



Mosaic Schools Learning Trust

Scheme of Governance

Contents

| | | |
|----|---|----|
| 1 | Introduction..... | 3 |
| 2 | The Academy Trust | 3 |
| 3 | Members | 4 |
| 4 | Trustees..... | 5 |
| 5 | Delegation of powers of Trustees..... | 12 |
| 6 | Committees | 13 |
| 7 | Local Governing Bodies..... | 14 |
| 8 | Intervention Rights | 14 |
| 9 | The Governance Professional | 15 |
| 10 | The CEO..... | 15 |
| 11 | The Accounting Officer | 16 |
| 12 | The DFO..... | 16 |
| 13 | Financial regulations manual | 17 |
| 14 | Budget approval | 17 |
| 15 | The Head teachers of the Academies | 18 |
| 16 | The relationship between the Trustees and senior staff in general | 18 |
| 17 | Approval..... | 19 |

Appendices

| | | |
|------------|--|----|
| Appendix 1 | Consent to be a Member | 20 |
| Appendix 2 | The Seven Principles of Public Life set out by the Committee on Standards in Public Life ("the Nolan Principles")..... | 21 |
| Appendix 3 | Trustee declaration..... | 22 |
| Appendix 4 | Duties and responsibilities of Trustees as charity trustees..... | 24 |
| Appendix 5 | Reserved matters | 30 |

1 Introduction

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

- how the individuals who are involved in the governance of the Academy Trust work together effectively;
- the relationship between the Trustees, the Local Governing Bodies (**LGBs**) and the Trust senior leadership team; and
- how the Trustees ensure compliance with the various legal and regulatory requirements placed on them.

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This Scheme may be altered, added to or repealed by a majority resolution of the Trustees.

A copy of this Scheme shall be given to the Members of the Academy Trust, every Trustee, each member of a LGB (**Local Governor**), the Chief Executive Officer (**CEO**), the Director of Finance and Operations (**DFO**), each Executive Head Teacher, and the Head Teachers of the Academies operated by the Academy Trust (the **Head Teachers**).

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, in particular but without prejudice to the generality of the foregoing, by establishing, maintaining, carrying on, managing and developing schools ("**the Academies**") offering a broad and balanced curriculum; and*

to promote for the benefit of the inhabitants of the areas in which the Academies are situated the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants."

The Academy Trust is responsible for existing schools and any schools that join the Academy Trust in the future (each an **Academy** and together the **Academies**).

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**) **Academy Trust 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 DFO;
- Executive Head Teachers;
- LGBs: each Academy (or cluster of Academies as appropriate) has an LGB formed by the Trustees as a committee of the Trustees. The members of the LGBs are called **Local Governors**; and
- the Head Teachers who have responsibility for the day to day running of their respective Academy.

3 **Members**

3.1 **The role of the Members**

In simple terms, the Members "own" the Academy Trust. They have a number of statutory rights, including the right to:

- appoint the auditors;
- appoint Trustees under Article 50;
- re-appoint Trustees appointed under Article 50;
- remove Trustees (provided that a specific procedure is followed which includes the right of the relevant Trustee to make representations);
- change the name of the Academy Trust;
- amend the Articles of Association of the Academy Trust (**Articles**); and
- receive the annual accounts.

They also have the right to appoint up to 11 Trustees under the Articles.

The Members are required to provide a guarantee that if the Academy Trust were to be wound up and the assets did not meet all of its liabilities, they would contribute £10.

The Members will often meet just once a year at the annual general meeting (AGM). Under current Articles, it is permissible for this meeting to be held online.

3.2 **The appointment of the Members**

Members are appointed in accordance with Articles 12 to 18. There must be a minimum of three Members at any one time although the DfE's currently policy is that every academy trust should endeavour to have five Members with as many of the Members being independent of the Trustees as is reasonably practicable.

On appointment, all Members are required to complete a consent to be a Member form (attached at Appendix 1). The register of Members will be updated as appropriate. Companies House does not need to be notified.

Members will undergo an enhanced Disclosure and Barring Service check and complete a register of interest declaration.

The Academy Trust Handbook requires the appointment of any new Member to be notified to the DfE via Get Information About Schools through the 'Secure Access' portal within 14 days of appointment to enable an assessment of their suitability.

