**Guidance regarding due diligence in respect of**

 ***The Executive Committee***

 Maxine

3 Josh Wilson

 Ann-Marie Willet

 Andy Winter

**multi academy trusts (MATs)**

**What is due diligence?**

A fair translation of due diligence is an investigation and research into and examination of the background and financial condition, business operations and contractual obligations of an organisation or individual – in the context of MATs this is of a school or academy trust. Due diligence must be undertaken to establish a complete, accurate and reliable vision of the subject so that realistic, fact-based decisions can be made by another entity considering investment, business relationship, acquisition or litigation.

Any trust considering joining another single or multi academy trust or taking a school or academy into the trust should complete its own due diligence to provide assurance that the school and the trust are a suitable match. It is important to remember that due diligence is a two-way process and that an individual school should gather information about any multi academy trust it is considering joining.

The thinking behind due diligence holds that performing this type of investigation contributes significantly to informed decision making by enhancing the amount and quality of information available to decision makers.

Due diligence should identify key risks and issues and assist in enhancing each stakeholder’s understanding of:

• critical success requirements;

• the legal and operational frameworks coming together;

• the current financial performance and prospects of the organisations, identifying key risks and sensitivities and how each stakeholder will deal with these; and

• any post-transfer integration required to support the delivery of planned benefits.

**In other words, ensuring that you fully understand all of the risks, assets, liabilities and relevant information to make a fully informed decision about whether entering into a Multi Academy Trust with a particular Academy is the right decision for your own organisation.**

It is essential that due diligence is carried out before any decisions are formally made. It should be further noted that all Governors/Trustees need to have been made aware of this information and that this information is minuted in case the need for referral later. Several early MATs that were set up with poor (or no) due diligence being carried out; rather they simply focussed mainly on results, Number on Roll (NOR) and Budget.

Existing academies which are considering forming MATs should ensure they fully understand what they are becoming part of. It is important that due diligence is carried out so that the financial and legal position of the whole group is clear in order to avoid any hidden ‘issues’ coming out of the woodwork later.

This is by no means an exhaustive list but a good indication of what is required when carrying out due diligence appropriately.

The principles of due diligence are relevant to:

An existing MAT considering taking a new establishment into the MAT

An existing single Academy trust (SAT) considering joining a MAT

A LA-maintained school considering Academy conversion and joining an existing MAT

**What should be investigated under due diligence?**

As a minimum due diligence work would normally involve obtaining a full understanding of:

* Income and expenditure profile over the past 3 years;
* Budget position for the past 3 years and any future changes that are known;
* Predicted budgetary position (assuming business as usual) for the forthcoming three years;
* Student forecast number on roll and any housing developments in the area;
* Scrutiny of all board (and sub-committee) meeting minutes for at least the most recent 3 years;
* Review of all legal contracts including suppliers, leases and consultants and potential contingent liabilities (e.g. contractual conditions attached to grant funding received);
* Analysis of all HR contracts including any existing TUPE requirements and special conditions/clauses relating to that particular academy;
* Pension liabilities
* Inspection of the physical assets of the Academy i.e. what is the condition of the buildings and facilities? What are the future strategic plans? Is the Academy compliant with all H&S aspects and is this evidenced?
* Scrutiny of all legal documents, insurance, H&S audits, ‘Near miss’ reports (and Risk Assessments follow ups), potential liability claims
* Audit outcomes including any related to whistleblowing issues and investigations,
* Scrutiny of safeguarding complaints;
* Scrutiny of GDPR compliance including Data Breaches, Subject Access Requests (SARs) received (and responses);
* Details of any fraud or financial irregularity (including any based on whistleblowing);
* Review of all Internal processes and controls including checks as to whether practice reflects policies;
* Internal control and scrutiny processes and findings
* Review of effectiveness of overview and scrutiny role played by Governing Bodies and Trustee Board acting as ‘critical friend’ or ‘second line of defence;
* Data Retention systems. Student file retention compliance; are they kept and available?

