

## **Becoming a Trustee in a Multi Academy Trust – An Overview**

### **The Trustees**

The Trustees are responsible for the same three core governance functions performed by the governing body in a maintained school: setting the direction, holding leaders to account and ensuring financial probity.

They are responsible for managing the affairs of the Academy Trust and are responsible for overall performance of the Trust. It is likely that the meetings of the Trustees will be on a regular basis and will need a meeting schedule that enables effective and efficient use of Trustee time and resources. This is likely to be 6 meetings per year as the Trust becomes established.

The Trustees key responsibilities are:

- The daily running of the Trust (using a Scheme of Delegation) and the management of the business affairs;
- Ensuring the provision of quality education at the Trust
- Monitoring the performance of each Academy in the Trust
- Entering into contracts on the Trust's behalf
- Ensuring that relevant statutory documents are delivered to Companies House and the statutory books are up to date
- Managing the Academy Trust's finances and property
- Taking part and actively contributing in board meetings of the Trustees

The Department for Education expect that only one Trustee will also be a Member. This is the Chair of the Trustees.

### **Company Law Responsibilities**

Trustees will be registered as directors of the Academy Trust at the Registrar of Companies and must be aware of and work within the following recently codified duties under the Companies Act 2006:

- A duty to act within the powers granted by the Memorandum and Articles of Association and only exercise the powers for the purpose for which they are conferred
- A duty to promote the success of the Academy
- A duty to exercise independent judgment
- A duty to exercise reasonable care, skill and diligence
- A duty to avoid conflicts of interest
- A duty not to accept benefits from third parties
- A duty to declare an interest in any proposed transaction or arrangement with the Academy

Other legislation which the Trustees need to be mindful of include Insolvency Act 1986, Health and Safety at Work etc Act 1974, Environmental legislation, Freedom of Information Act and The Company Directors Disqualification Act 1986.

### **Charity Law Responsibilities**

The Trust will have charitable status and it will need to comply with the regulations set by the Charities Commission. The Trustees are responsible for ensuring that the Academy Trust adheres to these regulations and the individual Trustees have similar duties under Charity Law as those addressed above but in addition they must:

- Accept ultimate responsibility for the Academy Trust ensuring that it is solvent and well managed and delivering the charitable outcomes for which it was set up
- Ensure compliance with Charity Law and deliver necessary reports and returns as required
- Only use assets and funds in furtherance of the Academy Trust's objects
- Consider obtaining external professional advice, if not the Trustees may be in breach of their duties
- Take special care when investing the funds of the Academy

## **Liabilities**

As a limited company, the starting point is that the Academy Trust is the entity which enters into contracts, can sue third parties and may be sued and holds the title to the various assets of the Academy. The Academy Trust can be held criminally and civilly liable for regulatory breaches, including breach of Health and Safety at Work etc Act 1974 and others to include Corporate Manslaughter and Corporate Homicide Act 2007.

The liability of the Members will be limited to contributing the nominal sum of £10 on dissolution of the Academy Trust as detailed in the Articles of Association. This would only be called upon if the Academy's assets did not cover all of the debts of the Academy Trust on it being wound up. This is very unlikely to occur as the Academy cannot operate with a financial deficit and the EFA (Education Funding Agency) monitors the financial stability of the Academy Trust.

The liability of Trustees is limited as they cannot be personally held responsible for the debts of the Academy Trust that have been properly incurred. They can become personally liable if they act in breach of their duties and/or statutory/regulatory obligations. However, the circumstances in which payment would actually need to be made are very limited. This view is supported by the Department for Education which states on its website that "Personal liability will not arise if Trustees carry out their duty acting in good faith. It is the Department's view that insurance covering Trustees for personal liability is unlikely to represent good value for money because Trustees acting honestly, reasonably and within their powers will not incur personal liability. The Model Articles of Association for the Academy Trust allow the Trust the option to take out insurance to protect Trustees if the Trustees sought such reassurance".

## **Committee Structures and Scheme of Delegation**

The Academy Trust needs to determine how the day to day delivery of governance will be most effective.

Establishing and reviewing a Scheme of Delegation is essential. This needs to be done by the Trustees, taking advice and support from the operational team and governors. A review working party may be established before the trust is established and may be required to re convene for future reviews.

The Scheme of Delegation sets out who is responsible for what within the Trust. An example from the NGA shows how clarity is important.

Establishing a clear system of performance management and appraisals across the Trust is essential.

Some elements cannot be delegated by the Trust Board these are:

- Appointment of headteachers
- Overall financial responsibility for the Trust
- Standards in the Academies
- Admissions

As the Trust Board is the employer of all staff and therefore is the final appeal body in matters of pay and staff discipline. Decisions relating to staff dismissal and appeals must be referred to the staff discipline committee and staff appeal committee.

Suitable Committee Structures must also be agreed for both the Trust and LGBs. These will be set out in the Scheme of Delegation. These should be subject to an annual review.