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;
 - the requirements of charity law (including the Charities Act 2011) and company law (including the Companies Act 2006); and
 - the Governance Decision 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 and unless otherwise determined by the Members, the maximum number of Trustees is fourteen.

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

- up to 11 Trustee(s) appointed by Members under Article 50, this number includes 10 independent Trustees;
- at least two parent Trustees elected by the Parent Local Governors of the LGBs, unless there are two Parent Local Governors serving on each of the LGBs; and

- co-opted Trustees (appointed by Trustees who are not themselves co-opted Trustees).

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

Trust Board Chair and Vice Chair

- Trustees seeking election to the position of Chair will indicate that they wish to stand and prepare a statement at least two weeks before the first Trust Board meeting of the academic year (although this will usually be set as a deadline of 31 August).
- The statement will be circulated, in writing, in advance of the meeting, and with the agenda papers for the Board meeting at which the Chair's appointment is listed.
- This statement will include as a minimum:
 - motivation for seeking appointment; and
 - priorities as the nominee sees them for the upcoming academic year.
- A vote will take place at the first Trust Board meeting of the academic year.
- The election procedures for Chair are as follows:
 - The prospective candidate(s) will leave the meeting whilst their candidacy is being considered
 - If there is one candidate for Chair, voting will be by a show of hands
 - If there are two or more prospective candidates for Chair, voting will be via a secret ballot
 - The candidate with a majority of votes will be elected Chair
 - If there is a tie in the vote, then rounds of voting will take place until the tie is broken. If this doesn't occur in three further rounds then the tie will be broken by the decision of the Members. The Vice Chair will chair the rest of the meeting
 - The Governance Professional will take the chair for the election of the Chair

The election procedures for the Vice Chair of the Board of Trustees are as follows:

- Term of office will be for one academic year
- The election of the Vice Chair will take place at the first meeting of the academic year, unless following the resignation or removal of the Vice Chair
- Nominations for the position of Vice Chair can be submitted in advance or at the meeting
- The prospective candidate(s) will leave the meeting whilst their candidacy is being considered
- If there is one candidate for Vice Chair, voting will be by a show of hands
- If there are two or more prospective candidates for Vice Chair, voting will be via a secret ballot
- Candidates with a majority of votes will be elected Vice Chair
- If there is a tie in the vote, then the Chair has the casting vote

4.3 The appointment of Trustees

Members may appoint by ordinary resolution up to 11 Trustees.

Trustees, not being themselves co-opted Trustees, may appoint Co-Opted Trustees, under Article 58.

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 to Companies House (either in paper form or electronically); and
- complete a declaration of business interests form.

The register of Trustees will be updated in the statutory books. Trustees are appointed for a four-year term of office.

Re-appointment of Trustees

The Governance Professional will write to Trustees who are nearing the end of their four-year term of office and establish if the Trustee wishes to be re-appointed.

If the Trustee wishes to be re-appointed, the Governance Professional will list the end of a Trustees' term of office on the next Board of Trustees agenda, to inform the Board.

Trustees appointed under Article 50 will need to be re-appointed by Members as a Member appointed Trustee under Article 50.

Co-opted trustees appointed under Article 58 will need to be re-appointed by Trustees as a Co-opted Trustee under Article 58.

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 they are not disqualified as a company director or charity trustee);
- there is a system in place which ensures that all relevant checks, including an enhanced Disclosure Barring Service (**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 they are taking on and consents to act as a Trustee.

Each new Trustee will be properly inducted to ensure that they understand the nature and extent of their role and responsibilities. It is the duty of a new Trustee to ensure that they are 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 Governance Decision Matrix.

New Trustees should also be provided with copies of the Academy Trust's latest annual report and financial statements. New Trustees will also be given any Trustee/Governor Handbook and the DfE/ESFA Academy Trust Handbook.

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 considered at least annually (and when new Trustees join) and carried out in full at least triennially.

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 their 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 Trustees are responsible for the governance and supervision of the Academy Trust, its committees (including the LGBs) and the executive leadership team.

