



Chief Executive Officer's Paper to the Directing Board on Company and Academy School Governance for all Members, Directors and Governors of the EPA

Introduction

When the Eynsham School's Partnership were considering academy status, they wanted to build on many years of partnership by ensuring that we converted together as a multi-academy trust to work for the benefit of all the students in our community. We chose the multi-academy trust model as, when you are converting as a group of schools where at least one of which is not regarded as performing well, the DfE prefer this model as it provides a strong governance structure; we were in this position.

It was also based on recent research which had shown that there is a clear correlation between adopting a multi-academy trust model and generating school improvement. This multi-academy trust conversion was seen to be a good model to promote continuing collaboration between our schools and enable us to pool resources, benefitting from economies of scale and shared expertise across the schools. We felt it would also make it easier for staff to work between the schools. Research had also showed that having primary schools and a secondary within a MAT, allows for a better transition between each school, effectively creating all-through schooling.

So why the need for this document?

Members, Directors and Governors must have a clear understanding of the governance structure of their multi-academy trust to enable them to play an effective role in the governance of the academy trust and each individual academy. This document aims to explain the way in which the EPA Academy Trust has had to be established along with providing information on the roles and responsibilities of each tier of governance within the Academy Trust, i.e. of Members, Directors and Governors.

It should be noted that these roles and responsibilities are somewhat fluid and are changing regularly currently due to the volatile and progressively changing nature of the new academy structures nationally. It is the responsibility of the CEO to keep each group up to date with these changes as far as is possible. It is the responsibility of each individual Member, Director and Governor to ensure they read and assimilate this information so they are fully aware of their responsibilities and are able to function in their roles, assisting the academy trust to run effectively.

The Academy Trust as the Company

The Government requires that a multi-academy's academy trust should be a private company limited by guarantee. This type of company does not have share capital and has Members who are guarantors rather than shareholders. Anyone can be a Member of a company. In this case, each Member is required to guarantee to contribute £10 to the liabilities of the company if it is wound up. All academy companies also have exempt charity status.

The Members of the company have ultimate control over its direction but the key role for the Members is to appoint Directors "to run the company on their behalf" (Companies House guidance). In every multi-academy trust, the Directors of the company secure its accountability to the Secretary of State for the performance of the company. Directors can delegate responsibility to committees and have to establish local governing bodies for each academy school. The Directors are also the charity trustees of the company.

The memorandum of understanding and articles of association are the governing documents required to establish the multi-academy's overarching academy trust. The memorandum contains the names of the subscribers who will be the academy trust's first Members. The articles of association are the constitution of the company and set out how the academy trust should be run. The memorandum and articles of association must be filed at Companies House to incorporate the company. Academy trusts are deemed to be exempt charities so there is no need for them to be registered with the Charity Commission.

Each individual academy within a multi-academy's academy trust then has a scheme of delegation which lays out the structures and functioning of that academy within the academy trust, including the nature and make-up of the individual academy's local governing body.

Members of the Academy Trust and their roles

The Members are effectively the owners of the company and appoint, and therefore can remove, Directors. In order to fulfil this function, the Members should know what is going on, and are absolutely entitled to do so, subject to the usual restrictions on personal data. Hence, Members should expect to see minutes and papers of Directors meetings, again subject to confidential matters.

Academy company articles are a kind of compromise between the articles of a limited company and the governance practices of maintained schools. Normally a company would have more Members than Directors, whereas in academy companies the reverse is true. And it is the Directors who are given all day to day powers under the articles of association.

It is the job of the Chair of Directors, who is an ex officio Member, to ensure that the Members are briefed through the year and alerted especially to problem issues and opportunities. If Directors do not keep the Members informed then the Members should remove them. However, Members should take care not to act as shadow Directors. It is possible for Members also to be Directors but it may be desirable for some not to be.

