

# **Scheme of Governance**

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## **Ascend Learning Trust**

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## Contents

1	Introduction .....	3
2	The Academy Trust .....	4
3	Members.....	5
4	Trustees.....	7
5	Delegation of powers of Trustees.....	18
6	Committees.....	19
7	Local Governing Bodies.....	20
8	Intervention Rights .....	21
9	The Company Secretary and the Clerk .....	22
10	CEO.....	23
11	Chief Operating Officer (COO) .....	25
12	The Accounting Officer .....	27
13	Chief Financial Officer (CFO) .....	28
14	Trust Executive Leadership Team (TELT) .....	29
15	Financial regulations manual .....	31
16	Budget approval.....	32
17	The Heads of the Academies .....	33
18	The relationship between the Trustees and senior staff in general.....	34
19	Alterations.....	35
20	Circulation list .....	36

## Appendix

Appendix 1	Consent to be a Member .....	37
Appendix 2	The Seven Principles of Public Life set out by the Committee on Standards in Public Life ("the Nolan Principles").....	38
Appendix 3	Trustee declaration.....	39
Appendix 4	Duties and responsibilities of Trustees as charity trustees .....	40
Appendix 5	Reserved matters.....	47

## 1 Introduction

This Scheme of Governance (**Scheme**) has been made by the Trustees of Ascend Learning Trust (**Academy Trust**) to set out a framework under which the Academy Trust is governed and managed, and in particular:

- how the individuals which are involved in the governance of the Academy Trust work together effectively
- the relationship between the Trustees, the local governing bodies (**LGBs**) and the executive; and
- how the Trustees ensure compliance with the various legal and regulatory requirements placed on them.

This Scheme is to be read in conjunction with the Scheme of Delegation and Decision-Making Matrix.

This Scheme shall be reviewed by the Trustees annually and in doing so, the Trustees shall have regard to any new legislation or guidance affecting the provisions of these documents.

This Scheme may be altered, added to or repealed by a majority resolution of the Trustees or by the Members of the Academy Trust in a general meeting.

A copy of this Scheme shall be given to the Members of the Academy Trust, every Trustee, each Local Governor, Chief Executive Officer (**CEO**), the Heads of the Academies operated by the Academy Trust (the **Heads**), the Chief Operating Officer (COO) and the Company Secretary (if appointed).

Where inconsistency arises; the Scheme of Delegation shall prevail.

## 2 The Academy Trust

The Academy Trust is a charitable company limited by guarantee with exempt charitable status. Its constitution is its Articles of Association. The Objects of the Academy Trust (the purposes it exists to further) are to advance for the public benefit education in the United Kingdom.

The Academy Trust is responsible for Royal Wotton Bassett Academy, Lawn Manor Academy, Kingsbury Green Academy, The Wellington Academy, Wellington Lions Academy, Wellington Eagles Academy, Noremarsch Junior School and any schools that join the Academy Trust in the future (**Academies**).

The Board retains responsibility for approving the Trust's growth strategy; including the approval of schools joining the Trust.

Due diligence processes shall be overseen by the Board; with operational delivery delegated to the executive; and scrutiny provided through the Finance; Audit and Risk Committee.

The Academy Trust has entered into a master funding agreement and separate supplemental funding agreements for each Academy under section 1 of the Academies Act 2010 with the Secretary of State for Education in relation to the funding of the Academies (**Funding Agreement**).

The Funding Agreement places a number of requirements on the Academy Trust including the requirement to comply with the Department for Education's (DfE) Academies Trust Handbook (as updated from time to time) (**Handbook**).

There are a number of roles involved in the running of any multi-academy trust and these are as follows:

- the **Members**
- the **Trustees**
- the CEO
- the Deputy CEO
- the COO
- LGBs: each Academy has an LGB formed by the Trustees as a committee of the Trustees. The members of the LGBs are called **Local Governors**; and
- the Heads who have responsibility for the day to day running of their respective Academy.

### **3 Members**

#### **3.1 The role of the Members**

The Members are the guardians of the Academy Trust's constitution and charitable purpose.

They exercise a limited but critical role in holding the Board of Trustees to account and ensuring that the Trust remains faithful to its charitable objects and statutory obligations.

Members have a number of statutory rights, including:

- The right to appoint the external auditors
- The right to remove Trustees (provided that the procedure set out in the Articles of Association is followed, including the right of the relevant Trustee to make representations)
- The right to amend the Articles of Association (subject to any required regulatory consent); and
- The right to receive the annual report and accounts

Members may appoint up to eight Trustees in accordance with the Articles of Association.

Each Member undertakes to contribute £10 in the event that the Academy Trust is wound up and its liabilities exceed its assets.

Members will ordinarily meet at least once per year at the Annual General Meeting (AGM).

In accordance with the Academy Trust Handbook, Members shall remain independent of the day-to-day governance and executive leadership of the Trust.

Members shall not be employees of the Trust.

Members shall not ordinarily serve as Trustees; save in exceptional circumstances permitted under the Articles of Association; and at no time shall a majority of Members also serve as Trustees.

Members act as the guardians of the Trust's charitable objects and shall provide independent oversight of the Board of Trustees, ensuring that the Board:

- Advances the Trust's charitable objects
- Complies with statutory and regulatory requirements
- Exercises effective governance and control

Members shall review the effectiveness of the Board at least annually; including consideration of:

- Governance structure
- Accountability arrangements
- Skills composition
- Regulatory compliance

### **3.2 The Appointment of the Members**

Members are appointed in accordance with Articles 12 to 18 of the Articles of Association.

There must be a minimum of three Members at any one time. In line with the Academy Trust Handbook, the Trust shall endeavour to maintain at least five Members to promote effective oversight and independence.

On appointment, all Members are required to complete:

- A consent to be a Member form (attached at Appendix 1)
- A declaration of business interests form

The Governance Professional (or Company Secretary, where appointed) shall update the statutory register of Members accordingly. Companies House does not require notification of Members.

In accordance with the Academy Trust Handbook, the appointment of any new Member shall be notified to the Department for Education via Get Information About Schools (GIAS) within 14 days of appointment to enable suitability checks to be undertaken.

## 4 Trustees

### 4.1 Capacity of Trustees

Each Trustee is:

- a director of the Academy Trust; and
- a charity trustee.

The Trustees meet together as the Board of Trustees to carry out their duties and functions.

All Trustees are required to:

- follow the Seven Principles of Public Life set out by the Committee on Standards in Public life (referred to as "the Nolan Principles" and set out in Appendix 2) comply with:
  - the Articles
  - this Scheme; and
  - the Scheme of Delegation and the Decision Making Matrix
- ensure they understand their duties, rights and responsibilities, and that they are familiar with the function and role of the Academy Trust
- not misuse information gained in the course of their Trusteeship for personal gain, nor seek to use the opportunity of service to promote their private interests or those of connected persons, firms, businesses or other organisations; and
- participate actively in the induction process and any relevant training.

### 4.2 Constitution of the Board of Trustees

The minimum number of Trustees is three although the number of Trustees is not subject to any maximum.

The **Board of Trustees** is constituted as follows:

- up to 12 Trustee(s) appointed by Members
- the CEO (if approved by the Members)
- at least two parent Trustees elected by the Parent Local Governors of the LGBs, unless there is a minimum of two Parent Local Governors serving on the LGB; and
- co-opted Trustees (appointed by Trustees who are not themselves co-opted Trustees).