The Trustees have a number of duties and responsibilities relating to the management of the Academy Trust and its finances. In summary, the Trustees are responsible for:

- establishing the vision, mission and values for the Academy Trust;
- carrying on the Academy Trust in accordance with the objects of the Academy Trust as set out in the Articles and safeguarding the assets of the Academy Trust;
- designing strategy and structure for the operation of the Academy Trust;

- the delegation of running the Academies and directing the education, pastoral care, financial and other policies of the Academies to the CEO in accordance with the Articles and the Funding Agreements (including the Academy Trust Handbook);
- ensuring sound management and administration of the Academy Trust, and ensuring that managers are equipped with the relevant skills and guidance;
- financial controls and the financial management of the Academy Trust in accordance with the provisions of the Academy Trust Handbook, which sets out in detail provisions for the financial management of each Academy and the Trust overall, including guidance on financial systems and controls and accounting and reporting requirements;
- setting standards of conduct and values, monitoring performance and the achievement of objectives, and ensuring that plans for improvement are acted upon;
- risk management, that is identifying, quantifying and devising systems to mitigate the risks affecting the Academy Trust; and
- ensuring the Academy Trust and the Academies are conducted in compliance with the general law.

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;
- 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, Executive Head Teachers and the DFO 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 and under 4.2 above. 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, the CEO and the DFO.

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 them 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 one meeting of the Trustees every academic term, with an annual expectation of six meetings. Meeting dates will be published at the beginning of each academic year. All meetings of the Trustees shall be conducted as provided by the Articles. They can be convened on a virtual platform.

Meetings of the Trustees will ordinarily cover the following:

- a report on the standards within each Academy against agreed school improvement targets;
- a report on the financial position, including income and expenditure and financial commitments against agreed budgets and significant contracts proposed to be entered into;
- progress on any action identified to improve financial arrangements;
- details of any significant matters affecting:
 - staff;
 - pupils' welfare or education; and
 - assets.

In consultation with the Chair, the Governance Professional to the Board of Trustees shall prepare an annual plan for the meetings of the Trustees. Content may vary depending on priorities and delegations to Trust Committees.

4.11 Risk management

The charities statements of recommended practice (Charities SORP FRS102 and Charities SORP FRSSE) set out requirements for reporting on the risks to a charity. These requirements apply to all charities which meet the charity audit threshold, regardless of whether they are reporting under FRS102, which applies to larger charities, or FRSSE, which applies to smaller charities.

If the Academy Trust meets the charity audit threshold, the Trustees' report must include a description of the principal risks and uncertainties facing the Academy Trust and its subsidiary undertakings, as identified by the Trustees. The report must also include a summary of the Trustees' plans and strategies for managing these risks. The Trustees must identify specific risks and describe ways to combat each one, rather than making general statements regarding risk management.

The Trustees are therefore responsible for:

Scheme of Governance

- identifying the major risks that apply to the Academy Trust, including:
 - operational risks (employment issues, health and safety, fraud, service quality and development etc.);
 - financial risks (accuracy of financial information, cash flow, reserves, over-reliance on funding sources etc.);
 - external risks (changes in government policy, economic factors, demographic changes, adverse publicity etc.); and
 - regulatory risks (compliance with legislation, changes in policies of the regulators etc.).
- making decisions (based where appropriate on advice from professional advisors) as to how to respond to those risks; and
- making appropriate statements regarding the management of risks in the annual report.

The following policies and Trust statements shall be approved by the Board of Trustees or by one of the Board of Trustee Committees:

- Accounting Standards
- Charging and Remissions Policy;
- Trust Behaviour Statement;
- Relationships and Sex Education;
- Special Educational Needs;
- Data Protection Policy;
- Trust Health and Safety Statement;
- Admissions Policy;
- Accessibility Plans
- Complaints Handling Policy
- Freedom of Information
- Equality Statement
- Annual Review of Equalities Objectives;
- Staff Discipline
- Staff Grievance
- Teacher Appraisal
- Teacher Capability
- Staff Pay and Reward
- Governor and Trustee expenses
- Trust Safeguarding Statement
- EYFS Policy
- Allegations of abuse against staff

- Supporting pupils with medical conditions
- Whistle blowing
- Anti-fraud, bribery and corruption
- Business continuity and disaster plans
- E-safety
- ECT Policy
- Policy for children who are unable to attend school due to ill health
- Policy for use of biometric data

The Audit and Risk Committee responsible, supported by nominated Trustees and the DFO, shall prepare a risk register for approval by the Trustees along with a procedure by which the risk register shall be subject to regular review and made available, on request, to all staff.

