

Applicant Guidance

Governance in a single academy trust

Winter/spring 2019

**New
Schools
Network**

Introduction

Free schools are new state-funded schools that are free from Local Authority (LA) oversight. As their governing bodies are independent and have responsibility for operating and directing the affairs of their schools, good governance is particularly important. Achieving it requires not only skilled individuals willing to serve as governors, but also a governance model which allows for effective and informed decision making.

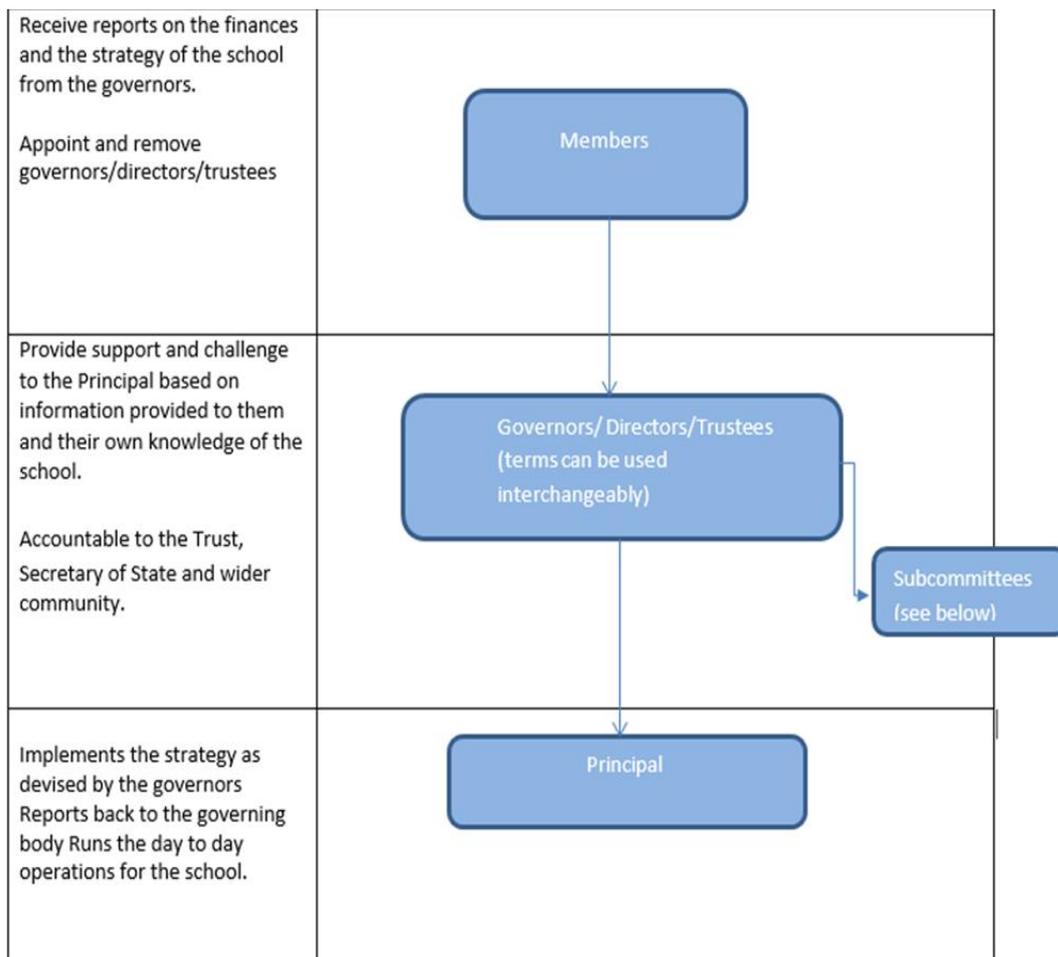
The DfE places a very high emphasis on the quality of governance plans in their assessment of free school applicant groups so it is crucial that this element of your application is strong. This guidance, aimed at groups setting up one free school under a single-academy trust (SAT), sets out the key questions you need to consider when deciding on the governance arrangements for your free school. It also offers advice on how the governing body should be formed and particular issues you are likely to face, depending on the nature of your applicant group. It should be read in conjunction with the other guidance we have produced on governance – including notes on the roles of governors and governing bodies – which is available on our website [here](#).

Although the same laws apply to multi-academy trusts (MATs), the board of a MAT and the local governing bodies beneath it will play very different roles. NSN has produced further guidance on the structure of MATs and possible systems of delegation within them, which can be found [here](#).