**Warning**

Due diligence is one situation in which more is always better. Do not neglect any factor that might have informational value. Serious issues arise over incomplete due diligence. If the Academy refuses to provide any information you have requested, consider that a bad sign and potentially a deal breaker.

All of these documents should be retained in one folder (electronically if possible, subject to GDPR and appropriate security) and a findings report produced overall for submission to the Trustee Board for consideration.

Note that a group of academies that currently work together effectively may not work as a MAT due to neglect of one or more of the above areas with other academies deciding they are not in a position early on in the MAT process to take on these liabilities, An example of mistakes made in the past relates to academies that have neglected the maintenance of the buildings and H&S requirements. Some academies have not been proactive in achieving CIF funding resulting in the collective Capital Funds of the MAT to bring the Academy up to standard, which can have a detrimental effect on all other in the group. This leaves a perception that establishments which have been financially responsible and prudent are financially penalised by those who have been negligent. If appropriate due diligence had been carried out, the MAT would have been aware of these issues and could have planned actions to mitigate the risks including, for example, negotiating with the EFSA regarding additional funds for these costs.

The EFSA may provide some funding to trusts taking on a failing school and may include the write off historical deficits, however this must be fully and explicitly negotiated in advance. The EFSA may also pay a restructuring grant to cover the cost of staff redundancies, etc.

**Who should carry out due diligence?**

You will need a multi-disciplinary team to carry out due diligence. A specialist firm(s) for:

* Accounting and auditing aspects
* Fixed assets including condition and suitability review
* H&S Audit
* HR Review
* Any other specialist deemed necessary depending on initial findings (e.g. Data Protection, legal)

A budget should be allocated of between £10k and £30k (dependent on the size of the Academy) for a full due diligence process to be undertaken but these sums can vary depending on the complexity. Although a significant cost, this spending must be viewed as essential to give full information on which to base decisions.

**What should headteachers & governors expect from an appropriate due diligence report?**

A full report with evidence and an overall opinion or guidance as to suitability together with any identified risks. Some MATs also ask for a strategic Risk Review for the Governors to consider.

