



# A guide to Academy Trust Governance .



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## Academy Trusts



An academy is a charitable company. It is important for trustees to understand this structure as it brings with it some additional responsibilities (although many overlap with the responsibilities of governors in maintained schools).

The governing instrument of an academy trust is made up of two documents. One is the memorandum (which contains the names of the first members) and the second is the articles of association (this is the constitution of the company which sets out how it should be run). The memorandum and articles of association must be filed at Companies House to incorporate the company on conversion. Academy trusts are exempt charities so there is no need to register them with the Charities Commission but trustees must still comply with charity law.

At the beginning of the academies programme, businesses or Diocesan Boards of Education needed to sponsor schools in order for them to become academies. This changed with the Academies Act 2010, which allowed schools to convert to academies on their own. Many schools converted into Single Academy Trusts, but the DfE has since stated a preference for schools considering converting or expanding to become Multi Academy Trusts (MATs).

Over 7000 schools are now academies, around one third of all schools in England.

# Strategic Functions

The 2017 Governance Handbook requires a governing board to have three core strategic functions:

- Ensuring the trust has a clear vision, ethos and strategic direction
- Holding your executive leader to account for the educational performance of pupils at your school
- Overseeing the financial performance of your schools



Academy Trusts will have a funding agreement with the Secretary of State for Education, and this provides the framework in which an academy must operate.

## Members And Trustees

As a charitable company, all academy trusts have both trustees and members.

Members are often described as having a similar role to that of shareholders in a company limited by shares. They should fulfil their duties with an ‘eyes on hands off’ approach so as not to undermine the work of the Trustees.

The DfE requires academies to have at least three members but prefers them to have at least five members. This allows decisions to be taken by special resolution without requiring unanimity. It is expected that there will be a separation between the members and trustees to enable the members to exercise their powers objectively, so the majority of members will not also be trustees. Employees of the trust must not be appointed as members. The role and power of the members is to:

- Appoint and remove some of the trustees
- Take part in general meetings
- Appoint the auditors and receive the accounts
- Appoint new members or remove existing members
- By special resolution (75% agreement) issue directions to the trustees to take a specific action
- Amend the Articles of the company
- Wind up the company

In the event that a trust were to be wound up and the assets did not meet all of its liabilities, members would be asked to contribute an amount limited to £10.

The trustees are responsible for the day to day running of the company and are also directors under company law. The Board must comprise at least three trustees and these will usually be appointed by the members.

The DfE recommends that smaller trustee boards are now appointed of between 6-9 trustees to provide more effective governance. Trustees may also be appointed by any Sponsor or Diocese.

It is the responsibility of Trustees to ensure:

- They are complying with the trust's charitable objects and with company and charity law
- They sign off the annual accounts
- Adherence to the funding agreement the trust has entered into with the Secretary of State

The board of trustees may delegate some of their powers to committees, individual governors, or the senior leadership team, but trustees must be clear that they will remain ultimately responsible and accountable. It is therefore important to ensure that reporting and monitoring arrangements are in place for any delegated functions.

All members, trustees and individuals on any local governing body (LGB) are required to have an enhanced criminal records certificate from the Disclosure and Barring Service (DBS). Members ultimately have powers to remove ineffective trustees.

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## Single Academy Trust (SATs)



A single academy trust runs one academy...



...and so has a single funding agreement with the Secretary of State for Education.



It has two layers of governance that comprise of members and trustees.