How are free schools governed?

Free schools are different legal entities to maintained schools in that, once set up, they are legally academies. The legal entity that runs a free school is an academy trust, which is a company limited by guarantee (CLG). This company will also be a charity.

The governance model set out below shows the levels of responsibility within the trust and will be relevant for most SATs.



Subcommittees

Although not a legal obligation there will also often be subcommittees of the board of trustees, e.g. finance and teaching & learning committees, which will support the board through taking certain decisions and making recommendations. These can be comprised of trustees and other representatives as appropriate (e.g. parents).

Members

The founding members sign the memorandum of association for the company. For further details about how to set up a company limited by guarantee see [this document](#). In order to set up an academy trust under the model recommended by the DfE it is necessary to have a minimum of three members. However, the DfE advise in the [Academies Financial Handbook](#) that although trusts should be established with at least three members they are encouraged to have at least five in total, as this:

- Ensures enough members can take decisions via special resolution (which requires 75% of members to agree) without requiring unanimity; and
- Facilitates majority decisions being taken by ordinary resolution (which requires a majority of members to agree)

You should therefore bear this in mind when deciding how many members your trust will have. Other members can be appointed at a later date by passing a special resolution (a resolution passed by 75% of the members present (in person or by proxy) and eligible to vote). The chair of governors will also become an ex officio member. The members do not run the school on a day to day basis and are not directly accountable to the DfE.

Members' responsibilities are limited. As an academy trust is an independent charitable company limited by guarantee, members are not liable for its debts. Members would only be obliged to pay a maximum of £10, which is the amount of their guarantee in the articles of association.

Members' powers are also limited. Their main power is to be able to appoint and remove trustees and they should appoint the trustees on a skills needed basis. They should consider the outcome of a skills audit and feedback on the free school's performance to establish what person they need and then they should properly assess the skillset of any proposed candidate.

The term of office for members is unlimited so groups should consider carefully who would be best suited to take on this role. Groups should consider the following when deciding on their members:

- A member will need to have a proper understanding of the vision of the academy trust and be fully on board with its ethos.
- You can appoint a corporate member (i.e. a representative of an organisation rather than an individual). They would have a say in appointing and removing trustees.
- When appointing members, groups should minimize the risk of a conflict of interest (more on conflicts of interest below).
- The DfE states that members must not be employed by the Trust (to avoid conflicts of interest) unless permitted by their articles of association, and the model articles do not allow members to be trustees.
- Although members can also be trustees, not all members should also be trustees. The DfE may challenge a structure where the majority of members are also trustees.

The commitment to being a member should be taken after careful consideration, as it is a fairly convoluted process to remove a member and any decisions will be impeded if a member cannot be traced, as they will not be able to reach a unanimous decision.

Trustees/Governors/Directors

The trustees control the trust's management and administration. They are trustees of the charitable trust; directors of the company limited by guarantee and governors of the academy trust (hence the terms are inter-changeable in this context). The trustees are in charge of supervising the running of the school by the leadership team. They are legally responsible for the management of the school and are also accountable to the DfE and the ESFA for this management.

As the academy trust is a company and a charity, the powers and responsibilities of the board of trustees come from both company and charity law. Trustees must also comply with the terms in their corporate documents (the memorandum and articles of association) and with the Funding Agreement that they enter into with the Secretary of State (SoS).

Trustees' duties under charity law: as trustees of the charity, the board needs to comply with charity law and act above all in the best interests of the charity (this means in the best interest of the school and its pupils). They should not profit from their position as trustee and need to be aware of any potential conflicts of interest.

Free schools are exempt charities, which means that they are not regulated by the Charity Commission like a normal charity, although Charity Commission approval is required when making regulated changes to the articles of association. They are regulated by the SoS.

The Charity Commission does have some useful guidance for all trustees on its website [here](#) and in their [guidance](#) for trustees who are school governors. Governors have and must accept ultimate responsibility for directing the affairs of a charity by ensuring that it is solvent, well-run, and delivering the charitable outcomes for which it has been set up.

Trustees' duties as directors under company law: as directors of the company, the trustees' duties are set out in company law and in the corporate documents for the company; principally the Articles.

