

Academy Trust Handbook 2022

Our summary of the key changes

The Education and Skills Funding Agency have published the Academy Trust Handbook 2022

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Trusts need to ensure that they are compliant with the new Handbook from the start of September

Our summary of the key changes for trustees and finance staff

The Education and Skills Funding Agency (ESFA) have published the Academy Trust Handbook (the Handbook) 2022, which is effective from 1 September 2022.

The new Handbook has been published very late this year, we have been accustomed to new editions being released in May or June. The parliamentary upheaval appears to have had an impact here, and whilst there are few changes, it is not really fair for the ESFA to publish a document that trusts must comply with from 1 September just a short while beforehand – especially when it's the school summer holidays and many people will be off.

Nevertheless trusts do need to ensure that they are compliant with the new Handbook from the start of September, so it will be important that trustees and CFOs review the new edition and action any necessary changes promptly at the beginning of the new academic year.

The Handbook continues to set out the financial management, control and reporting requirements that apply to all academy trusts, and also points trusts towards key legislation and guidance about safeguarding, health and safety and estates management.

It is important the trustees and CFOs are aware of these amendments and what they may mean for their trust.

In her opening foreword, Baroness Barran, Parliamentary Under Secretary of State for the School System, comments on the importance of strong financial management and governance, and how these are 'essential facilitators of the aspirations for educational outcomes for children. She recognises that strong management skills will continue to be ever more critical as trusts face the pressures of inflation in the months ahead.

There are only a very small number of changes in the Handbook. Most of these are subtle or relatively minor, but nevertheless it is important the trustees and CFOs are aware of these amendments and what they may mean for their trust.

In our summary we highlight the changes with our helpful commentary on what these may mean for the sector and, with so few changes, we take the opportunity to remind you of some of the wider requirements linked to the changes.



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Financial reporting

The Handbook confirms the withdrawal of the separate Budget Forecast Return Outturn, which has now been incorporated into the main BFR (para 2.15).

UHY view: This merely confirms the change announced earlier in the year and by now trusts have already submitted their BFRs for 2022. We would remind trusts of the importance of the BFR process and that it is vital these forecasts are prepared to be as accurate as possible. Internally trusts may well prepare a range of budgets to show the outcome of different scenarios, but the submitted BFR should reflect the most likely predicted financial outturn and position.

Each year trustees should carefully consider and review the budget before this is set and the BFR is submitted, and it naturally remains important that subsequent changes to the budget are reported internally and fully explained to trustees.

It is a 'must' requirement of the Handbook for trustees to approve the BFR each July before submission. It is therefore important that when setting your meeting calendar for the coming year that the June or July meeting is scheduled at a time the forecast will be ready for approval and which also gives the CFO time to then submit the BFR.

Special payments

The Handbook now clarifies that prior approval of staff severance payments, in accordance with HM Treasury's Guidance on Public Sector Exit Payments applies only to special payments (para 5.12).

UHY view: The headline change highlighted on page 8 of the Handbook is a little misleading. The only change to para 5.12 is the insertion of the word 'special', but it is important to note that para 5.12 only looks at certain higher level payments, and trusts also have other obligations as set out earlier in Part 5 of the Handbook.

The definition of special is any severance payments which are non-statutory or non-contractual. Trusts have an obligation to obtain prior ESFA approval before making a special staff severance payment where:

- an exit package which includes a special severance payment is at, or above, £100,000; and/or

- the employee earns over £150,000.

Para 5.10 of the Handbook continues to require trusts to obtain approval for any staff severance payments including a non-contractual/non-statutory element of £50,000 or above.

Para 5.12 is therefore an additional requirement on top of this standard obligation under 5.10, which means that larger packages, or packages paid to very high earning staff, are caught regardless of whether the special element is below or above the £50,000 threshold.

The Handbook has a link to further guidance about **academies severance payments**. This guidance is for trusts considering making special severance payments, and it explains what you must consider before making any such payments, and how to seek approval from the ESFA. This guidance contains some examples of approval requirements:

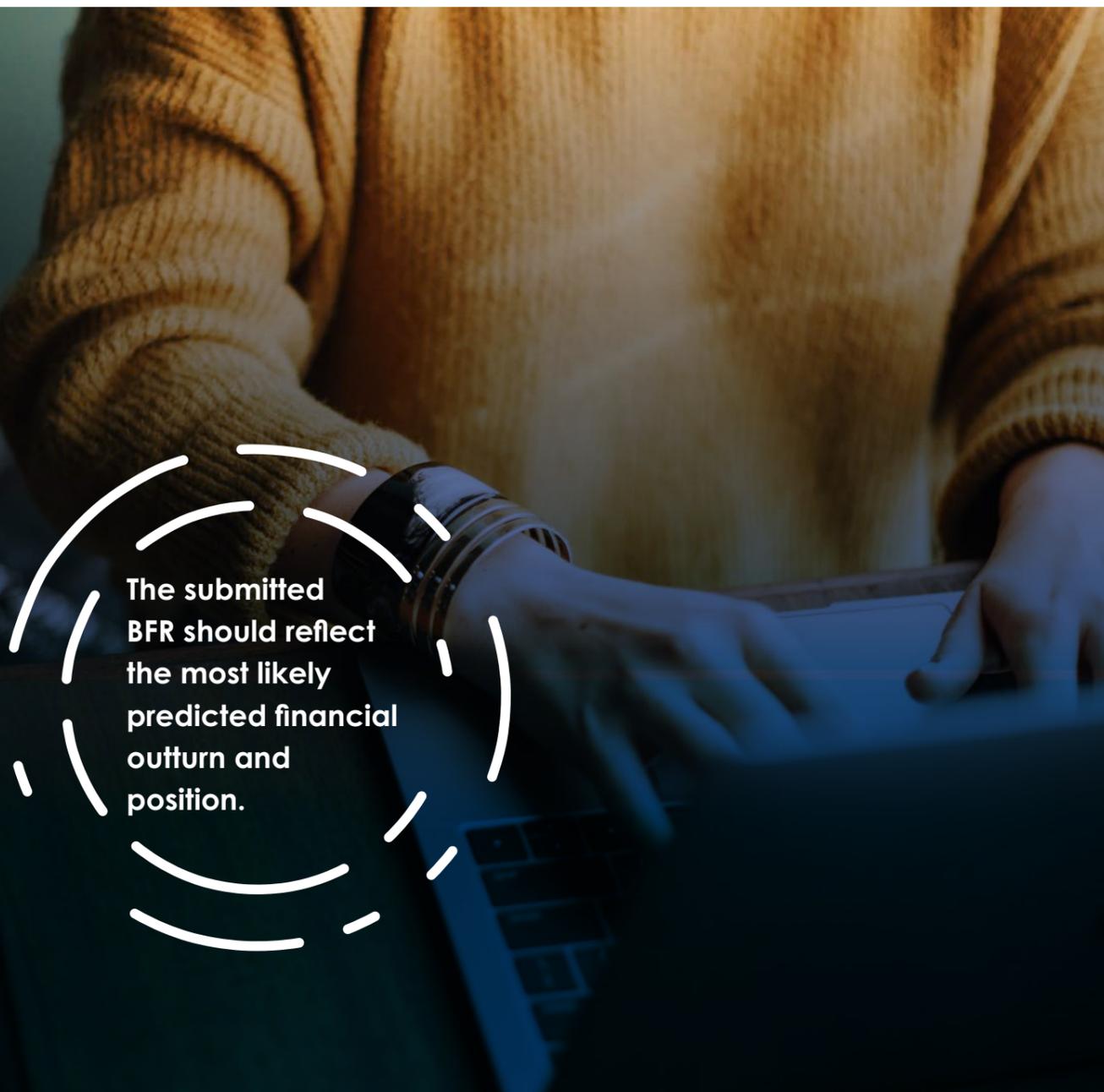
	Member of staff earns up to £150k	Member of staff earns over £150k
Non-statutory/non-contractual severance payment of £50k or more	Yes	Yes
Non-statutory/non-contractual severance payment is greater than £0 but under £50k, and: (a) Total severance payment (sum total of statutory/contractual and non-statutory/non-contractual elements) is under £100k	No	Yes
(b) Total severance payment (sum total of statutory/contractual and non-statutory/non-contractual elements) is £100k or more	Yes	Yes

Note: If the total severance payment comprises both statutory/contractual and non-statutory/non-contractual elements, it is the non-statutory/contractual element that the trust must seek approval for, although details of the whole payment must be declared to ESFA so the full context of the request is known.

Trusts need to take care when considering any special severance payments to ensure that:

- the proposed payment is in the trust's interests
- the payment is justified, based on legal assessment of the trust's chances of successfully defending the case at employment tribunal. If there is a significant prospect of losing the case, a settlement may be justified, especially if the costs of a defence are likely to be high. Where a legal assessment suggests the trust is likely to be successful, a settlement should not be offered

- if the settlement is justified, this must be less than the legal assessment of what the relevant body (eg. an employment tribunal) is likely to award.
- staff severance payments should not be made where they could be seen as a reward for failure, such as gross misconduct or poor performance.



The submitted BFR should reflect the most likely predicted financial outturn and position.

Indemnities

The Handbook confirms that trusts will be able to enter into indemnities which are in the normal course of business without seeking approval [paragraph 5.19].

UHY view: para 5.19 explains trusts' responsibilities to obtain prior approval for certain transactions, and the 2022 Handbook contains an additional bullet point for contract indemnities which are not in the normal course of business. By default this means trusts do not require approval if indemnities are in the normal course of business.

An indemnity is a contractual agreement of one party (indemnifier) to compensate a loss to the other party (indemnity holder), due to the actions of the indemnitor or any other party. Indemnities are included in agreements usually to offer protection to one party in the agreeing to the contract if one party cannot fulfil their contractual obligations. Indemnities are usually found within contractual agreements that academy trusts sign on a routine basis, and these indemnities can also be explained as non-statutory commitments.

The Handbook contains a new link to [guidance on handling contractual indemnities](#) (in the normal course of business).