The Trustees shall elect a Chair and Vice-Chair from among their number each academic year.

The DfE's Governance Handbook (as updated from time to time) require that there is an appropriate mix of skills represented on the Board of Trustees and that those making the appointments onto the Board bear in mind the need for the skills mix when making their appointments.

#### 4.3 The Appointment of Trustees

On appointment, all Trustees shall be required to:

- undergo an enhanced Disclosure and Barring Service check
- complete a Trustee declaration (attached at Appendix 3)
- complete an AP01 form for submission by the Company Secretary to Companies House (either in paper form or electronically); and
- complete a declaration of business interests form.

The Company Secretary shall update the register of Trustees in the statutory books. As of 1 September 2016, the Handbook requires the appointment of any new Trustee to be notified to the DfE via GIAS within 14 days of appointment to enable an assessment of his or her suitability.

#### 4.4 Recruitment of Trustees

It is essential that the Board of Trustees has a proper mix of skills and experience. The Trustees must therefore be able to identify potential new Trustees in order to plan for succession which combines continuity of experience and expertise with new ideas and energy.

The Board as a whole is responsible for ensuring that:

- the skills of any new Trustees fit in with the Academy Trust's requirements in the short, medium and longer term
- each new Trustee is not disqualified from acting as a Trustee by any provision of the Academy Trust's Articles (including the requirement that he is not disqualified as a company director or charity trustee)
- there is a system in place which ensures that all relevant checks, including an enhanced DBS check (countersigned by the Secretary of State in the case of a new Chair), are completed before or as soon as practicable after a Trustee takes up position; and
- the new Trustee understands the responsibility he or she is taking on and consents to act as a Trustee.

Each new Trustee will be properly inducted to ensure that he or she understands the nature and extent of his role and responsibilities. It is the duty of a new Trustee to ensure that he or she is familiar with the Objects of the Academy Trust; its history and ethos and the nature and extent of its activities; and the content of the Academy Trust's Articles.

The Trustees shall provide each new Trustee with a copy of:

- the Articles
- this Scheme; and
- the Scheme of Delegation and the Decision Making Matrix.

New Trustees should also be provided with copies of the Academy Trust's annual report and financial statements from the previous three years.

#### 4.5 Training and development of Trustees

The Trustees shall ensure that the Board has the skills and experience needed to perform its functions effectively. Trustees shall also be kept up to date with developments in the legal and regulatory framework in which the Academy Trust operates.

The Trustees must have in place a system for evaluating Trustees, with a view to identifying potential gaps in their skills and any requirements for training. Such evaluation shall be carried out annually.

#### 4.6 Accountability of Trustees

The Trustees are chiefly accountable to:

- the beneficiaries of the Academy Trust (pupils at the Academies and their parents) and to the local community for the quality of education and pastoral care at the Academies, for matters of health and safety and for safeguarding and promoting the welfare of the students
- the DfE, the ESFA and specifically the Secretary of State under the terms of the Funding Agreement
- the Secretary of State (in his or her role as principal regulator in respect of charity matters) for operating the Academy Trust for the public benefit, for the prudent management of the Academy Trust and its financial efficiency, and for compliance with legislation including charities legislation
- the employees of the Academy Trust for their working environment, and for compliance with the contract of employment and employment law requirements and matters of health and safety; and
- other regulatory authorities for compliance with regulated responsibilities to which the Academy Trust and the Academies are subject.

#### 4.7 Powers, functions and responsibilities of Trustees

The Board of Trustees is responsible for the governance; strategic direction; and overall performance of the Trust and all its schools.

The Trustees act collectively and retain ultimate accountability for ensuring that the Trust:

- Advances its charitable objects
- Complies with the Articles of Association; Funding Agreements; and the Academy Trust Handbook
- Operates with financial probity; regularity; and propriety
- Delivers high-quality education; safeguarding; and pupil outcomes
- Maintains effective systems of risk management; internal control; and assurance

In discharging these responsibilities; the Trustees shall:

- Establish the vision; mission; and strategic priorities of the Trust
- Set and approve the Trust's strategic plan
- Approve the annual budget; three-year financial plan; and reserves policy

- Approve the Risk Management Framework; risk appetite; and internal scrutiny programme
- Monitor performance against educational; financial; and operational targets
- Hold the Chief Executive Officer to account for the performance of the Trust

#### **4.7a Policy Architecture and Oversight**

The Trust operates a structured policy framework to ensure clarity of accountability; consistency across schools; and compliance with statutory and regulatory requirements.

#### **4.7b Tier 1 – Trust-Wide Policies**

Tier 1 policies are strategic; statutory; or risk-critical policies which apply across all schools within the Trust.

These policies:

- Are approved by the Board of Trustees
- Are mandatory for adoption across all schools
- Reflect the Trust’s vision; values; and statutory obligations
- Are reviewed at least annually; or in accordance with statutory guidance

Tier 1 policies include; but are not limited to:

- Safeguarding and Child Protection
- Attendance
- Complaints
- Health and Safety
- Risk Management
- Financial Regulations
- Whistleblowing
- Data Protection

The Board retains ultimate accountability for ensuring that Tier 1 policies are effectively implemented; monitored; and reviewed.

#### **4.7c Tier 2 – School-Level Adaptation Policies**

These policies:

- Are approved in accordance with the Scheme of Delegation
- Must align to the Trust’s Tier 1 framework and strategic direction
- Must not contradict Trust-wide policy
- Are subject to oversight through Local Governing Bodies and relevant Board committees

Headteachers are responsible for ensuring compliance with both Tier 1 and Tier 2 policies within their schools.

#### **4.7d Named Trustee Roles**

The Board shall appoint:

- A Named Safeguarding Trustee; responsible for providing strategic safeguarding oversight and receiving assurance that safeguarding systems are effective and compliant with statutory guidance
- Such additional link Trustees as the Board determines necessary; including for example SEND or other statutory areas

The Named Safeguarding Trustee shall work closely with the Chief Executive Officer; Designated Safeguarding Leads; and the Standards Committee to provide assurance to the Board that safeguarding practice is robust; compliant; and effective.

#### **4.7e Curriculum and Standards Oversight**

The Board retains ultimate responsibility for the approval of the Trust's curriculum policy and ensuring that a broad; balanced; ambitious; and statutory-compliant curriculum is delivered across all schools.

The Standards Committee shall provide strategic oversight of:

- Curriculum intent; implementation; and impact
- Educational performance; pupil progress; and attainment
- School improvement planning
- Safeguarding effectiveness
- Inclusion; SEND; and attendance

The Committee shall provide assurance to the Board that standards are high; that improvement is sustained; and those statutory requirements are met.

#### **4.7f Delegation and Accountability**

While Trustees may delegate certain functions to committees; Local Governing Bodies; or the executive leadership team; delegation does not remove ultimate accountability from the Board.

- All delegated responsibilities are defined within the Scheme of Delegation and RACI Matrix.
- Where any ambiguity arises; the Scheme of Delegation shall prevail.
- The Trustees shall review delegated arrangements annually to ensure they remain effective; proportionate; and aligned to the Trust's strategic priorities.

The duties and responsibilities of the Trustees are explained in further detail in Appendix 4 and *CC3: the essential trustee: what you need to know, what you need to do* (Charity Commission, July 2015).

