



Money matters

Your questions on any aspect of school finance, answered by the experts. This issue, **David Whittington** looks at issues around conversion to academy status...



We are a non-church VA school that has recently become an academy. However, part of our site is still owned by the historic trustees, which leaves us (and, apparently, them) unsure as to where each party stands in terms of capital works. What powers do the trustees have to enforce particular standards of

maintenance and, conversely, do they have responsibilities when it comes to financing work that we and/or they deem to be essential? Is there a simple answer?

A Your site trustees will either have made their land available under a lease or under the (non-church) version of the land Supplemental Agreement. They both contain requirements for trustee consent/approval of capital works. These should be backed up by Articles 5(c) and 5(l) in the Academy Company Articles, which should require the consent of the trustees to all capital works or site disposals. Church VC or VA converters always have these provisions. Whether you do or not depends on what was drafted on conversion. However none of this means that the trustees can generally require the academy to undertake a particular piece of work, merely that they could require that a piece of work has to be done in a particular way or to a particular standard. Note, though that the trustees (as the freeholders) have health and safety duties which they must ensure are being carried out by the academy company. So they must make sure that the LA is insuring in their joint names and they must have procedures to ensure that health and safety issues are being addressed by the academy company and that any capital works are undertaken with appropriate health and safety controls (for example, they should get very upset if the electrical wiring is being repaired on the cheap by the granddad of one of the pupils!) And no, the site trustees will not normally be expected to meet your capital shortfall unless they have explicit powers and funds to do that (which they sometimes do) and unless they also have powers to meet expenditure that would normally fall to the public purse. Even then it is their choice, not yours. Is that simple enough?



ABOUT THE EXPERT

DAVID WHITTINGTON WAS UNTIL HIS RETIREMENT HEAD OF SCHOOL DEVELOPMENT NATIONALLY FOR THE CHURCH OF ENGLAND. SUBSEQUENTLY HE HAS BEEN ACTING AS AN ADVISER ON EDUCATION LAW TO **LEE BOLTON MONIER-WILLIAMS**, LEGAL ADVISERS TO THE CHURCH OF ENGLAND, MANY DIOCESES AND A LARGE NUMBER OF SCHOOLS AND OTHER CLIENTS ON THESE MATTERS.

DO YOU HAVE A QUERY RELATING TO ANY ASPECT OF YOUR SCHOOL'S BUDGET? SEND IT TO EDITOR@TEACHSECONDARY.COM AND WE'LL PUT IT TO OUR PANEL OF EXPERTS...

Q Our school became an academy in 2011, and we are due to move into brand new, purpose built premises in January 2013. The facilities will include a large and well appointed sports hall, which we are intending to hire out on a regular basis, both to local groups and also to commercial organisations. Will we need a trading company in order to do this and if so, what will the situation be with regard to corporation tax and VAT?



For goodness' sake set up a proper trading company for this – and you absolutely must do so if the annual turnover is going to be more than £50,000 per annum (or 25% of the academy company turnover, whichever is the smaller), which is the limit above which a charity is not

normally allowed to trade in its own right. The trading company then deals with VAT in the normal way for a commercial company. If its turnover is above (currently) £73,000 pa it must register for VAT and may do below that figure. Take advice on this (the figure goes up most years, so check the detail). Any profit that the trading company makes it can Gift Aid each year to the academy company (automatically a charity) and thus avoid paying any corporation tax. The academy Funding Agreement prevents the academy company from using its GAG (annual revenue grant from the Secretary of State) to subsidise such a trading company except to a very small extent as a kind of charitable donation. You should look to make a profit and to factor in an appropriate contribution to the on-going capital maintenance of the sports hall. You must treat this kind of thing as a proper business venture because you will not have the LA to bail you out or fix the building if something goes wrong. An academy should see this kind of provision as a profit-making business and not in the first place as a public service, even if you have a second Object in your articles allowing you to provide public facilities and services.