The Annual General Meeting provides a formal opportunity for reporting to the Members and should be taken seriously. Members can also require other general meetings to be held, although they are arranged by the Directors and chaired by the Chair of Directors. All Directors have a right to attend general meetings but only Members may vote. Most decisions can be carried by bare majority but some, as set out in the articles of association, require specific majority votes.

The core roles and responsibilities of the Members are to:

- be the 'owners' of the company
- oversee the achievement of the objectives of the company
- take part in annual and extraordinary general meetings
- receive the company's accounts
- appoint the Directors and remove Directors
- have the right to amend the Articles of the company
- hold the Members' liability which is limited to £10

Directors of the Academy Trust and their roles

The Directors of the multi-academy are appointed by the Members in accordance with the regulations laid out by the memorandum of association and the articles of association. Their core responsibilities are to be:

- responsible at a strategic level for the MAT as a whole and therefore all the academies within it
- accountable to the Secretary of State for the performance of all the academies within the MAT
- accountable for the MAT's performance as a charity and as a company

The Companies Act 2006 also imposes specific duties on Directors, as charity trustees, which are to:

- act only within their powers, complying with the articles of association and charity law
- promote the success of the academy trust
- exercise independent judgement
- exercise reasonable care, skill and diligence in all matters
- act prudently to safeguard and protect the assets of the charity
- act in the best interests of the charity and avoid conflicts of interest
- not accept benefits from third parties
- declare an interest in a proposed transaction or arrangement and not to profit from their position

The duty to promote the interests of the company includes having regard to the interests of staff, the need to foster the academy trust's business relationship with suppliers and with the community, the impact of the

academy trust on the environment, preserving the academy trust's reputation for high standards of business conduct and the need to act fairly.

As well as the obligations to report to the Department of Education under the Funding Agreement, the Directors must make sure that the academy trust complies with its obligations under the Companies Act, for instance to file information at Companies House promptly on any changes to the Directors. The academy trust will also have to file an annual return and audited accounts.

Directors must exercise the skill and care expected of reasonably diligent persons and if they have special skills they must exercise those. To avoid conflict of interest, Directors must notify the academy trust at the earliest opportunity of interests which they have in other businesses, and seek advice if any transaction is proposed with any business in which they have an interest. Directors' obligations not to accept benefits from third parties extend to any circumstance in which receiving the benefit is likely to compromise, or be perceived as compromising, the independence of the Director.

Directors are legally responsible for managing the academy trust's affairs and looking after its assets. The academy trust is exempt from registration as a charity but nevertheless guidance given by the Charity Commission outlines what Directors ought to do in order to comply with their obligations under charity law.

Directors of a company can be made personally liable for the company's obligations in certain circumstances under the Companies Act, in particular where they have not behaved prudently or they have failed to look after the company's assets. Similarly, Directors can be made jointly liable for a wrong done by the company, which is why Academies must take out Directors' & Officers' insurance in order to be prudent. In an exceptional situation, a director who has acted fraudulently could be prosecuted under criminal law and 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. Such policies normally cover the cost of successfully defending legal proceedings but Directors must still be careful and prudent in their actions, if they wish to avoid the risk and anxiety of proceedings or prosecution.

Directors have the authority to decide what powers and responsibilities to delegate to committees and individuals. They will lay the exact level of delegation out in each individual academy's scheme of delegation. Directors must establish each academy's Local Governing Body and all Directing Boards of our size must have a central Audit Committee. It is important for Directors to consider whether to use their powers to delegate functions and decisions to committees, individual LGBs or the senior leadership team of each academy.

In order to ensure the academy is run properly, delegation should be clearly laid out in each academy's scheme of delegation with instructions that:

- there should be clear and regular reporting procedures which are enforced in practice
- there should be a majority of Directors on any committee
- delegation should be annually reviewed and monitored.