#### 4.8 Conducting Trustees' business

The Trustees are required to:

- act together and in person and not delegate responsibility of the Academy Trust to others (save as may be permitted by the terms of the Articles with regard to certain functions including, for example, the creation of the LGBs)
- act strictly in accordance with the Articles
- act in the Academy Trust's interests only and without regard to their own private interests
- manage the Academy Trust's affairs prudently
- not take personal benefit from the Academy Trust unless expressly authorised by the Articles or the Charity Commission; and
- take proper professional advice on matters on which they are not themselves competent.

The Trustees should also hold the CEO, the Heads and the COO accountable. They should offer support, constructive advice, be a sounding board for ideas, a second opinion on proposals and help where needed, but will also challenge, ask questions, seek information and improve proposals where appropriate and at all times act in the best interests of the Academy Trust.

The Trustees shall have regard to the framework for inspecting schools in England under section 5 of the Education Act 2005 (as amended) issued by the Office for Standards in Education, Children's Services and Skills (**Ofsted**).

The Trustees shall have regard to the Academy Trust Handbook, which shall be circulated to all Trustees.

#### 4.9 Chair of Trustees

The Board shall appoint an individual from among their number to act as Chair. The terms of the Chair's appointment are set out in Article 82. A change of Chair will require a notification to be made to the DfE, including a DBS disclosure form to be submitted via the DfE.

The main role of the Chair is to chair meetings of the Board of Trustees. He or she also provides leadership to the Trustees and acts as the main point of contact between the Trustees and the CEO and COO.

Apart from any special responsibilities or powers given to the Chair in the Articles of Association (e.g. the right to chair meetings of the Board of Trustees and to have a second or casting vote in any case of an equality of votes at a meeting of the Board of Trustees), the Chair has no special powers or rights over any other Trustee. If the Chair is to carry out certain specific functions (for example, the power to approve an overspend in a certain area of the budget or the CEO's appraisal) then this must be delegated to him by the Board in accordance with an appropriate power of delegation in the Academy Trust's Articles.

#### 4.10 Meetings of Trustees

There will be at least three meetings of the Trustees in every academic year. Meetings will normally be held towards the end of each term and the dates will be published at the beginning of each academic year.

All meetings of the Trustees shall be convened and conducted as provided by the Articles.

Each meeting of the Trustees will ordinarily cover the following:

- a report on the financial position, including income and expenditure and financial commitments against agreed budgets
- whether adequate financial monitoring of budgets and activities is being undertaken
- progress on any action identified to improve financial arrangements
- significant contracts proposed to be entered into
- details of any significant matters affecting:
  - staff
  - pupils' welfare or education; and
  - assets.

In consultation with the Chair, the Clerk to the Board of Trustees shall prepare an annual plan for the meetings of the Trustees.

#### 4.11 Governance Effectiveness and Review

##### 4.11a Board Self-Evaluation

The Board of Trustees shall undertake an annual review of its effectiveness.

This review shall include consideration of:

- Board composition; skills; and succession planning
- Effectiveness of committees
- Quality of challenge and strategic oversight
- Compliance with statutory and regulatory requirements
- Impact of governance on educational and financial outcomes

The outcomes of the review shall inform trustee development; recruitment; and governance improvement planning.

##### 4.11b External Governance Review

The Trust shall commission an independent external review of governance at least once every three years.

The review shall evaluate:

- Board structure and effectiveness
- Alignment between governance and executive leadership
- Compliance with the Academy Trust Handbook
- Committee effectiveness
- Risk and assurance arrangements

The findings shall be reported to the Board; and an action plan agreed and monitored.

#### **4.11c Publication of Governance Information**

The Trust shall publish governance information in accordance with statutory requirements and the Academy Trust Handbook.

This shall include:

- Names of Members and Trustees
- Committee membership
- Terms of office
- Attendance records
- Relevant business interests
- Scheme of Delegation

This information shall be maintained on the Trust website and updated regularly.

The Board shall review compliance with statutory website requirements at least annually.

This review shall include governance information; statutory policies; funding and financial reports; attendance records; and equality information.

The Scheme of Delegation; Annual Accounts; and Governance Attendance Record shall be published and maintained as current.

#### **4.11d GIAS Compliance**

The Trust shall ensure that governance information is kept up to date on the Department for Education's Get Information About Schools (GIAS) system.

Updates shall be made within required statutory timeframes following:

- Appointment or resignation of Members
- Appointment or resignation of Trustees
- Change of Chair
- Change of Accounting Officer

#### 4.12 Risk management

The Charities SORP (FRS 102) sets out the requirements for reporting on the risks facing a charity. These requirements apply to all charities that meet the statutory audit threshold.

Where the Academy Trust meets the audit threshold, the Trustees' Annual Report must include:

- A description of the principal risks and uncertainties facing the Academy Trust and any subsidiary undertakings, as identified by the Trustees; and
- A summary of the Trustees' plans and strategies for managing and mitigating those risks.

Trustees must identify specific risks and describe the measures in place to manage or mitigate them, rather than relying on general statements regarding risk management.

The Trustees are therefore responsible for:

- Identifying the principal risks that apply to the Academy Trust, including:
  - Operational risks (employment matters; health and safety; safeguarding; fraud; service quality; and service development)
  - Financial risks (accuracy of financial information; cash flow; reserves; funding sustainability; and value for money)
  - External risks (changes in government policy; economic factors; demographic change; and reputational risk)
  - Regulatory and compliance risks (compliance with legislation; statutory guidance; funding agreement requirements; and regulatory expectations)
- Determining, where appropriate taking professional advice, how those risks should be managed or mitigated; and
- Making appropriate disclosures regarding risk management in the Academy Trust's Annual Report and Accounts.

The following policies shall be approved by the Trustees:

- A Risk Management Policy
- A Contingency and Business Continuity Plan
- A Fraud Policy
- A Whistleblowing Policy

The Finance; Audit and Risk Committee (FARC), supported by nominated Trustees and the COO, shall prepare and maintain a strategic risk register for approval by the Trustees and Local Governing Bodies.

The strategic risk register shall:

- Identify strategic risks facing the Trust
- Allocate named risk owners
- Be reviewed regularly
- Inform internal scrutiny planning
- Be reported to the Board through the Finance; Audit and Risk Committee

Audit and assurance oversight forms a core function of the Finance; Audit and Risk Committee.

#### 4.13 Internal Scrutiny

The Trust shall maintain an independent internal scrutiny function in accordance with the Academy Trust Handbook.

Internal scrutiny shall:

- Provide independent assurance on the adequacy and effectiveness of financial and non-financial controls
- Be independent of executive leadership and operational management
- Report directly to the Finance; Audit and Risk Committee
- Produce a written report following each review
- Provide an annual summary report to the Board of Trustees

The Board shall approve the annual internal scrutiny plan; and monitor the implementation of recommendations.

#### 4.14 The management of conflicts of interest

The Companies Act 2006 imposes a statutory duty on the Trustees to avoid situations in which they have or could have an interest which conflicts (or could conflict) with the interests of the Academy Trust. The duty is to:

- declare the nature and extent of any interest in any matter relating to the Academy Trust; and
- avoid any conflict of interest between that interest and the interests of the Academy Trust.

