

Academy Trust Handbook 2022 — Latest Edition

26 August 2022

Whilst it may be late compared to previous years, the [Educations and Skills Funding Agency \(ESFA\)](#) has now published their [latest edition of the Academy Trust Handbook](#) (the Handbook), ready for implementation in less than a week, on 1 September 2022. The ESFA in [their update to the academies sector](#), did apologise for the delay on issuing the Handbook.

Thankfully, given the late release, those in the [academies sector](#) will be pleased to know the changes this year are relatively few, being across four areas that are summarised on page eight of the Handbook.

This year only a small number of changes are being made to ensure trusts continue to enjoy the right level of day-to-day autonomy. In this article, we offer our thoughts on the one substantive change, which relates to contractual indemnities.

Contractual indemnities

An indemnity is a term used in law to recompense for any loss or liability. So, in any contract, an indemnity is a clause under which one party promises to protect the receiving party against loss, by paying money on the happening of a specified event. They regularly feature in contracts because of the perceived benefits over relying on contractual claims where the party suffering a loss would need to prove the breach of contract or any fault. In many ways, indemnities are used to allocate risk within agreements between the parties entering it.

Up until publication of the latest Handbook, a trust that was entering into any indemnities beyond the delegated limits, needed to obtain prior ESFA approval before entering into it. That meant, theoretically at least, trusts needed to seek consent for relatively standard indemnities that feature in the day-to-day contacts that trusts will be regularly entering into as part of running the academy, including catering contracts and data sharing arrangements. Often the theoretical liability under the indemnities would be greater than the delegated limits under the Handbook.

Sensible change

The Handbook contains a new provision that makes clear that trusts are no longer required to seek consent for indemnities where they are within the 'normal course of business', which is a sensible change and will no doubt be welcomed by the sector.

Separate guidance has been produced that explains what is meant by 'normal course of business' in more detail, which gives a number of examples of the types of contracts considered by ESFA to fall under this provision. The guidance also makes clear that whenever trusts are seeking to enter into an indemnity, even if ESFA approval is not needed, legal advice needs to be sought to advise on the terms. It's not uncommon for us to be asked for advice on catering or other contracts when there is a dispute and there are significant indemnities in the agreement that trusts didn't seek advice on at the time.

Whilst the ESFA's advice gives some examples of situations which will fall within the 'normal course of business' in situations that trusts may be less familiar with or which are not given as examples in the guidance, trusts will need to consider whether they are within the ordinary meaning of normal course of business or whether ESFA approval is required. As was previously the case, if any indemnity is outside the normal course of business, it is considered novel, contentious, or repercussive and prior ESFA approval must be sought.

Please do get in touch if you have any questions about the changes made or need advice on contractual arrangements and indemnities.

Contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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