The Directors should, in each school year, elect a Chair and Vice Chair of the Directing Board. Hence, the appointment of the Chair is particularly significant for the effective running of the school. A good Chair will have the following skills:

- an excellent understanding of the educational landscape
- a good working relationship with the CEO
- the confidence to hold the LGBs to account
- an ability to encourage team working
- an excellent knowledge of the multi-academy trust and its academy schools

The only restrictions that prevent anyone becoming a Director are that:

- they must not have been disqualified from acting as a company Director (unless the court has given them permission to act for a particular company)
- they must not be an undischarged bankrupt (unless they have been given permission by the court to act for a particular company)
- they must not be under the age of 18 and specifically cannot be an academy student

It is important that the Directing Board contains individuals who have specific skills and knowledge that will enable the academy trust to meet its objectives. Hence, undertaking a regular skills audit of the Directing Board is both a useful but also an essential activity. Directors should be encouraged to bring all their skills to bear in furthering the good performance of the overarching academy trust and all academy schools.

School Governors of the Academy Trust and their roles

In a multi-academy trust, each school is an academy that is directly accountable to the Directing Board and to the overarching academy trust. Each academy school will have a Local Governing Body (LGB) that is made up of elected Governors and Governors appointed by the Directors. Governors will be elected or appointed in accordance with the individual academy's scheme of delegation.

The LGB of an academy school within the multi-academy trust will usually include:

- the Headteacher
- Elected staff governors (staff including the Headteacher to comprise no more than 1/3 of LGB)
- Elected Parent Governors
- Governors appointed by the Directors
- Governors appointed by the Diocese in a VC/VA school
- Any co-opted governors appointed by the other governors

The processes for electing and appointing Governors are laid out in each academy's scheme of delegation.

In common with Governors in all types of schools, Governors within an academy school, as laid out in the newly published DfE Governors' Handbook (January 2015) have three core strategic functions:

- setting a clear vision, ethos and strategic direction for the academy school within the wider vision and direction of the multi-academy trust determined by the Directing Board
- holding the Headteacher to account for the educational performance of the academy school
- overseeing the financial performance of the academy school

These functions are reflected in the criteria Ofsted inspectors use to judge the effectiveness of an academy school's Local Governing Body. LGBs and their individual Governors should adopt the same standards of behaviour as are outlined above for Directors and will similarly receive the benefit of indemnity insurance.

In setting the strategic direction of the academy, the Governors and LGB should:

- set out the academy's vision, ethos and strategic direction framework
- ensure that it has a vision for the future and a robust strategy for achieving its vision
- sign off the policies, development plans and targets to achieve strategic priorities
- regularly monitor and check on progress, being constructively challenging

In holding the Headteacher and senior leaders to account on school performance, Governors should:

- play a strategic role and avoid routine involvement in operational matters
- demonstrate they are an effective LGB by asking the right questions:
 - Which subjects get the best and worst results and why?
 - How does this relate to the quality of teaching?
 - How are you going to raise standards for all children, including the most and least able, those with special educational needs and those receiving free school meals?
 - What is the school's approach to the implementation of performance related pay?
 - What is the school's track record on attendance and behaviour?
- review data: the LGB must have good data to monitor and review your school's performance
- ensure the Headteacher provides the LGB with all the information it needs to do its job well
- use objective data from external sources to evaluate performance, including Ofsted reports
- use performance tables to compare their own school with other schools
- visit their school, particularly during the day, on a regular basis as a helpful way to 'know' it
- ensure the school is implementing development and improvement plans

In ensuring financial probity, Governors should:

- ensure they have full financial information provided to them

- have the skills necessary to understand financial performance data
- ensure the academy's money is well spent with value for money assured
- ensure at least one governor has specific skills and experience of financial matters
- ask key financial management and value questions such as: are we making full use of all our assets? are other schools achieving better value for money?
- understand how the effectiveness of the LGB has a real impact on the success of the academy

LGBs of a multi-academy trust have no more than delegated powers that may always be removed or modified by the Directors. However, in the EPA, the delegation is very extensive and is set out in each individual academy's scheme of delegation. LGBs relate to senior leaders of the academy in the same way as governing bodies of maintained schools. The LGB oversees the day to day running of the academy, including the management and organisation of the academy in line with any development plan proposed by the Governors and agreed by the Directors. The LGB will also be responsible for implementing Directors' policies and decisions in the way set out in their scheme of delegation.