In addition, charity law and guidance issued by the Charity Commission confers obligations on the Trustees to manage any conflict between a Trustee's duty to the Academy Trust and their own personal interests or for a Trustee to be influenced by conflicting duties to the Academy Trust and a third party.

Trustees which are nominated or appointed by other institutions have the same powers and duties as all other Trustees and owe their duties to the Academy Trust only. They must not allow those duties to come into conflict with duties they may owe to their nominating / appointing body.

All Trustees are required to complete a declaration of business interests form on appointment and on an annual basis (including a nil return). Such declarations shall include:

- all business and financial interests such as directorships, shareholdings, and other appointments of influence within a business or other organisation; and
- interests of related persons including, but not limited to, parents, spouses, children, personal and business partners.

The Company Secretary shall be responsible for maintaining a register of business interests including nil returns.

Each meeting of the Trustees shall include a standing agenda item for those attending to declare any changes to their declarations of interest.

No Trustee shall receive any payment for their work as a Trustee, other than payment of reasonable out of pocket travel, accommodation and other expenses which shall be subject to the prior written approval from the COO.

## 5 Delegation of Powers of Trustees

Trusteeship (and directorship which necessarily follows) is a personal office of trust and responsibility and this cannot be transferred to another individual. However, in order to ensure the proper management of the Academies, the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations.

It is for the Board of Trustees to determine what decisions it will take for itself, what will be delegated to committees, working groups or individual Trustees (e.g. the Chair) and what will be delegated to the CEO and the COO. The Trustees must also consider when and from whom they should take professional advice.

Delegation can be made to:

- Trustee committees (or individual Trustees)
- the LGBs
- the CEO and the senior leadership team; and
- the Heads.

In determining whether delegation is appropriate, the Trustees will have regard to the following principles:

- non-executive powers must be exercised by the Trustees personally and may not be delegated
- except when it is impracticable to do so, executive powers should be delegated to the Chief Executive Officer, the Heads and the COO, who may authorise further delegation; and
- every act of delegation is only a delegation of powers and does not relieve the Trustees of responsibility.

The Trustees must not delegate any of their powers listed in Appendix 5 (**Reserved Matters**).

## 6 Committees

The Trustees may appoint committees with functions related to the Academy Trust. The constitution, membership and proceedings of any committee shall be determined by the Trustees under terms of reference.

Each committee shall be chaired by a Trustee (with the exception of an LGB which may or may not be chaired by a Trustee).

Membership of a committee may include persons who are not Trustees provided that (with the exception of the LGBs) a majority of the members of the committee is Trustee.

Except in the case of an LGB, no vote on any matter shall be taken at a meeting of a committee of the Trustees unless the majority of members of the committee present are Trustees.

The Trustees shall ensure that they receive adequate feedback on the work of any committees.

- Committees will act in an advisory capacity to the Trustees, except where powers have been specifically delegated to them by the Trustees. The following committees will be established: Finance; Audit and Risk Committee; and
- Standards.
- Governance Working Group

The Trustees may also appoint additional committees from time to time.

The terms of reference of each committee of the Trustees must be approved by the full Board of Trustees and reviewed at least once in every 12 months. They provide the sole agreed framework within which each committee operates.

## 7 Local Governing Bodies

The Trustees shall establish a Local Governing Body (LGB) in respect of each Academy, although the Trustees may, where appropriate, establish a single LGB in respect of two or more Academies.

Each LGB is a committee of the Board of Trustees.

LGBs shall be constituted and shall operate in accordance with Terms of Reference approved by the Board of Trustees. The Terms of Reference may be amended by the Trustees from time to time.

The Terms of Reference shall clearly set out the functions and powers delegated to the LGB by the Trustees. All delegated authority shall be consistent with, and subject to, the Scheme of Delegation.

In summary, the role of the LGB is to:

- Provide advice and local insight to the Trustees regarding the functioning and performance of the Academy
- Act as a link between the Academy Trust, parents, staff and the wider Academy community
- Provide appropriate support and constructive challenge to the Headteacher and senior leadership team
- Monitor the implementation of the School Improvement Plan and the impact of strategic priorities
- Assist with and review the implementation of delegated policies, including areas such as admissions and behaviour

Local Governing Bodies shall have no powers other than those expressly delegated to them within the Scheme of Delegation and their approved Terms of Reference.

Local Governing Bodies may not:

- Enter into contracts on behalf of the Trust
- Employ, dismiss, or determine the pay of staff
- Approve Trust or school budgets
- Amend Trust-wide policies
- Create sub-committees exercising governance powers

unless expressly authorised in writing by resolution of the Board of Trustees.

The Board of Trustees retains ultimate accountability for all functions and reserves the right to amend, suspend, or withdraw delegated powers at any time.

## **8 Intervention Rights**

### **8.1 Intervention in times of concern**

The Board of Trustees remains ultimately responsible for the Academy Trust and the conduct of the Academies. The operation of the various elements of governance outlined in this Scheme of Governance and the Scheme of Delegation and Decision Making Matrix are crucial to its success. However, there will be circumstances (more the exception than the norm) where the Board of Trustees might need to intervene and, for example, withdraw delegated authority for a particular element of governance.

In such circumstances, the Board of Trustees, along with the CEO and the senior leadership team, would work closely with any Academy or Academies concerned and those involved in their governance who would be expected to promptly implement any advice or recommendations made by the Board of Trustees and the senior leadership team.

The Board of Trustees reserves the right to review or remove any power or responsibility which it has delegated, in particular, in circumstances where serious concerns in the running of an Academy or Academies are identified (either internally within the Academy Trust or by a third party), including where:

- there are concerns about financial matters
- insufficient progress is being made against educational targets (including where intervention by the Secretary of State is being considered or carried out)
- there has been a breakdown in the way the Academy is managed or governed
- the safety of pupils or staff is threatened, including a breakdown of discipline; or
- the Board of Trustees considers such removal of power or responsibility appropriate in all of the circumstances.

### **8.2 The delegated budget**

In line with their duties and responsibilities as trustees and directors and irrespective of the delegations set out in the Scheme of Delegation and the Decision Making Matrix, the Board of Trustees shall be entitled to determine that a proportion of the budget in respect of the Academy be held centrally for the following reasons:

- to be allocated to the provision of central services received by the Academy
- in pursuance of the Academy Trust's reserve policy; and / or
- as otherwise may be determined by the Board acting reasonably and in the best interests of the Academy Trust.

## **9 The Company Secretary and the Clerk**

The Company Secretary (if one is appointed) is appointed and removed by the Trustees.

If appointed, the Company Secretary is the chief administrator with respect to the Academy Trust's administration affairs. If a Company Secretary is not appointed, then the Clerk to the Trustees is the chief administrator with respect to the Academy Trust's administration and affairs.

The Trustees shall also appoint a Clerk (who may or may not also be the Company Secretary). The Clerk shall not be a Trustee (CEO) or a Head. However, if the Clerk fails to attend a meeting of the Trustees, the Trustees may appoint any one of their number or any other person to act as Clerk for the purposes of that meeting.

## 10 CEO

The Trustees may appoint a chief executive officer (who will be known as the CEO).

The role of the CEO is to provide professional leadership; strategic management; and direction for the Academy Trust and its Academies. The CEO may also serve as a Head of one of the Academies where appropriate.

Subject to the approval of the Members; the CEO may serve as an ex-officio Trustee in accordance with the Articles of Association.