What is meant by 'in the normal course of business'? The guidance refers to a definition within Annex 5.4 of the [Managing Public Money document](#) but that definition is not particularly helpful to academy trusts. In general, in order to treat a liability as arising in the normal course of business, the organisation concerned should be able to show that the activity is an unavoidable part of its business.

Examples of such contracts include:

- liabilities arising in the course of the purchase or supply of goods and services in the discharge of business
- contractual commitments to make payments in future years arising under long-term contracts, eg. major building works

An indemnity is a contractual agreement of one party to compensate a loss to the other party

- a catering contract that supplies catering services to students and staff
- a data-sharing agreement that ensures information transfers between organisations
- an energy contract that supplies electricity/ water/gas to the trust's buildings
- a commercial IT contract which supports the academy trust run business as usual
- a land transaction contract for the buying or transfer of land to a trust.

Often indemnities which are outside the normal course of business will be novel, contentious, or repercussive.

Whoever is responsible for the management of contracts, perhaps the Chief Operating Officer or Chief Financial Officer, needs to assess contracts that contain indemnities and understand where they are within the normal course of business. It is interesting to note that the ESFA expect academy trusts to maintain a contract register of known indemnity clauses with the necessary assessments. It is not currently even a requirement to have a contracts register in place, although this is a highly recommended approach, and the ESFA do routinely criticise trusts that do not have such a register. We always recommend to our clients that they do hold a detailed up to date register, and now any indemnities can be added to this. Will this become a 'must' requirement in a future edition of the Handbook?

How can trustees help? Trustees should provide the appropriate oversight and challenge to the trust to ensure the appropriate assessments and record management is maintained.

If in doubt as to whether an indemnity is outside the normal course of business then independent legal advice should be obtained. Naturally it is recommended that legal advice is sought, where deemed necessary, before entering into any significant indemnities.



The ESFA expect academy trusts to maintain a contract register of known indemnity clauses with the necessary assessments



Religious Character

Extending the scope of paragraph 5.57 from dioceses to all religious authorities, confirming when the 'at cost' requirement is met.

UHY view: This change relates to the 'at cost' requirements of the related party transaction rules. Usually trusts have an obligation under para 5.49 to pay no more than 'cost' for goods or services provided to it by related parties.

Previously there was an exemption for transactions with dioceses from the normal 'at cost' rules where the payments made by an academy trust to its diocese, for services it receives associated with securing the academy trust's religious character and ethos, which only the diocese can provide. These payments were automatically regarded as meeting the 'at cost' requirement. The change extends the exemption to all religions' authorities, widening the scope of para 5.57.

Reminder of 'at cost' rules

- The 'at cost' requirement applies to contracts with a related party agreed on or after 7 November 2013. Note that contracts should not be allowed to roll on year to year. It is expected that trusts will renew all contracts, including those with related parties, on a regular basis, and so whilst the Handbook continues to refer to the 2013 date, it is considered highly unlikely that trusts would still have contracts in place predating this time that have not since been renewed.
- The rules apply to contracts with a related party exceeding £2,500, cumulatively, in any one financial year. Where a contract takes the trust's cumulative annual total with the related party beyond £2,500, the element above £2,500 must be at no more than cost.
- Academy trusts must ensure any agreement with an individual or organisation referred to in section 5.49 to supply goods or services to the trust is properly procured through an open and fair process.
- Trusts must obtain a statement of assurance from the individual or organisation to the trust confirming their charges do not exceed the cost of the goods or services, and it is recommended that they ask related suppliers to demonstrate clearly, that their charges do not exceed the cost of supply.
- Cost means the 'full cost' of all the resources used in supplying the goods or services and must not include any profit. Full cost includes:
 - all direct costs (costs of materials and labour used directly in producing the goods or services)
 - indirect costs (a proportionate share of fixed and variable overheads).
- The 'at cost' rules do not apply to contracts of employment.
- Related parties caught by the 'at cost' rules are defined in full in para 5.49 of the Handbook but include:
 - Members
 - Trustees
 - Individuals related to a member or trustee, such as a close family member, business interest, or a company in which the member or trustee, or the relative of the member or trustee (when taken separately or together), holds more than 20% of the share capital or otherwise has control.

The next step

You can read the full 2022 Handbook [here](#).

The Handbook again includes, in Part 8, a schedule of the 'must' requirements. The issuing of a new Handbook is an opportune moment for all Accounting Officers, Chief Financial Officers and trustees to read, as a minimum, the Part 8 requirements since these serve as a reminder of the key rules. Since Part 8 abbreviates those requirements it should not be used as a substitute for reading the full Handbook, and we would strongly encourage key individuals involved in the sector to read the full document once a year.

If you have any questions after reading our summary, the Handbook itself, or indeed in respect of reporting requirements for academies more generally, please contact your usual UHY adviser or find your local academy expert on our website at www.uhy-uk.com/academy-schools.

Reminders

The Handbook uses two key words throughout:

Must – this is an explicit requirement of the Handbook and failure to comply is a breach that would be classed as a regularity issue, reportable in the audit findings report and possibly the financial statements

Should – this identifies minimum good practice which trusts should apply unless they can demonstrate that an alternative approach better suits their circumstances.

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