 8 February 2019. There are two versions, church majority governance and church minority governance. Each version contains alternative clauses so that it can be used for either multi-academy trusts or single academy trusts.

This note sets out some general guidance and some of the main changes in the new documents. A fuller note on the provisions of the new articles is to follow and will be available generally via Education Answers and direct from the firm to clients.

And don't forget we are running a free workshop (with lunch) on the new Articles on Friday 8th March [book here](#).

Church majority or church minority?

The Church of England Education Office recommends (in accordance with the memorandum of understanding it agreed with the Department for Education in April 2016) that the church

majority model should be used when a MAT will contain one or more academies that were formerly voluntary aided Church of England schools. The church minority model is for use when a MAT will contain one or more academies that were formerly voluntary controlled Church of England schools, and no former VA schools. However, there will occasionally be good reasons why a former VA school should join a church minority MAT without the MAT becoming a church majority MAT. Where this happens, the new church minority articles permit flexibility in the number of directors (but not members) appointed to safeguard the ethos of the church schools, without having to amend the articles. [article 50A].

Diocesan Corporate Member

In many church MATs, the Diocesan Board of Education will have two roles to play. It will have its rights and obligations in relation to the schools in the diocese (and particularly the church schools) as DBE under the DBE measure. It may also be a member of the MAT, either directly or through another body, and have the duties and obligations of a member to uphold the Object of the MAT and to hold the directors to account.

The new model articles introduce a defined term of Diocesan Corporate Member to make clear what rights and obligations are being exercised by the DBE (or its appointee) as member, but in consequence of its having been appointed as a member to carry out the role of the DBE in relation to the MAT. It follows that the Diocesan Corporate Member cannot exercise any such rights that the DBE does not have under the DBE measure.

The role of the Diocesan Corporate Member has been clarified and made consistent in both models, so that there are explicit references to it where relevant, and some provisions from the church minority articles now also appear in the church majority articles. See also further detailed advice to follow as above.

Conflicts of Interest

The conflict of interest provisions have been updated and improved with advice from the Charity Commission. Contracts between the members and the MAT now also need to be authorised in the same way as for directors [article 6.2A]. It is made clear that, where a person or body has been appointed to represent the rights and obligations of the Church of England (and so ensure that the MAT upholds its object as a church MAT), it cannot be held to have a conflict of interest or loyalty because of its connection with the Church of England [article 98A].

Site trustees

The new articles contain more references to the Trustees of the school charity, in order to flag up to a MAT when a proposed action may need the consent of the Trustees for it to happen on trust land. In addition, a MAT now has explicit power to meet the costs of the Trustees, or provide insurance or indemnification, where it is in the MAT's interest to do so. As a result, the articles should work better with the contractual terms in the church supplemental agreement. Article 10, which previously required the consent of all site Trustees to all changes to the Articles now requires this only where such change may affect

the governance or ethos of the relevant church school. This should make it easier to make changes to the articles where these will not affect the church school trusts.

Employment of Staff

One area where the new articles are perhaps less helpful is that the detailed provisions relating to the appointment of reserved teachers in former VC schools have been removed (arrangements for appointment of Principals and CEOs are retained) [Article 107]. This does not affect the underlying law, and these powers remain available for former VC schools. Further guidance on this point will be released in the future.

Disqualification for failure to give undertaking

Directors of both kinds of church MATs, and the local governing body member, are required to give an undertaking to the site Trustees and to the Diocesan Corporate Member, to uphold the object of the MAT [articles 45A and 103]. If they do not, that person is automatically disqualified from holding office [article 75]. MATs proposing to adopt the new articles should therefore review their appointment documentation to ensure that it contains a suitable undertaking.

General updating

In the five years since the model church articles were last updated, there have been legislative changes, changes in DfE policy, and in thinking on good governance. Many of the changes that have been made to the mainstream articles in this period to reflect these changes have now also been made to the church articles. Where such a change has not been made, this is because it is felt to be less appropriate for church MATs in some way. The two sets of articles have also been made more consistent with each other, and various definitions tidied up.

In summary, the new articles should be much easier to use, and in line with modern thinking on governance. They should require little or no customisation in normal circumstances. The inclusion of explicit provisions relating to the Diocesan Corporate Member and the Trustees strengthen the position of those bodies, but they also make the articles easier to use for MATs by identifying situations where not consulting or obtaining the consent of those bodies could give rise to legal difficulties. All those involved with church multi-academy trusts should find them a great improvement on the previous model.

And don't forget we are running a free workshop (with lunch) on the new Articles on Friday 8th March [book here](#).

REVERTER JUDGMENT CONCLUDED.

Good news for trustees with schools on sites with Reverter provisions under the 1841 Act. The judgment is a 'master class' in how LBMW has always advised this

issue should be handled. We will issue a briefing paper shortly through [Education Answers](#) (watch our twitter feed also at [@Answers_LBMW](#)), but all cases put 'on hold' can now be restarted. The full judgment can be read [here](#).

SCHOOLS CONFERENCE 2nd October 2019 – now a complete line-up of top-level speakers, bringing Headteachers, Directors, Trustees, and Chief Execs of schools and trusts unique experience and insights into making schools safe, strong, and successful. [Click here](#) for full details and to save the date.

The first 25 to register will receive a 20% discount on their places.

Lee Bolton Monier-Williams
Solicitors



8th LBMW Annual Schools Conference



Wednesday 2nd October 2019 | 10:00 – 16:15
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Safe schools | Strong schools | Successful Schools
An expert symposium for the new decade

For Directors, Trustees, Senior Executives, School Leaders and Chief Officers
Academies, Independent and Maintained Sectors



Education Answers News

New Paper on 'Education Answers' (login required) at [this link](#).

What powers to Church Academies have in staff employment to safeguard or enhance their specific ethos?

This paper gives information following a recent European Court of Justice ruling and reviews the powers academies have when appointing staff in contrast with those at VC and Foundation schools.

Read the paper for the detail from [this link](#).

Three new papers with a "charity" twist, but relevant to academies and independent sector, and all schools with charities linked to them or operating from them.

New Paper – How Charity Trustees can delegate. Some clear and practical guidance from Jane Grenfell offers a straightforward approach. Read more at [this link](#) (login required).

New Paper – Serious Incident Reporting. Charity Trustees (which includes those of MATs) are required to report serious incidents. Read more at [this link](#) (login required).

New Paper – Charities and Trust. Charities can encourage public trust by being transparent and accountable and explaining in detail what they have achieved and the impact it has had. This paper offers guidance on relying on trust within charities. Read more at [this link](#) (login required).

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