The CEO reports to the Board of Trustees and shall comply with any reasonable direction issued by the Trustees when acting on behalf of the Academy Trust.

The CEO is the Accounting Officer for the Trust and is personally responsible to the Board for:

- Regularity and propriety
- Securing value for money
- Prudent and economical administration
- Efficient and effective use of resources
- Compliance with the Academy Trust Handbook and Funding Agreements

The CEO must raise concerns with the Board where a proposed action may breach statutory; regulatory; or propriety requirements.

### 10a Core Responsibilities

Broadly; the CEO is responsible for:

- The internal organisation; leadership; and management of each Academy
- Advising on and implementing the Trust's strategic framework
- The implementation of all policies approved by the Trustees
- Ensuring effective safeguarding systems across all schools
- Ensuring compliance with statutory guidance and regulatory requirements
- Ensuring effective financial management systems are in place; working closely with the Chief Financial Officer
- Ensuring operational risk is identified; managed; and reported
- Overseeing implementation of internal scrutiny recommendations

### 10b Executive Leadership

The CEO leads and line manages the executive leadership structure; including:

- The Chief Operating Officer (COO)
- Members of the Trust Executive Leadership Team (TELT)
- Headteachers

The CEO has authority to direct Headteachers in relation to operational; educational standards; safeguarding; and matters which could adversely affect the financial or reputational position of the Trust.

**10c Performance Management and Accountability**

- The CEO is accountable to the Board of Trustees.
- The Trustees shall undertake the annual appraisal of the CEO.
- The CEO is responsible for the performance management and appraisal of the Executive Leadership Team; and for ensuring robust appraisal processes are in place for Headteachers.

**10d Curriculum Oversight**

The CEO shall formulate aims; objectives; policies; and targets for the Trustees to consider; and shall report on progress at each Board meeting.

The CEO is responsible for preparing and reviewing the Trust's curriculum policy in consultation with Headteachers. Final approval of the curriculum policy rests with the Board of Trustees; with detailed monitoring delegated to the Standards Committee.

The Trustees may delegate such specific powers as they consider are required by the CEO for the carrying out any of the above responsibilities.

## **11 Chief Operating Officer (COO)**

The Trustees shall appoint a Chief Operating Officer (COO) to provide strategic and operational leadership across the Trust's business; estates; compliance; and infrastructure functions.

The COO reports directly to the Chief Executive Officer and is accountable to the CEO for the effective delivery of operational services across the Trust.

The COO does not hold independent governance authority; and operates within the executive powers delegated by the Board of Trustees to the CEO.

### **11a Core Responsibilities**

The COO is responsible for ensuring robust operational systems; regulatory compliance; and efficient business management across all schools within the Trust.

This includes responsibility for:

#### **Operational Compliance**

- Ensuring compliance with statutory; regulatory; and contractual obligations
- Monitoring implementation of Trust-wide operational policies
- Supporting schools in meeting operational and regulatory standards
- Ensuring effective systems of internal control are maintained

#### **Estates and Facilities Management**

The COO has strategic oversight of the Trust's estate's function and shall line manage the Trust's Estates Lead.

Responsibilities include:

- Delivery of the Trust's estates strategy and asset management plan
- Oversight of capital works and maintenance programmes
- Ensuring compliance with premises-related statutory requirements
- Monitoring condition; suitability; and safety of school sites

The COO shall report regularly to the Finance; Audit and Risk Committee (FARC) on estates performance; compliance; and associated risks.

#### **Health and Safety**

The COO shall ensure that a robust Health and Safety framework is implemented across all schools.

This includes:

- Oversight of statutory compliance
- Monitoring of incidents and risk mitigation
- Ensuring appropriate policies; procedures; and risk assessments are in place

- Providing assurance to Trustees regarding safety compliance

### **IT and Infrastructure**

The COO shall line manage the Trust IT Lead and oversee the Trust's IT and digital infrastructure.

Responsibilities include:

- Ensuring secure; resilient; and compliant IT systems across the Trust
- Oversight of cyber security implementation and data protection controls
- Monitoring ICT service delivery and infrastructure performance
- Escalating cyber or infrastructure risks through the Risk Management Framework

### **Business Services**

- Leadership of central operational services
- Procurement and contract management oversight
- Operational efficiency and value for money

### **Risk and Assurance**

The COO is responsible for ensuring that operational risks are identified; mitigated; and reported through the Trust's Risk Management Framework.

Operational risk matters shall be escalated to the CEO; and where appropriate; to the Finance; Audit and Risk Committee.

### **11c Accountability and Reporting**

The COO:

- Reports directly to the Chief Executive Officer
- Provides reports to the Board and its committees as required
- Supports the CEO in providing operational assurance to Trustees

Ultimate accountability for operational performance remains with the Chief Executive Officer; and collectively with the Board of Trustees.

## 12 The Accounting Officer

The CEO shall have the role of **Accounting Officer** as set out in the Academy Trust Handbook.

The Accounting Officer is personally responsible to the Trustees for ensuring:

- regularity and propriety, that is dealing with money in accordance with applicable legislation, authority and rules and with fairness and integrity (including avoidance of personal gain)
- prudent and economical administration, which is concerned with securing value for money
- avoidance of waste and extravagance
- efficient and effective use of available resources; and
- the day-to-day organisation, staffing and management of the Academy.

Where the Accounting Officer considers that a proposed action of the Board; a Committee; or an individual Trustee would breach the requirements of regularity; propriety; value for money; or Managing Public Money; the Accounting Officer shall raise the matter formally with the Board.

If the concern is not resolved to the satisfaction of the Accounting Officer; the Accounting Officer must notify the Education and Skills Funding Agency (ESFA) and the Department for Education where required under the Academy Trust Handbook; in writing and without delay.

The Accounting Officer shall be required to provide a statement on governance, regularity, propriety and compliance in the Academy Trust's annual report. The format of the statement is included within the Accounts Direction which is issued annually.

The Accounting Officer may delegate or appoint others, such as the Finance Director, to assist in carrying out these responsibilities.

### 13 Chief Operating Officer

The Trustees shall appoint a Chief Operating Officer in accordance with the Academy Trust Handbook.

In accordance with the Academy Trust Handbook, the Chief Operating Officer is responsible for, along with a wider remit, the following responsibilities:

- the day to day management of financial issues
- the preparation and management of the Academy Trust's budget
- the maintenance of effective systems of internal control; and
- ensuring that the annual accounts are properly presented and adequately supported by the underlying books and records of the Academy Trust.

The Chief Operating Officer is responsible for guiding the Trustees on financial, audit and charity accounting matters, as well as dealing with the day to day management of the financial position of the Academies and the maintenance of effective controls.

The Chief Operating Officer shall report to the Trustees and the Finance; Audit and Risk Committee at least termly.

## **14 Trust Executive Leadership Team (TELT)**

The Trust Executive Leadership Team (TELT) is the collective executive leadership group responsible for supporting the Chief Executive Officer in the strategic and operational leadership of the Trust.

TELT operates under the authority of the CEO and does not hold independent governance powers. The Team functions within the executive authority delegated by the Board of Trustees to the CEO.