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| **DUE DILIGENCE SAMPLE CHECKLIST (Guidance only)** | **X/🗸** |
| **Strategic Due Diligence** |  |
| Latest financial statements and accounts, including the Accounting Officer’s Statement of Regularity, Propriety, and Compliance |  |
| Academy’s Development Plan |  |
| Academy’s Self Evaluation Form (SEF) |  |
| Latest OfSTED report and OfSTED Action Plan |  |
| Latest Audit Reports, both from the external auditor and internal assurance function/responsible officer |  |
| Copy of latest Risk Register with details of frequency of review |  |
| Most recent H&S Audit with action plan |  |
| Most recent Fire Risk Audit with action plan |  |
| Minutes of all board meetings, including sub-committees, for the past 3 years |  |
| Articles of Association  |  |
| Funding Agreement |  |
| Academy Policies including list stating update frequency and responsibility |  |
| Academy Risk Assessments including availability to employees and SEND information  |  |
| Trustees & Governors Skills Audits and details of Trustee / Governor training undertaken |  |
| Any outstanding legal claims or potential claims? |  |
| Details of any safeguarding complaints and the outcome of investigations |  |
| Levels of governor turnover, especially resignations mid-term |  |
| Details of any transactions with related parties, including reporting to ESFA and approvals |  |
| Details of the Academy’s External Auditors / Accountants  |  |
| Who are the Academy’s Solicitors or Legal Advisors? |  |
| Is payroll provided ‘in house’ or by an external bureau? |  |
| Financial analysis (business plan / accounts) including use of Integrated Curriculum and Financial Planning and of any significant trading activities undertaken, e.g. in-house catering, pre-school. |  |
| What financial and information systems are used |  |
| Details of what partnerships and joint ventures are currently undertaken |  |
| Details of other limited companies under the control of the Trust (e.g. trading companies) |  |
| Details of any significant communications with parents or members of the community, including GDPR compliance, data breaches, SARs (and responses) |  |
| Details of fraud investigations or other financial irregularities including whistleblowing and outcomes of investigations |  |
| Summary of significant marketing communications, publications and materials, including outcomes of investments in this area |  |
| Copies of any significant correspondence with external legal counsel |  |
| Crisis management and disaster recovery plan |  |
| **Finance Due Diligence** |  |
| Financial Management Processes |  |
| Financial planning and monitoring systems |  |
| Financial scheme of delegation |  |
| Finance reports and management accounts to Governors / Trustees – current year and previous 2 years |  |
| School Census |  |
| Impact of National Funding Formula |  |
| Finance system used |  |
| Devolved Formula Capital plans |  |
| Cashless system |  |
| Local demographics – feeder school pupil number projections |  |
| Insurance cover |  |
| Details of any Fraud or financial irregularity including reporting to ESFA where required |  |
| **Income/Funding/Sales/Services Due Diligence** |  |
| Funding and other revenue streams? |  |
| Breakdown of full income analysis |  |
| Grant income – both recurring and one-off grants, revenue and capital (ESFA, DfE, external organisations) |  |
| KPI data on a monthly or termly basis |  |
| Student numbers against forecasts and at least 3-year forecast data and past 3 years to view trajectory |  |
| Any losses of students or income? (and the reason for the losses, e.g. parent/student exit interviews?) |  |
| What are the surrounding educational circumstances? |  |
| Benchmarking – ICFP analysis. School Resource Management Self-Assessment and actions identified |  |
| **Expenditure Due Diligence** |  |
| Analysis of monthly gross margin and operating margin with explanations for any significant changes |  |
| What are the variable costs? |  |
| What are the fixed costs? |  |
| % of staffing against EFSA budget (now and for previous 3 years) |  |
| % of staffing against total budget (now and for previous 3 years) |  |
| Total generated income per student (including SEND / Pupil Premium, etc.) |  |
| Information of any one-off costs in the last 3 years |  |
| Breakdown of costs by supplier |  |
| If there are any supplier dependencies |  |
| Spreadsheet of Service Level Agreements/contracts/leases with annual expenditure; length of contract and notice period required. Operational leases and any financial leases, with contract information. |  |
| Insurances – with any claims made in the past three years and any outstanding claims |  |
| Capital works undertaken |  |
| **Cash Flow Due Diligence** |  |
| Details and timing of large payments/receipts include EFSA and SEND funding |  |
| Bank statements for the past 12 months |  |
| Cash flow analysis for the past 3 years |  |