The general duties of directors are set out in the Companies Act 2006:

- to administer the company correctly, to file all the necessary accounts and annual returns;
- to promote the success of the company and to act in good faith with the aim of achieving the purpose of the company;

- to act within their powers and within the objects (purpose as set out in the Articles) of the company;
- to exercise reasonable care, skill and diligence;
- to exercise independent judgment, although they are free to take advice; and
- to avoid a conflict of interest.

More detailed guidance can be found [here](#).

The articles of association that the school adopts will need to be the model articles proposed by the DfE. These incorporate all the requirements of charity, company, and education law and policy, so should not be amended beyond what is allowed by those requirements. By adopting the model memorandum and articles of association, available [here](#), the company will automatically become an academy trust and a charity.

Trustees' duties as governors under the funding agreement: The school's funding agreement sets out in more detail how the school will be managed. A model funding agreement can be found on the DfE website [here](#), but each school will have an agreement adapted to its own circumstances. Trustees in a free school will be answerable to the SoS directly and they, via the DfE and the ESFA, have the power, under the funding agreement, to hold the school to account and ensure that it is acting in accordance with the terms of the agreement and in the best interests of the pupils.

As a corporate body, the board of trustees will be responsible as a whole for the decisions it takes. As a result, individual trustees are generally protected from personal liability as a result of the board of trustees' decisions and actions, provided they act honestly, reasonably, in good faith and within the powers and authority conferred on them.

The trustees should however ensure that there are robust mechanisms in place to check that all trustees are aware of the limits of their power conferred on them by law and contract and that they act within them. Trustees will become personally liable, financially and potentially criminally, if they do not comply with their obligations, even unwittingly. So for instance, audited accounts will need to be filed within a certain time period or the governors may suffer penalties. If a school trades while insolvent, the trustees may be financially liable. If any trustee breaches the rules on conflicts of interest, he/she could be considered to have behaved in a fraudulent manner. Trustees may also be personally liable if they authorise payment of money or use of assets otherwise than for the specific purpose for which that money and those assets has been provided.

Responsibilities of trustees in a SAT

As free schools are independent from their area's LA and groups are often setting them up from scratch, the responsibilities of free school trustees are considerable and cover some

areas that maintained school governors do not need to deal with. Please note that in a multi-academy trust the trustees would be likely to delegate certain responsibilities to local governing bodies (LGBs). Since the trustees are the governors in a SAT the terms are used interchangeably below as are the terms 'board of trustees' and 'governing body.'

These are the areas that the governing body will have ultimate responsibility for:

Admissions

In a free school, the academy trust is the admissions authority for the school. Admission authorities are responsible for setting fair and transparent admission arrangements, making admission decisions and arranging admission appeals in accordance with the [Admissions Code](#) and the [Admissions Appeals Code](#) (the Codes). Admission authorities decide which children are admitted to the school by applying the admissions criteria they have set and published. These must be set annually, notified to the LA and published. The governing body can choose to join in the local LA's admissions process, and usually do so from the second year of opening, but the terms of any cooperation will need to be negotiated by the governors.

This means that trustees of free schools need to be aware of the requirements of the Codes as they will play a role in devising the admissions policy for their school. If they wish to amend the policy, they will need to carry out a formal consultation with local stakeholders.

Wellbeing and safeguarding

The academy trust has a duty to maintain the wellbeing of pupils. This involves ensuring that pupils are adequately cared for and protected from harm. Whereas for maintained schools this duty is often taken on by the LA, for free schools the governors cannot delegate this responsibility. A free school governing body will need to:

- devise written policies that promote good behaviour and define sanctions for misbehaviour;
- have full responsibility for exclusions and set up an independent review panel to deal with permanent exclusions;
- keep full records on attendance and provide any information requested by the DfE;
- be responsible for setting its own school day hours and term dates as the governors have the freedom to adjust these according to their school's ethos;
- devise and enforce policies on health and safety, additional health needs, SEN, school security, safeguarding; and
- be responsible for first aid provision.

Curriculum

A free school is not bound to follow the national curriculum. The academy trust is responsible for ensuring that the school provides a broad and balanced curriculum, up to the age of 16 in mainstream and AP schools (this is not necessary for 16-19 or special schools) and will need to ensure high standards of education for all pupils in the school.

Where relevant, governing bodies in free schools also need to ensure that religious education is provided in line with their funding agreement. This is the case in both faith and non-faith schools as both need to provide a daily act of collective worship. This will generally by default be broadly Christian in nature but the governors can apply to the SoS via the Education and Skills Funding Agency (ESFA) to have the faith changed. The school will need to remain inclusive, in line with the terms of the Codes.