### **14a Purpose**

The purpose of TELT is to:

- Provide collective executive leadership across the Trust
- Ensure delivery of the Trust's strategic priorities
- Drive school improvement; operational performance; and compliance
- Support collaboration; consistency; and shared practice across schools

### **14b Composition**

TELT shall comprise senior executive leaders appointed by the Board; including but not limited to:

- Chief Executive Officer
- Chief Operating Officer
- Other executive leaders as determined by the CEO and approved by Trustees

Membership may be reviewed periodically to ensure alignment with Trust priorities and organisational structure.

### **14c Responsibilities**

Under the leadership of the CEO; TELT shall:

- Lead the implementation of the Trust's strategic plan
- Monitor educational; financial; and operational performance
- Ensure effective safeguarding systems are maintained
- Oversee delivery of Trust-wide initiatives
- Identify and manage cross-Trust risks
- Promote high standards of leadership; teaching; and pupil outcomes

TELT shall ensure that strategic decisions approved by Trustees are translated into effective operational practice across all schools.

### **14d Accountability**

TELT is accountable to the Chief Executive Officer.

Members of TELT are line managed by the CEO; and are subject to the Trust's performance management processes.

TELT does not have authority to approve budgets; or governance decisions independently of the CEO and Board of Trustees.

All governance authority remains with:

- The Board of Trustees
- Board Committees; where powers are formally delegated

Ultimate accountability for executive leadership rests with the CEO; and collectively with the Board of Trustees.

## 15 Financial regulations manual

The financial regulations manual (**Finance Manual**), which shall be prepared by the COO, shall be adopted by the Trustees, normally on the recommendation of the Finance; Audit and Risk Committee.

The purpose of the Finance Manual is to ensure that the Academy Trust maintains and develops systems of financial control which conform with the requirements both of propriety and of good financial management.

The Finance Manual shall include:

- finance authorisation levels, which shall confirm the delegation of authority to key individuals up to a specified value
- appropriate procedures to monitor cash requirements to ensure that the Academy Trust will not become overdrawn
- a competitive tendering policy for larger purchases in accordance with the Academy Trust Handbook; and
- a capitalisation limit for assets.

The COO shall be responsible for preparing a policy for the disposal of assets for approval by the Trustees with a view to ensuring the best possible value is obtained from any disposal.

## 16 Budget approval

The Trustees shall be presented with a balanced budget for the year to 31 August for submission to the ESFA by 30 June or within six weeks of receipt of the final funding letter.<sup>1</sup>

The Chief Financial Officer shall be responsible for:

- establishing a written procedure and timetable for setting a budget in advance of each academic year
- setting the annual budget (including the assumptions on which it is based) for approval by the Trustees and for monitoring progress against it during the year
- ensuring that all significant in year amendments to budgets are properly notified to the Trustees for approval. The Finance; Audit and Risk Committee shall determine the appropriate thresholds and procedures for this
- reporting to the Trustees on the accuracy of the assumptions which have been used; and
- reporting to the Trustees on the key financial performance indicators included in the budget.

The Trustees shall be responsible for approving the final audited accounts and the Academy Trust's accounting policies, as set out therein.

The Trustees shall ensure that they put in place procedures to review their own effectiveness and skills available in overseeing the Academy Trust's financial performance, and the soundness of its internal control.

## 17 The Heads of the Academies

The Heads are responsible to the Trustees for:

- the internal organisation, management and control of his or her respective Academy
- the implementation of all policies approved by the Trustees that relate to his or her respective Academy; and
- the direction of the teaching and implementation of the curriculum at his or her respective Academy.

The Trustees may delegate such additional powers and functions as they consider are required by each of the Heads to enable them to carry out the above responsibilities.

<sup>1</sup> Please note that the Education Funding Agency's deadlines and requirements may change from time to time.

## **18 The Relationship Between the Trustees and Senior Staff in General**

The Trustees will support and oversee the work of the CEO and the Chief Operating Officer and hold them accountable for the authority that is delegated to them and how they exercise it. The Trustees will not without good cause and consultation (where practicable) interfere in the exercise of the CEO and COO's executive powers.

The Trustees must fully consider any views and proposals relating to any matter within the non-executive powers of the Trustees which may be submitted to them by the CEO or the COO.

The CEO and COO maintain regular contact with the Chair and the Vice-Chair of Trustees and share all relevant information with them concerning the welfare and good reputation of the Academies and their community.

Any issues surrounding the performance of the CEO or the COO should be raised directly with the Chair of Trustees, and likewise, any concerns the CEO or the Chief Financial Officer have over the Trustees or one of their number should be raised with the Chair (or the Vice-Chair in the case of the Chair).

Further detail regarding the division of responsibilities between the CEO and COO shall be set out in their respective service agreements.

### **Alterations**

This Scheme may be amended by resolution of the Board of Trustees; provided that any amendment affecting the constitutional role of Members; the Articles of Association; or any Reserved Matter shall require Member approval in accordance with the Articles.

## 19 **Circulation list**

This scheme shall be circulated to Trustees of Academy Trust and others at the discretion of the Chair of the Trustees of the Academy Trust. This Scheme was approved and adopted by a resolution of the Trustees of the Academy Trust passed at a meeting held on [• 00 month year] and take effect from [• 00 month year].

**Appendix 1 Consent to be a Member**

[• Name of academy trust] (Company)

I hereby consent to being a Member of the Company.

As a Member of the Company, I hereby undertake to contribute to:

- 1 the assets of the Company in the event of it being wound up whilst I am a Member or within one year after I cease to be a Member;
- 2 payment of the debts and liabilities of the Company contracted before I cease to be a Member and of the costs, charges and expenses of winding up; and
- 3 the adjustment of the rights of the contributories among themselves, such amount as may be required;

provided that such amount does not exceed £10.

Signed .....

Full name .....

Address .....

.....

.....

.....

.....

Date .....

Please sign and retain the additional copy of this document with your records.

[• Name of academy trust]: a company limited by guarantee

**Company registration number:** [• number]

**Registered office:** [• address]

## **Appendix 2 The Seven Principles of Public Life set out by the Committee on Standards in Public Life ("the Nolan Principles")**

### **1. Selflessness**

Holders of public office should act solely in terms of the public interest.

### **2. Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **3. Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **4. Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **5. Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **6. Honesty**

Holders of public office should be truthful.

### **7. Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**Appendix 3 Trustee Declaration**

[• Name of academy trust] (Company)

I confirm that I am willing to act as a Trustee of the Company (**Trustee**). I further confirm that I am not disqualified from so acting by virtue of any provisions of the Articles of Association of the Company, including, but not limited to, the requirement that I am not disqualified from acting as a charity trustee or director by virtue of section 178 of the Charities Act 2011 (extract included below).

Signed .....

Full name .....

Address .....

.....

.....

.....

.....

Date .....

Please sign and retain the additional copy of this document with your records.

[• Name of academy trust]: a company limited by guarantee

**Company registration number:** [• number]

**Registered office:** [• address]

## **Extract from section 178 of the Charities Act 2011**

### **178 Persons disqualified from being charity trustees or trustees of a charity**

(1) A person ("P") is disqualified from being a charity trustee or trustee for a charity in the following cases—

#### **Case A**

P has been convicted of any offence involving dishonesty or deception.

#### **Case B**

P has been adjudged bankrupt or sequestration of P's estate has been awarded and (in either case)—

- a) P has not been discharged, or
- b) P is the subject of a bankruptcy restrictions order or an interim order.