4.12 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.

All Trustees are required to complete a declaration of business interests form on appointment and on an annual basis (including a nil return). If a Trustee has a change in their circumstances mid-year, they should alert the Governance Professional, who will provide a new register of interest form to log the interest. Such declarations shall include:

- all business and financial interests such as directorships/ trusteeships, 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 living with you.

The Governance Professional to the Board of Trustees shall be responsible for maintaining a register of business interests including nil returns.

Each meeting of the Trustees or Trust Committees shall include a standing agenda item for those attending to declare any changes to their declarations of interest or an interest material to that agenda.

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

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 DFO. 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;
- the DFO; and.
- Other senior leaders (including Executive Head Teachers and Head Teachers as appropriate);

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 impracticable to do so, executive powers should be delegated to the CEO, DFO, Executive Head Teachers, and Head Teachers 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 the 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 Trust Committee shall be chaired by a Trustee (with the exception of an LGB which will generally be chaired by a Local Governor). Exceptions by Trust Board approval.

Membership of a Committee may include persons who are not Trustees provided that (with the exception of the LGBs and the EDI Committee) a majority of the members of the Committee are Trustees.

Except in the case of an LGB or the EDI Committee, 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 a termly report 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 specific Committees to be appointed are as follows:

- Achievement and Standards Committee
- Admissions Committee
- Equalities, Diversity and Inclusion Committee
- Finance and Resources Committee
- Audit and Risk Committee; and
- Trust Pay Committee.

The terms of reference of each Committee of the Trustees must be approved by the full Board of Trustees and reviewed annually. They provide the sole agreed framework within which each Committee operates.

7 Local Governing Bodies

The Trustees will establish an LGB in respect of each of the Academies (although may, if desired, appoint one LGB in respect of two or more of the Academies). The LGBs are a committee of the Trust. They are constituted and operate under terms of reference which are set out in a separate document which will be reviewed annually. The terms of reference will confirm what powers the Trustees have delegated to the LGB.

In summary, the role of the LGB is to:

- provide advice to the Trustees on the functioning of that Academy(ies);
- act as a key link between the Academy Trust, parents and the Academy community;
- act as a sounding board for the Head Teacher and senior leadership team and offer challenging but positive support to the Head Teacher;
- continually review the overall impact of the Academy; and
- assist with monitoring the implementation of policies.

As set out in the LGB terms of reference, LGBs should focus primarily on Standards, Safeguarding, and Stakeholders.

The LGBs are made up of individuals who generally will not also be Trustees. The LGBs will not be chaired by a member of the Board of Trustees. The Board may appoint a trustee to attend LGB meetings to act as a link with the Board. These Trustees will not be full members of the LGB and have no voting rights at this Committee level.

8 Intervention Rights

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 Governance Decision 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 executive 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 executive 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.

The delegated budget

In line with their duties and responsibilities as Trustees and Directors and irrespective of the delegations set out in the Governance Decision Matrix, the Board of Trustees shall be entitled to determine that a proportion of the budget in respect of an 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 reserves policy; and/or
- as otherwise may be determined by the Board acting reasonably and in the best interests of the Academy Trust as a whole.

9 The Governance Professional

The Trustees shall appoint a Governance Professional (who may or may not also be the Governance Manager). The Governance Professional shall not be a Trustee (or an Executive Head Teacher or Head Teacher). However, if the Governance Professional fails to attend a meeting of the Trustees, the Trustees may appoint any one of their number or any other person to act as a clerk for the purposes of that meeting.

10 The Chief Executive Officer

The Trustees may appoint a Chief Executive Officer (CEO). The role of the CEO is to provide professional leadership, strategic management and direction for the operation of the Academy Trust and its Academies. The CEO may be a Trustee if appointed so by Members.

The CEO will report to the Trustees and shall comply with any reasonable direction by the Trustees when acting on the Academy Trust's behalf.

