



Commercial Transfer Agreement (CTA) Clarification

Governing bodies of maintained schools are bodies corporate under section 36 of the School Standards and Framework Act 1998. This means that governors sitting within the governing body have protection from personal liability afforded by corporate status. Only in certain circumstances (wilful negligence, criminal acts, fraud etc.) would governors be personally liable for their actions.

The governing bodies of VA schools are the employers of staff working at their schools.

When a school converts to academy status it enters into a commercial document called the Commercial Transfer Agreement. The Commercial Transfer Agreement is signed by the governing body (as a body corporate) rather than individual governors.

Under the terms of the Commercial Transfer Agreement the governing body (as the current employer) makes certain promises to the future employer (the MAC) about the staff and the information provided by the governing body to the MAC about the staff. For instance, the governing body promises that all the information that it provides to the MAC is accurate and up to date. These promises are called “warranties” and the governing body agrees that if the governing body breaches one of the warranties and the MAC ends up out of pocket as a result, the governing body will repay the MAC. This is known as an “indemnity”.

On the day of conversion, the governing body will cease to exist and the MAC will become the employer. When the governing body ceases to exist, it ceases to be responsible for the burden of the warranties and indemnities. Under Regulation 13 of Part 1 of Schedule 1 of the Academies Act 2010 the burden of the warranties and indemnities reverts to the Council, even if the Council are not a party to the Commercial Transfer Agreement. Therefore, the MAC’s claim for any breaches of the warranties or the indemnities would be against the Council and not the governing body (which no longer exists).

Governors have no responsibility for the school after the day of conversion as the governing body has ceased to exist. Governors remain personally liable for their actions prior to conversion only in the limited circumstances mentioned above (for instance wilful negligence, criminal acts, fraud etc.).

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