#### **Case C**

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

#### **Case D**

P has been removed from the office of charity trustee or trustee for a charity by an order made—

- a) by the Commission under section 79(2)(a) or by the Commission or the Commissioners under a relevant earlier enactment (as defined by section 179(5)), or
- b) by the High Court,

on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or to which P was privy, or which P's conduct contributed to or facilitated.

#### **Case E**

P has been removed, under section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (powers of the Court of Session) or the relevant earlier legislation (as defined by section 179(6)), from being concerned in the management or control of any body.

#### **Case F**

P is subject to—

- a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/ 3150 (N.I.4)), or
- b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).

## **Appendix 4 Duties and Responsibilities of Trustees as Charity Trustees**

- 1 The Trustees (as charity trustees) must ensure that the Academy Trust remains solvent, well run and meets the needs for which it was established.
- 2 Broadly, the main powers and duties are as follows.

### **To carry out the Objects of the Academy Trust**

- 3 The Trustees will need to act in accordance with the Articles of the Academy Trust and only exercise their powers for the purposes for which they are conferred. In practical terms, this means that the Trustees must ensure that all of the Academy Trust's assets are applied for the charitable objects of the Academy Trust.
- 4 The Trustees will also need to be satisfied that they have the requisite powers to pursue a particular activity. The powers which the Trustees have are set out in the Articles.

### **To manage any risks to the Academy Trust, the Academies and their reputations**

- 5 The Trustees' Annual Report (contained with the accounts) must contain a statement confirming that "...the major risks to which the charity is exposed, as identified by the Trustees, have been reviewed and systems have been established to mitigate those risks." (See Charities (Accounts and Reports) Regulations 2008 (SI 2008/629)).
- 6 The Trustees will therefore need to identify the major risks to the Academy Trust and to the Academies; those which have a high likelihood of occurring and if they did would have a severe impact on operational performance, achievement of the Academy Trust's aims and objectives or which could damage the reputation of the Academy Trust.
- 7 The Trustees will need to put systems in place to minimise these risks. This might include transferring a risk to a third party (e.g. via insurance), avoiding the activity which gives rise to the risk or accepting it and putting processes in place to manage it. The obligation to monitor and assess risk is ongoing.
- 8 Failure of insurance may also be a major risk. Failure can arise for a number of reasons such as non-disclosure of a material fact, non-compliance with claims conditions (e.g. late notification), under-insurance or omitting to pay premiums.

### **To comply with legislation**

- 9 The Trustees are responsible for ensuring that the Academy Trust complies with relevant legislation, in particular:
  - 9.1 charity law and the requirements of the Charity Commission; and
  - 9.2 company law and the requirements of the Registrar of Companies at Companies House.

### **To observe the Academy Trust's constitution**

- 10 For charities incorporated as a company limited by guarantee, such as the Academy Trust, the constitution is the Articles of Association.
- 11 The Articles set out the charitable Objects of the Academy Trust and the powers (acting through its Trustees) that it has to fulfil these Objects.

- 12 The Trustees must ensure that the activities of the Academy Trust are within its charitable Objects and that the Academy Trust has all necessary powers to perform those activities.
- 13 The Articles of Association also prescribe how the Academies are to be governed. It sets out the rules relating to the composition of the Board of Trustees, how meetings are called and convened and decisions made etc.

**To observe fiduciary duties including the duty of care**

- 14 As charity trustees and directors, the Trustees must avoid taking any personal benefit from their position and should ensure that nothing arises from their own activities that gives rise to personal gain other than as authorised by the Academy Trust's governing instruments.
- 15 The Trustees must exercise their powers for the benefit of the Academy Trust, for the purposes for which they were given and with prudence and reasonable diligence. There are penalties for breach of these duties.
- 16 The Trustees must act in accordance with their duty of care, that is they must carry out their duties with such care and skill as is reasonable in the circumstances, having regard in particular:
  - 16.1 to any special knowledge or experience that a Trustee has or holds himself out as having; and
  - 16.2 if he or she acts as Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

**To act prudently**

- 17 The Trustees should act with the same degree of prudence as a reasonable person would act in the management of his or her own business affairs. In particular the Trustees:
  - 17.1 should ensure that the Academy Trust is and will remain solvent
  - 17.2 must not cause loss or risk to charity property or get into a conflict of interests; and
  - 17.3 are required to carry out effective risk management.
- 18 In cases of doubt or difficulty a Trustee should take legal and other expert advice. If the advice is wrong but it was reasonable for the Trustee to have relied and acted on it, he or she may be relieved of liability.

**To act impartially**

- 19 The Trustees must be free to make decisions untainted by any considerations of personal gain or other conflicts. Not only must the Articles of Association specifically permit a Trustee to take this benefit if offered, but the decision-making process behind any award must be fair and open.
- 20 If a conflict of interest arises, it should be handled with transparency and in accordance with the governing instruments.
- 21 Any nominated Trustee must act independently of his nominating body and act in the best interests of the Academy Trust.

### **To delegate**

- 22 Trusteeship is a personal office of trust and responsibility and this cannot be delegated or farmed out to another individual. The buck stops with the Trustee personally.
- 23 Academies, like any good business, need to be managed and the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations. An example is the formation of sub-committees of the Board to research certain aspects of trust work and report back for the decision making of the main Board on such issues as finance, states and buildings and curriculum.
- 24 The Trustees are entitled to trust persons in positions of responsibility until there is reason to distrust them. However, the Trustees must exercise reasonable supervision and ask questions that should be asked.
- 25 The Trustees may delegate the management of investments to expert third parties but must maintain regular checks and retain overall responsibility for those investments.
- 26 The overall test is whether a Trustee has behaved as a "prudent man or woman of business".

### **To protect and manage the property and assets of the Academy Trust**

- 27 The Trustees must at all times act to protect the property and assets of the Academy Trust and this extends to land, money and intellectual property. The following should be arranged:
  - 27.1 full insurance cover including public and employer's liability and trustee indemnity insurance
  - 27.2 full security measures to protect premises and access to sensitive and valuable documents
  - 27.3 clear office procedures and in particular systems of financial control
  - 27.4 reporting procedures for staff to report to the Board including the ability of an individual to report suspected irregularities directly to a Trustee in confidence if the occasion demands (whistleblowing)
  - 27.5 reviews of investments with or without a third party expert according to need; and
  - 27.6 land management.

### **To ensure adequacy of funds**

- 28 The Trustees must ensure the adequacy of funds for the Academy Trust's immediate needs and for its development.
- 29 The Trustees must invest trust property wisely, acting as a prudent person when making investments.
- 30 However, the pursuit of funds should not distort the aims of the Academy Trust. It is important to assess and justify why additional funds are being sought.

### **To hold and attend meetings**

- 31 The Trustees must ensure that:

- 31.1 notices go out in a timely fashion
  - 31.2 accurate minutes are taken recounting precisely all decisions taken and the background reasoning
  - 31.3 they read all minutes (Trustees are responsible for all decisions whilst whether or not they were present at a meeting)
  - 31.4 they maintain an up to date membership register
  - 31.5 they call an Annual General Meeting each year; and
  - 31.6 they call General Meetings to conduct special business where necessary.
- 32 However, in practice most of these will be delegated to the Clerk to the Trustees.