## Multi Academy Trust (MATs)

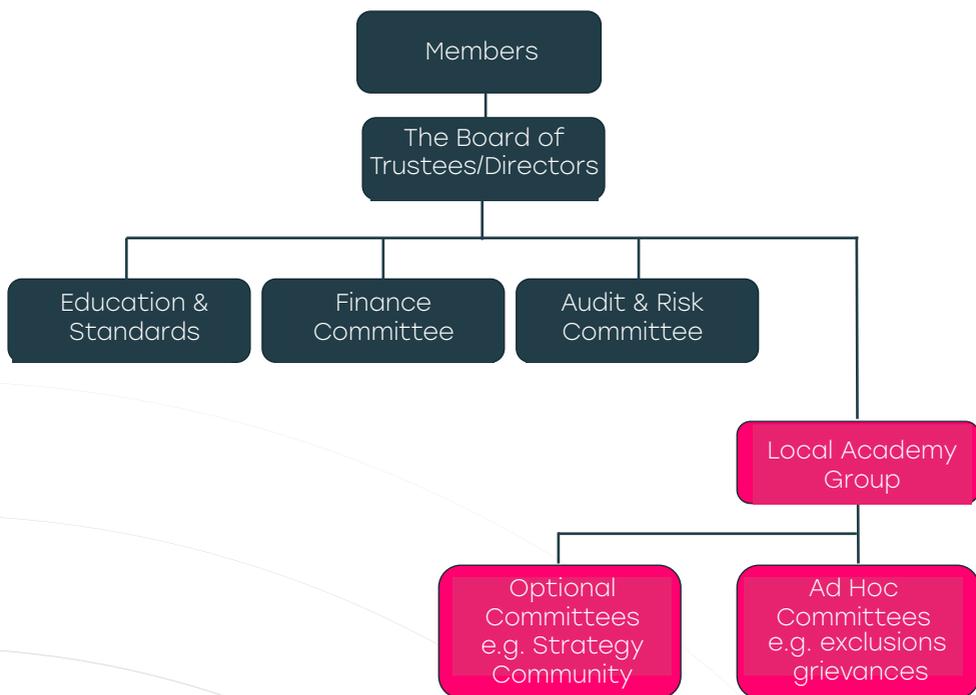
In the academic year 2016-17, over 98% of schools that opened as academies did so as part of a MAT. A MAT is a single legal entity with a board that is accountable for all the schools within the group, and is considered by the DfE to provide the strongest form of governance.

A MAT has both members and trustees. The trustees may delegate the day to day running of each school to LGBs although some MATs refer to them as an Academy Council or Strategic Governing Body. These LGBs are usually similar in membership to a school's existing governing body. In a MAT there should be at least two elected parent governors, although these can be at board level or on each LGB.

The diagram on the next page provides an example structure of a MAT, although it is important to note that all MATs vary and may structure their trust differently.

**“There are now around 2,800 academy trusts involved in running schools, which means even greater reach and capacity to improve the education of more children but also more responsibility... now that we have trusts that cover groups of schools, there are many more lives that volunteers can influence, going beyond their own immediate community.”**

**Damian Hinds**  
Secretary of State for Education



The level of delegation can be varied to reflect the performance of each school. This information should be detailed in the MAT Scheme of Delegation document, which should be available on the MAT website. In a large MAT, the board may decide to appoint a committee to oversee a group of LGBs as a regional cluster.

A MAT model offers advantages to groups of schools converting to academy status as it helps to strengthen collaboration between them. The academies can also pool resources and benefit from economies of scale.

## **Collaborative Partnerships**

Schools that convert to individual academy trusts will still be expected to support at least one other local school. There are no requirements detailing the kind of support that should be offered, or how this support must be carried out. However, any support given must aim to improve standards. To this end, schools may establish collaborative partnership agreements that set out how they will work together.

These agreements may cover areas such as joint purchasing; sharing facilities and school improvement services. There are of course only a small percentage of schools that now convert as single academies and a collaborative partnership structure is not a specific model that will be approved by the DfE.

## **Umbrella Trusts**

Over the past few years, some academies have set themselves up in umbrella trust structures to aid collaboration. Each school has its own individual academy trust and the schools are linked together by an overarching umbrella trust, usually working together on matters such as procurement.

The DfE does not have a formal relationship with umbrella trusts and has no power of oversight in relation to them. The contractual agreement the DfE makes via the funding agreement remains with each individual academy trust. The DfE feels that the MAT model offers stronger governance, and as a result, will not approve an academy – or plans for any existing academy trust – to join an umbrella trust. However, arrangements within existing umbrella trusts may continue.