Broadly, the CEO is responsible for:

- the internal organisation, management and control of each of the Academies;

- advising on and implementing the Academy Trust's strategic framework; and
- the implementation of all policies approved by the Trustees.

The CEO shall have the authority to direct the DFO, Executive Head Teachers and Head Teachers in relation to operational and educational standards matters, particularly with regard to improving educational standards and matters which could adversely affect the financial position of the Academy Trust.

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

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

11 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 Trust.

Included in the responsibilities of the Accounting Officer is a duty to take appropriate action if the Trustees (or the LGB) or the Chair is contemplating a course of action that the Accounting Officer considers would infringe the requirements of propriety or regularity (including the provisions of the Funding Agreement or other documents setting out the financial duties of the Trustees or of any other rules governing the conduct of the Trustees), or would not represent prudent or economic administration, or the efficient or effective discharge of the Trustees' functions.

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 DFO, to assist in carrying out these responsibilities.

12 Director of Finance and Operations (DFO)

The Trustees shall appoint a DFO who shall be the Chief Financial Officer.

In accordance with the Academy Trust Handbook, the DFO 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 DFO 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 DFO shall report to the Trustees, the Finance and Resources Committee and the Audit and Risk Committee at least termly.

13 Financial regulations manual

The financial regulations manual (**Finance Manual**), which shall be prepared by the DFO, shall be adopted by the Trustees, normally on the recommendation of the Finance and Resources 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 procurement policy for purchases in accordance with the Academy Trust Handbook; and
- a capitalisation limit for assets.

The DFO 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.

14 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.¹

The DFO shall be responsible for:

- establishing a written procedure and timetable for setting a budget in advance of each academic year including robust stakeholder management and communication as appropriate;
- 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;

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

- ensuring that all significant in year amendments to budgets are properly notified to the Trustees for approval;
- 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.

15 The Executive Head Teachers

The Trustees may appoint Executive Head Teachers. The Executive Head Teachers are responsible to the CEO for educational standards and improvement within a hub of schools.

16 The Head Teachers of the Academies

The Head Teachers are responsible to the CEO for:

- the internal organisation, management and control of their respective Academy;
- the implementation of all policies approved by the Trustees that relate to their respective Academy
- standards at their respective Academy; and
- personal participation in the development and improvement of educational standards across the Academy Trust

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

17 The relationship between the Trustees and senior staff in general

The Trustees will support and oversee the work of the CEO and the DFO 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 DFO 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 DFO.

The CEO and DFO 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 DFO should be raised directly with the Chair of Trustees, and likewise, any concerns the CEO or the DFO 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).

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, 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.
- 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, estates 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 (if required); 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 Governance Professional.

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 and Skills Funding Agency (where relevant).
- 34 In practice, administrative functions will be delegated to the Governance Professional.

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 and Skills 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 their failure to act.
- 46 The Trustees can be made liable for the acts and omissions of their co-Trustees 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 pass a resolution to wind up an Academy or the Academy Trust |
| 6 | 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) | |
|--|---|
| 1 | To change the name of the Academies |
| 2 | To determine the educational character, mission or ethos of the Academy Trust |
| 3 | To adopt or alter the constitution and terms of reference of any committee of the Board of Trustees (subject to complying with the Articles of Association) |
| 4 | To terminate a supplemental funding agreement for an Academy |
| 5 | To establish a trading company |
| 6 | To sell, purchase, mortgage or charge any land |
| 7 | To approve the annual estimates of income and expenditure (budgets) and major projects |
| 8 | To appoint investment advisors |
| 9 | To sign off the annual accounts |
| 10 | To appoint or dismiss the CEO, DFO, Executive Head Teachers, Headteachers, or the Governance Professional to the Trustees |
| 11 | To settle the division of executive responsibilities between the Trustees on the one hand and CEO, DFO, Executive Head Teachers and Head Teachers on the other hand, and to settle the division of executive responsibilities between those individuals |
| 12 | 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) |
| 13 | To do any other act which the Articles expressly reserve to the Board of Trustees or to another body |
| 14 | To do any other act which the Board of Trustees determine to be a Reserved Matter from time to time |