| Analysis of the degree of bank balance fluctuation within a month |  |
| **Balance Sheet and Tax Due Diligence** |  |
| Debtors ageing report at the most recent balance sheet and each year end date during the historical period along with explanations for any items aged greater than 90 days. |  |
| Breakdown of bad debt provision at the most recent balance sheet date. |  |
| Details of all debtors written off or provided for over the historical period. |  |
| Creditors ageing report at the most recent balance sheet and each year end date during the historical period along with explanations for any items aged greater than 90 days. |  |
| Bank reconciliations for the most recent balance sheet date and each year end during the historical period |  |
| Details of any exceptional assets of high value, e.g. heritage assets, artwork |  |
| Breakdown of accruals, prepayments, deferred income, deferred revenue at the most recent balance sheet date and each year end during the historical period. |  |
| Has any cash been received from any clients in advance of performing all work required for that payment (these amounts should be included in the deferred revenue balance |  |
| Details of outstanding corporation, VAT and payroll taxes due at the most recent balance sheet date |  |
| Corporation Tax Exemption documents |  |
| Any correspondence received from HMRC over the last six years |  |
| Details of any tax investigations over the last six years |  |
| Copies of all VAT returns - If VAT is paid quarterly what months are returns made up to? |  |
| Results of any HMRC inspections |  |
| **HR & Employee Due Diligence** |  |
| Organisation chart (including grades & allowances) and positions filled by supply / agency staff |  |
| Pay Policy |  |
| Performance Management Policy and processes |  |
| Details of Attendance and average attendance for the past 3 years |  |
| Details of any disciplinary/complaints/grievances for the past 3 years |  |
| Details of any staff on pre-capability support programmes |  |
| Details of Performance Related Pay procedures |  |
| Experience / qualifications of all staff including Finance and HR staff |  |
| Information regarding any compromise agreements in the past 3 years |  |
| Information regarding any formal disciplinary issues (including “live” warnings” & referral linking to DBS / NCTL) |  |
| Staff employment contract, plus any special conditions and any existing TUPE agreements  |  |
| Job descriptions |  |
| All employees’ salaries and benefits (including Termination payments, Staff Salary Sacrifice, Safeguarding, Family Benefits) |  |
| Details of any consultants used to support HR or Payroll including details of Long Term Agreements |  |
| Details of any staff on secondments |  |
| Salary projections for at least the next 3 years, including pay point progressions, TLRs, pay protection |  |
| Exit interview records (anonymised) |  |
| Pupil numbers and Pupil/teacher/support staff ratio |  |
| Details of relevant Trade Unions |  |
| Single Central Record |  |
| Safeguarding procedures |  |
| **Facilities & H&S Due Diligence** |  |
| H&S registers and Plans eg. Asbestos, Legionella inspection records etc.  |  |
| Strategic Condition Improvement & Maintenance Plans with evidence of current diligence in keeping the school estate secure including: fire safety, weatherproof, sufficient space, heating, lighting and ventilation |  |
| Details of any Capital bids for the past 3 years including any retentions, conditions of funding and liabilities |  |
| Condition Survey (within last 12 months) including any potential projected costs for the next 3 years |  |
| Fixed Asset Register |  |
| Future contracted Commitments? |  |
| Potential contingent liabilities (e.g. contractual conditions attached to grant funding received) |  |
| H&S practice including Risk Assessments and their implementation |  |
| Details of any current equipment requiring replacement/upgrade  |  |
| Site plans, |  |
| Inventories of all equipment and furniture (valued above an agreed amount e.g. £1,000) |  |
| Trusts must refer to the School Premises Regulations 2012 and Part 5 of the Independent School Standards Regulations 2014 and evidence that this has been considered. (These regulations cover toilet and washing facilities, health, safety and welfare, acoustics, lighting, water supply and the provision of outdoor space. The Standards for School Premises guidance document assists understanding the necessary health and safety requirements). |  |
| **IT Due Diligence** |  |
| IT inventory |  |
| Assessment of IT infrastructure including servers, computers, laptops, tablets, phone system, printers (Multifunctional devices) maintenance and refresh programme |  |
| Assessment of IT software |  |
| Student Information Management System |  |
| Backup and disaster recovery |  |
| Cloud storage |  |
| Websites |  |
| Firewalls, filtering |  |
| ICT Use and e-safety policies. Staff and Students Acceptable Use Agreements |  |