## Strategic leadership

A key feature of effective governance is strategic leadership that sets and champions the vision, ethos and strategy for the academy trust. For MATs, the vision should set out the level of ambition the board has for future growth. The trustees must ensure that there is a strategy in place for achieving this vision and an awareness of the need to review the effectiveness of governance structures as and when the size of the organisation changes.

The board must set an ethos of high expectations for everyone at the trust. This covers the attainment and behaviour of pupils and the conduct and professionalism of staff and governors. Strong and clear values must be embedded across the organisation.

Trustees must govern in accordance with the academy's charitable object and any trust deed, particularly in schools designated with a religious character. Every effort must be made to ensure that the school's ethos promotes the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance for those with different faiths and beliefs.

**“It is very much about big picture thinking, how the pieces of the MAT all fit together, and essentially running a business [...] you have to understand how to run it most effectively by obtaining value for money and results at the same time, and understanding the responsibility of managing large budgets of public money for the benefit of children.”**

**Tiffany Beck**

Chair of Trustees Maritime  
Academy Trust

## Accountability

Every academy trust must have an executive leader, who often has the title such as CEO or Executive Principal. This person is responsible for implementing the strategic framework established by the trustees. Boards should hold them to account for the day to day running of the trust. Generally, trustees should avoid involvement in operational matters. However as the board is legally responsible for the school it may need to intervene in circumstances where the school may be in breach of contractual or statutory duties.

Trustees are accountable for driving up educational standards and financial performance. It is therefore essential that boards are familiar with data about their schools and are able to rigorously analyse, for example, pupil progress and attainment information. At least one board member should have the skills to understand and interpret educational performance and financial data.

The board can use performance tables that provide information on matters such as pupil attainment and school finances to compare their own schools with other local or national schools.

Each school should also have internal assessment systems to monitor progress and attainment at more regular intervals. This may also be used to predict how well pupils will perform at statutory assessment periods.

To oversee financial performance, your board must have at least one person with specific skills and experience of financial matters. This is even more critical in MATs with larger budgets.

Effective boards hold their executive leaders to account for improving pupil and staff performance by asking the right questions. Appropriate questions may include:

- Does the school have sufficient reserves to cover major changes such as re-structuring?
- Is the school collaborating with other schools to generate efficiency savings?

## **Ofsted**

The trustees of an academy are accountable to Ofsted for the standard of education at the school. In a MAT, the board may have delegated certain governance functions to the LGB. The role of trustees and, depending on the level of delegation, LGB governors, is critical in ensuring that a school is successful in achieving a positive Ofsted grade. Ofsted will look at whether the governing structure is effective, as well as seeking to answer the following questions.

- Is the board challenging and supporting the executive leadership?
- Is the board aware of the quality of teaching at the school and how this impacts on different pupil groups?
- Is the board carrying out its statutory duties?

Ofsted currently inspects the educational performance of individual academies. However, the government is looking at the accountability framework for MATs and is considering giving Ofsted additional powers of inspection.

## **Regional Schools Commissioners (RSC)**

Once schools change their legal status to become academies, they are no longer under Local Authority oversight. Instead, the Regional Schools Commissioner (**RSC**), reporting to the National Schools Commissioner and acting on behalf of the Secretary of State for Education, becomes responsible for:

- Taking action where academies or sponsors are performing poorly
- Intervening in academies where governance is inadequate
- Deciding on applications to convert to academy status
- Deciding on applications from sponsors to operate in a particular region.

There are 8 RSCs who operate in 8 regions across England. Rather than intervening directly, RSCs commission experts in education. This can involve including national leaders in education and teaching schools and MATs to support underperforming schools.

## **Education & Skills Funding Agency (ESFA)**

Trustees are accountable to the Education & Skills Funding Agency for ensuring compliance with the academy trust Funding Agreement and the Academies Financial Handbook.

