


FAQs – academy re-brokerage

05 May 2023  Lydia Michaelson-Yeates

These FAQs are designed for academy trusts who want to understand more about the Department for Education's (DfE) approach to 're-brokering' existing academies.

These FAQs provide general guidance only. If you have concerns or questions about a potential re-brokerage, please feel free to contact us to discuss your specific circumstances.

What is a 're-brokerage'?

A re-brokerage is the term the DfE use where one academy trust is asked by the Regional Director (RD) to transfer one, some or all of its academies to another academy trust. Typically the underlying reason for the re-brokerage will be as a result of concerns about performance at one or more of the trust's academies. These concerns may be as a result of geographical difficulties, a breakdown in the relationship between the academy's local governing body and the main trust board, or as a method of school intervention.

In our experience every re-brokerage situation is different and needs to be considered in light of the specific circumstances and context to understand the options available.

In addition to an academy being compelled to transfer to another academy trust, it is also relatively common for an academy trust to decide voluntarily to transfer one or more of its academies to another academy trust. This is more typically referred to as an 'academy transfer' rather than a 're-brokerage'.

What powers do RDs have?

RDs are civil servants. They are able to exercise certain powers of the Secretary of State for Education (SoS) in their name. These powers are set out in a published framework: [Regional Directors decision making: 2022](#). Under this framework it is made clear that RDs are responsible, through the National Schools Commissioner, to the SoS. One of the core functions of RD is intervening with under-performing academies and free schools to ensure that high quality support is commissioned to improve them quickly. RD powers of intervention are set out in the Education and Adoption Act 2016, [Schools Causing Concern](#) guidance and in individual academy funding agreements.

Can the RD force us to transfer an academy to another trust?

Although there is no express 're-brokering' power in the funding agreement or in any statute, in some situations the threat of the RD exercising termination rights under the funding agreement will be sufficient to force through the re-brokerage. If an academy trust wishes to oppose an RD request to re-broker one of its academies, we recommend taking advice on the position as soon as possible.

Where an academy identified for re-brokerage is in need of immediate assistance the RD may put significant pressure on the existing academy trust to agree to a transfer of the academy to the RD's preferred sponsoring trust. It is therefore advised that academy trusts engage with the RD at an early stage to put plans in place to secure improvement. This may lead to the academy trust having more of a say in who the sponsoring trust will be or could even avoid a re-brokerage in its entirety.

When will an academy be at risk of being re-brokered?

There are a variety of circumstances in which an academy trust may be asked to re-broker some or all of its academies. Often the decision to re-broker is the final option for the RD where other methods of intervention, for example issuing warning notices or requesting that the trust seek improvement support, have not worked.

The RD may seek to re-broker an academy as a method of school intervention in three situations:

1. the academy is rated as inadequate by OFSTED
2. the academy is 'coasting'
3. the trust has failed to comply with a Termination Warning Notice (TWN) issued under its funding agreement.

What happens to the empty academy trust if all of its academies have been re-brokered or transferred to other academy trusts?

If an academy trust transfers all its academies, it continues to exist as a legal entity, with all the statutory filing requirements, until it is wound up. There are a number of ways to close down an academy trust company and we can advise further on this and the best option for you in your circumstances.

Is there any funding available to support a re-brokerage project?

Unlike an academy conversion, there is no automatic or fixed grant funding provided for either the outgoing or the incoming academy trust to pay for the legal and other related costs. Similarly, there is no funding available for the closing costs associated with the winding down of an empty trust that is no longer responsible for any academies.

The Education Skills and Funding Agency (ESFA) may consider requests for funding from incoming trusts but this would be on a case-by-case basis rather than as an established policy or principle.

We have been asked to take on another academy; do we have to agree?

There is no obligation on an academy trust, even when approached to do so, to agree to take on an academy that the RD is proposing to re-broker. Whilst an academy trust may be willing to expand and may win favour with the RD by stepping in as a new sponsor, it will be important for the board to consider the following key questions before committing to the re-brokerage:

- would this re-brokerage align with the trust's strategic plan and objectives?
- what would be the financial impact on agreeing to this re-brokerage, in the short, medium and long term?
- does the trust have the capacity to secure rapid improvement in the academy (assuming this is required)?
- what are the results of due diligence (financial, educational, contractual) and how will any risks associated with the re-brokerage that have been identified be managed?

Author

Lydia Michaelson-Yeates

Legal Director

lydia.michaelson-yeates@brownejacobson.com



+44 (0)121 237 3986

Related expertise

Academy sponsorships and MATs

School land and buildings