Ordinarily the day-to-day affairs of each academy are managed by the Headteacher and other members of staff. Governors' responsibilities are discharged through decision-taking in Governors' meetings. Governors need to make sure that they hold regular meetings and that they attend unless exceptional circumstances arise. Governors should make sure that they receive regular reports about the finances and affairs of the academy.

The LGB of an academy is accountable to Ofsted in the same way as a maintained school. The Ofsted Subsidiary Guidance: Supporting the Inspection of Maintained Schools and Academies, published in 2013, states that:

“Inspectors must evaluate the extent to which governors both challenge and support the school and hold senior staff, including the head teacher, to account for the achievement of the pupils... they hold important strategic responsibilities for the development and improvement of the school.”

Ofsted will consider whether a Local Governing Body:

- carries out its statutory duties
- understands the strengths and weaknesses of your academy
- takes account of pupil data
- is aware of the quality of teaching and how this impacts in different subject areas
- understands how the academy makes decisions about teachers' salary progression
- is challenging and supporting the leadership in equal measure

If a LGB fails to fulfil these requirements it will indicate a weakness in the quality of leadership and management of the academy school. The role of governors is critical in ensuring that an academy school is successful and achieves a good Ofsted grade.

The LGB of an academy is responsible to the DfE for ensuring compliance with the terms of its Funding Agreement. The Secretary of State could ultimately terminate the Funding Agreement if an academy is in breach of the terms or requires significant improvement. It is important that governors are familiar with the terms of their Funding Agreement. Governors must also ensure compliance with charity law and company law.

It is important that all Governors are offered appropriate training in their role. Practical measures can be taken by governors to ensure that they are in compliance with their duties by:

- regularly attending and preparing for LGB meetings, including by reading all papers
- ensuring the LGB regularly reviews compliance with statutory duties
- ensuring the LGB regularly reviews compliance with implementation of its policies
- ensuring the academy has proper procedures for reporting on its financial information to Governors
- reading and being familiar with the memorandum and articles of association of the academy
- having in place a governors Code of Conduct
- encouraging the LGB to act upon legal, financial and other professional advice whenever necessary

Restrictions

There is a legal requirement that academy trusts must ensure that they are not local authority influenced.

A company is deemed to be influenced if 20% or more of its members or directors are ‘associated persons’. Hence, the total of any persons associated with a local authority can be no more than 19.9% of either the Members or the Directors. This covers members of local authorities (including members within the last four years); employees of local authorities; and officers of companies under the control of a local authority. Any person who is an elected councillor will be regarded as an associated person whether the local authority is a county council, district council, borough council, parish council, or a community council.

Therefore if an elected Councillor or their spouse or any employee of any local authority (including district and parish councils and including teachers in community and VC schools) is willing to be a Member or a Director this provision will apply.

Further restrictions include the facts that:

- employees cannot be a Member of the company
- no more than one third of the Directors can be employees of the company
- no more than one third of an LGB should be employees of the academy school: note that this includes employees who are appointed or elected Governors, this is not just a restriction on the number of Headteacher and staff Governors

Note

This paper is an aggregation and then précis of information assembled from various sources. As mentioned earlier, it is important that Members, Directors and Governors are aware of the contents of this paper. They must also be aware of the reality that the facts detailed herein will change from time to time and, currently, on a regular basis in the light of changing policy and legislation: for example, the DfE has rewritten its Governors’ Handbook 5 times in the last two years. This means that this information will need to be updated regularly: as your CEO I will attempt to keep you up to date with suitably appropriate regularity.

I hope you find this paper of use in your roles. Please may I take the opportunity to thank you for all your efforts and input on behalf of the Eynsham Partnership Academy.

A S Hamilton

Chief Executive Officer

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