**Other information**

Other areas of information may need consideration depending on each organisation and the educational climate it is operating within.

Information may be obtained from various sources, examples include:

A range of Professional Advisors - Auditors, Accountants, Solicitors, Building Surveyors

Academy Ambassadors – Due Diligence Checklist

ISBL – Due Diligence in relation to Multi Academy Trusts

ASCL – Due Diligence and Risk Management

NGA – Staying in Control of your School’s Destiny: joining a multi-academy trust

NAHT - Joint guidance for schools considering academy conversion

ESFA Due Diligence in academies and maintained schools (February 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778091/Due__diligence_best_practice_guide.pdf>

**MULTI ACADEMY TRUST ADVANTAGES & DISADVANTAGES**

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| **ADVANTAGES/POTENTIAL COST SAVINGS** | **DISADVANTAGES/POTENTIAL COSTS** |
| Academy level leadership costs due to some strategic planning carried out at central board levelEquipment Inspection & testing Administrative (Back office costs including being able to provide high level support)Air Conditioning ServicingAuditors & Accountants fees (significant saving)Boiler (water heaters etc) Inspection and maintenanceBroadband chargesCash collection and banking serviceComputer licencing (curriculum & admin)Cooker Maintenance & inspectionCurriculum model flexibilities achievable (if contracts are issued by MAT not Academy)Dust Extractors Service and inspectionEconomies of scale Extractors service and maintenanceFan Convector heaters inspection and maintenanceFire Alarm inspection and maintenanceFire Extinguisher TestingFume Cupboard Testing and inspectionGeneral ProcurementGovernor Support – group buy in serviceGrant generation expertise shared amongst all academiesGrounds maintenanceHealth & Safety High level clean (Kitchens)HR ServicesHR issues resolved quicker due to collective skills availableInsurance – contents and buildings, School tripsICT Student Software including remote backupLegal servicesLibrary servicesLibrary system on-line help deskLift service inspection contractsMarketing strategy across MAT with reduced costsPAT TestingPayroll/HR servicesPeripatetic music lessonsPest ControlPhotocopiers leasing and maintenanceRefuse disposal serviceRisograph maintenance contractsSanitary bins service contractsSupply costs for cover Suppliers of school uniformStaff Development opportunities across the MATTransition improvements if MAT are feedersTelecommunication contractsUtilitiesVLEWindow Cleaning costs | Initial set up costs that could range from £2,500 up to £75,000 depending on complexity (includes legal costs and due diligence)Loss of some control at Academy level depending on type of MATLocational difficulties depending on location of academiesCentral costs – must be kept to a minimum (not more than 5% usually around 3-4%)Lack of skills initially especially at Governor levelIssues with different system initially until integration appliedTUPE restrictions certainly for the 1st yearPensions Liabilities (and variations in employer rates)Difference in terms and conditions of staff initially until integrationCapital costs for those academies in poor state of repair or not meeting H&S requirements (will impact on all academies funds)Potential impact on strategic plans of individual academies (being unable to achieve planned developments)Potential shortage of skills and experience at leadership levelHuge variance in systems and staff reluctance in streamliningRestructure costs within Academies to enable necessary structure and savings long term Issues with competition v collaborationCost of central services without immediate benefitsPoor Due Diligence |

**NOTES:**

* It should be noted that Academy costs excluding staffing are usually around 15-20% of the total budget. Whereas it is noted that significant savings can be made, these will only be from the 15% overall unless relating to staffing and curriculum costs.
* Savings to non-staff costs may be outweighed by central costs.
* Any central costs (top slice) will need to be below 5% otherwise the EFSA will challenge this level.
* If appropriate due diligence is carried out the MAT may be able to negotiate with the EFSA for additional funds including, for example for significant capital work to bring up to the appropriate standard.
* Do not assume that the MAT can afford a CEO that does not have other Academy level responsibilities initially. It is usually the case that funds for this take time to build up in line with other changes and cost saving alignments within the MAT.

**OUTCOME OF DUE DIGLIENCE REPORTS**

Following the outcome of the Due Diligence investigations a SWOT analysis should be complied stating the current position of the individual Academy. This type of summary is useful for the Governing Body.

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| **SWOT OF INDIVIDUAL ACADEMY** |
|  **STRENGTHS** | **WEAKNESSES** |
|  |  |
| **OPPORTUNITIES**  | **THREATS** |
|  |  |

This could then lead to a SWOT analysis of the proposed Academy groups as a whole, allowing due consideration to the type of MAT that would be appropriate for the group to set up or indeed, if there are academies that the group may not yet be ready to take on if an existing MAT. This type of summary should help Governors to consider the overall strategic position more easily.

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| **SWOT OF ALL POTENTIAL ACADEMIES IN GROUP** |
|  **STRENGTHS** | **WEAKNESSES** |
|  |  |
| **OPPORTUNITIES**  | **THREATS** |
|  |  |

Further analysis could be considered as part of a PEST taking into consideration other important areas. This kind of analysis should be presented to Governors considering MAT status and will also form part of your evidence of due process and due diligence.

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| **PEST ANALYSIS OF INDIVIDUAL / GROUP OF ACADEMIES**  |
|  **POLITICAL** | **ECONOMIC** |
|  |  |
| **SOCIAL** | **TECHNOLOGICAL** |
|  |  |

**Further Information**

**ESFA Due Diligence in academies and maintained schools (February 2019)**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778091/Due__diligence_best_practice_guide.pdf>

With thanks to Leicestershire Academies Group