**To satisfy information requirements**

- 33 These include requirements to keep information at the registered office and to file certain documents with Companies House and the Education Funding Agency (where relevant).
- 34 In practice, administrative functions will be delegated to the Clerk to the Trustees.

**To keep proper accounts**

- 35 The Trustees must ensure that appropriately drawn and audited accounts and returns are filed with Companies House and the Education Funding Agency.

**To have regard to legal matters in general**

- 36 General legal matters include the following:
- 36.1 equal opportunities
  - 36.2 data protection
  - 36.3 child protection and safer recruitment
  - 36.4 employment law; and
  - 36.5 human rights and procedural fairness.

**Not to receive a benefit from the Academy Trust unless authorised**

- 37 Trustees must not receive any personal benefit from the Academy Trust in return for any service they provide to it unless they have express legal authority to do so. That legal authority can come either from the Academy Trust's governing instruments or from the Charity Commission.
- 38 The prohibition from receiving benefits is not limited to monetary payments and 'benefits' and also includes those to spouses, partners, relatives and other persons or businesses connected with the Trustee.
- 39 It is important that the Trustees do not receive any unauthorised benefits as the Commission's starting point is to require the repayment of any unauthorised benefits.

### **To manage and minimise any liabilities**

- 40 As a distinct legal entity, a charitable company is liable for its own debts. However, the law allows a personal liability to be attributed to individual Trustees where the Academy Trust fails to fulfil its obligations and where that Trustee is held to be responsible for the loss caused by his or her negligence or deliberate fault.

### **Technical defaults**

- 41 The Trustees, as directors, can be liable for a fine for breaching company and charity law requirements.

### **Criminal liability**

- 42 A Trustee who knowingly and wilfully authorises or permits a company's criminal acts can become liable for those acts. These include not just financial or "white collar" crime, but also crimes such as corporate manslaughter.

### **Contractual liabilities**

- 43 The Trustees may incur personal liabilities if they personally contract with third parties in certain limited circumstances, including:
- 43.1 where they do not make it clear that they are a Trustee and contracting on behalf of the Academy Trust
  - 43.2 where the Trustee's authority is exceeded and the transaction is not ratified by the full Board of Trustees; and
  - 43.3 where a Trustee makes a fraudulent or negligent misrepresentation during negotiations; or where a Trustee guarantees the Academy Trust's obligations, and the Academy Trust defaults.

### **Insolvency**

- 44 Notwithstanding its existence as a charity with considerable assets, as a company the Academy Trust is subject to the insolvency legislation and the Trustees should be aware of the implications of this. In the unlikely event that the Academy Trust becomes insolvent, the acts of the Trustees will be subject to scrutiny.
- 45 If it can be shown that a Trustee knew or ought to have known that there was no reasonable prospect of avoiding insolvent liquidation and he subsequently fails to take every step to minimise the potential loss to the Academy Trust's creditors (**Wrongful Trading**), the Court can order that Trustee to make a personal contribution to the Academy Trust's assets to meet the claims of its creditors to the extent that they have been put in worse position by his failure to act.
- 46 The Trustees can be made liable for the acts and omissions of their co-directors where they have proved to have failed to investigate or supervise activity.
- 47 Honesty and good faith alone will not avoid personal liability for Wrongful Trading. A Trustee's general knowledge, skill and experience are also taken into account.

### Mitigation of the risk of personal liability

- 48 As directors of an incorporated entity, the Trustees will generally have no personal liability for the debts or liabilities of the Academy Trust. Trustees may in certain circumstances become personally liable if they act in breach of the duties and statutory / regulatory obligations referred to above, but the risk in relation to this for the Trustees can be mitigated to a significant extent:
- 48.1 Indemnity insurance can put in place to protect Trustees. Provided that the terms of the insurance policy are complied with (e.g. premiums are paid up and circumstances which could give rise to a claim are notified to the insurer), this will protect Trustees unless the claim relates to:
- 48.1.1 any act or omission which the Trustees knew to be a breach of trust
- 48.1.2 a breach of duty which was committed by the Trustees in reckless disregard of whether it was a breach of trust or breach of duty or not; and / or
- 48.1.3 if it relates to the costs of any unsuccessful defence to a criminal prosecution brought against the Trustees in their capacity as directors.
- 48.2 In addition to indemnity insurance, the Courts and the Charity Commission have a power to relieve a Trustee from personal liability where it is considered that a Trustee has acted honestly and reasonably and it is fair in the circumstances to do so, notwithstanding the consequences of his or her breach. Where, on the other hand, the Trustee has been involved in misconduct or mismanagement that was clearly intended or undertaken recklessly, the Court or Commission is unlikely to relieve him or her from personal liability.
- 48.3 The Articles expressly provide that the Trustees, officers and auditors of the Academy Trust are entitled to be indemnified by the Academy Trust if they incur any costs as a result of successfully defending legal proceedings or successfully making an application for relief from liability to the Court.

### Conclusion

- 49 Instances of personal liability for Trustees are rare. The key points for Trustees are to ensure that they understand their legal duties and obligations, to ensure that their powers are properly exercised and, if they are in any doubt, to take professional advice.
- 50 We do recommend that Trustees also read one of the Charity Commission's publications *CC3: the essential trustee: what you need to know, what you need to do* (Charity Commission, July 2015), which provides additional details on these matters. This guidance can be found on the following link:  
<http://www.charitycommission.gov.uk/publications/cc3.asp>.

## Appendix 5 Reserved Matters

The Reserved Matters are:

### Members

(subject to such other consents / requirements as might be required by law or the Funding Agreement)

- 1 To change the name of the Academy Trust
- 2 To change the Objects (which would require Charity Commission and Secretary of State consent in any event)
- 3 To change the structure of the Board of Trustees
- 4 To amend the Articles of Association
- 5 To require amendments to this Scheme where necessary to ensure compliance with the Articles of Association; charity law; or Funding Agreement.
- 6 To pass a resolution to wind up an Academy or the Academy Trust
- 7 To appoint the auditors (save to the extent that the Trustees may make a casual appointment)

### Trustees

(subject to such other consents / requirements as might be required by law or the Funding Agreement)

- 8 To change the name of the Academies
- 9 To determine the educational character, mission or ethos of the Academies
- 10 To adopt or alter the constitution and terms of reference of any committee of the Board of Trustees
- 11 To terminate a supplemental funding agreement for an Academy
- 12 To establish a trading company
- 13 To sell, purchase, mortgage or charge any land in which the Academy Trust has an interest
- 14 To approve the annual estimates of income and expenditure (budgets) and major projects
- 15 To appoint investment advisors
- 16 To sign off the annual accounts
- 17 To appoint or dismiss the Chief Executive Officer; the Chief Financial Officer; the Headteachers; the Company Secretary; or the Clerk to the Trustees. These matters are Reserved Matters of the Board and may not be further delegated.
- 18 To settle the division of executive responsibilities between the Trustees on the one hand and Chief Executive Officer, the Heads and the Chief Financial Officer on the other hand, and to settle the division of executive responsibilities between those individuals
- 19 To do any other act which the Funding Agreement expressly reserves to the Board of Trustees or to another body (including for the avoidance of doubt, terminating the Funding

Agreement or any part of it)

- |    |  |
|----|--|
| 20 | To do any other act which the Articles expressly reserve to the Board of Trustees or to another body |
| 21 | To do any other act which the Board of Trustees determine to be a Reserved Matter from time to time  |