Trustees are responsible for the proper stewardship of their academy's funds, including regularity and propriety, and for ensuring economy, efficiency and effectiveness in their use. These are the three key elements of value for money.

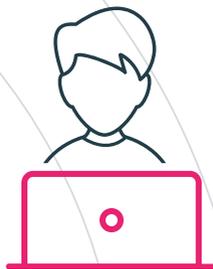
Trustees must provide details of the academy trust's governance arrangements in the governance statement within the annual accounts and published on the trust website.

## Training and support

All boards are responsible for identifying the induction and ongoing training needed by trustees and local governors. Schools should ensure that there is a budget available for training. Everyone on the board should be able to analyse data and effectively challenge the Senior Leadership team (**SLT**) and question leaders on, for example, the progress of groups of pupils at each school in the trust.

The Chair is responsible for ensuring the effective functioning of the board, and this role is especially important in providing visionary leadership and direction. The trustees should employ a professional clerk, and if necessary a separate company secretary, to provide expert advice and guidance to support the operation of the board.

The role of a clerk is not only about providing good administration, but about helping the board understand its role, functions and legal duties. This includes knowing when to seek the advice of independent professionals for guidance on the board's legal responsibilities.



## Compliance

As a trustee you must be aware of your statutory and contractual responsibilities and ensure that you comply with education and employment law.

The board has a duty to publish details on its website about all members, trustees and individuals on LGBs. This information must include any relevant material business or pecuniary interests. It must include any material interests arising from relationships between those involved in governance and close family members or senior employees. The Secretary of State also requires boards to provide information about individuals involved in governance on the 'Get Information About Schools' website.

Trustees must also comply with the articles of association and Funding Agreement.

As a charitable company, trustees have a duty to ensure that the academy trust complies with both charity law and company law.

It is important for practical measures to be taken by all trustees to ensure that they are compliant with their duties. These include:

- Regularly attending meetings
- Ensuring that your governing body regularly reviews its compliance with its statutory duties

- Ensuring proper procedures are in place for reporting financial information
- Being familiar with your memorandum and articles of association
- Having a governors Code of Conduct
- Encouraging your governing body to act upon professional advice wherever necessary.

## Liability



As a director, this new role brings potential liabilities but these should not generally be a concern to a trustee who is acting in good faith.

An academy trust may indemnify a trustee against claims brought against them in their capacity as a director. All boards should ensure that the trust takes out directors' indemnity insurance.

A director who has acted fraudulently could be prosecuted. They could also be disqualified from acting as a director, as well as being subject to a fine. In most cases, however, where a director is acting in good faith, any claim should be covered by the directors' indemnity insurance.

## Education law

Academies do not have to follow the national curriculum but the board of trustees must ensure that a broad and balanced curriculum is taught to the age of 16. It is also a legal requirement for schools to promote the spiritual, moral, cultural, mental and physical development of pupils.

All boards have legal duties in relation to pupils with Special Education Needs and Disability (SEND). There must be an individual on the board or a committee with specific oversight of the school's SEND arrangements.

There should also be an individual on the board with leadership responsibility for safeguarding, which includes the Prevent duty. Schools must have due regard of the need to prevent people from being drawn into terrorism.

The board has important responsibilities to review an executive leader's decision to exclude a pupil. Trustees are also responsible for arranging an independent appeal panel to consider permanent exclusions.

## Contact Us

We hope this briefing note gives you a clear overview of what is expected of trustees in an academy trust. If you have any questions you are welcome to contact [info@governorsforschools.org.uk](mailto:info@governorsforschools.org.uk) or Emma Swann, a partner at Harrison Clark Rickerbys at [eswann@hcrlaw.com](mailto:eswann@hcrlaw.com)

## Useful Documents

- A Competency Framework for Governance 2017
- Governance Handbook 2017
- Academies Financial Handbook 2018 (from 1st September 2018)
- Trust Scheme of Delegation – you should be able to find this on the trust website

## Special thanks

We would like to thank Emma Swann for her work as the author of a previous version of this guide.

**Effective Governors, Excellent Schools**

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