The effectiveness of the curriculum will be ultimately judged in the Ofsted inspection. Not only will the governing body's performance be judged within the context of an inspection but they will also be ultimately responsible for providing Ofsted with the data required to make a judgment on the performance of the school. The governors should therefore ensure that, whatever curriculum is adopted by the school, its success can be measured in practical terms.

Employment

The academy trust is the employer of the staff who will work at the school. The governing body of the school will have the responsibility of recruiting and managing the staff. The governors will need to act in accordance with employment law and the terms of the funding agreement. They will also need to consider the terms of the [Equality Act 2010](#). This sets out that employers must not discriminate against employees on any protected grounds (e.g. race or sex) in relation to pay, conditions, opportunities, promotion, training or dismissals.

If a principal designate has not been identified at application stage, a pivotal duty of the governing body will be to recruit the principal. This is a very important step in both setting up a school and maintaining its performance if a departing principal is being replaced. The governors will need to find someone with the necessary experience to lead the school but also the enthusiasm and conviction to implement its ethos. Our guidance on recruiting a principal can be accessed [here](#).

There is no requirement for the governing body of free schools to appoint teachers with QTS (qualified teacher status), unless it is required by their funding agreement. The exception to this is that any teacher appointed as SENCO or responsible for looked after children must have QTS, as must all teachers in a special free school.

The governing body will be responsible for establishing and enforcing an assessment policy. They will need to ensure that the head teacher is supervising the staff properly and that they

are provided with adequate development opportunities. The governors will need to continually review this policy to make sure it is meeting standards.

The governing body will be in charge of pay policy and conditions of service in the school for teachers and support staff. As from September 2013 pay is awarded on the basis of performance rather than length of tenure.

Other aspects that the governing body will be responsible for in relation to staff are:

- grievance procedures;
- suspension and dismissal procedures together with appeals;
- dealing with unions and teachers' disputes; and
- the teachers' pension scheme and retirement.

Premises

A free school governing body has control over the running of the school and is in charge of the land, premises and any other assets. The academy trust will be the owner or lessee of the land.

This means that the academy trust will be responsible for making the school facilities available to the wider community in accordance with the funding agreement. However, advice should be sought from the trust's lawyers as to whether the trust's standard educational objects are wide enough for its intended operations. The services that the school might provide include extended hours and childcare services. The school can charge for the additional use of the premises but must re-invest any profit into the educational benefit of the pupils.

Finance

A free school governing body has wide discretion over its use of the school's funds, subject to the rules of company and charity law, and the terms of the school's funding agreement. The funding agreement will impose conditions on the use of funds and if those conditions are breached, the SoS will be able to terminate the agreement and seek damages. This will effectively mean that the school will close or be transferred to different management. More detail on how a free school is funded can be found [here](#).

The governing body is responsible for the proper stewardship of those funds and for ensuring economy, efficiency and effectiveness in their use – what the DfE considers value for money. As a result, at least one but preferably several trustees should have the necessary experience and skills to manage the school finances and make sure that the proper decisions are being made by the governing body as a whole. Any person who authorises the misuse of any funds can be held personally liable to reimburse the school for those misused funds.

The governing body as a whole has the responsibility to sign off on the budget and to produce financial statements, the directors' report, annual accounts and the annual return. The governing body also has the responsibility of ensuring that the independent auditors, appointed by the members or the governors depending on the terms of the school's constitution, produce the audit report. All of these financial reports and accounts will need to be reported to the SoS. The trustees will also be responsible for filing all the necessary accounts with Companies House and publishing annual accounts on their website no later than January following the financial year to which the accounts relate.

The financial requirements imposed on academies are set out and explained in the Education and Skills Funding Agency's (ESFA) '[Academies Financial Handbook](#)'. Free school trustees and their auditors should also read the '[Academies Accounts Direction](#)', when preparing and auditing annual reports and financial statements.

The governing body will also be in charge of public procurement and entering into contracts on behalf of the school. There are detailed rules concerning the use of public funds. The DfE offer guidance [here](#). The governing body will need to be able to manage the funds made available to it in an efficient way, for the benefit of the school and in accordance with the rules imposed on public bodies. This involves adopting a competitive tendering policy as regards the supply of goods or services.

Finally, the governing body will be in charge of managing any supplemental funds which come in to the school other than through the usual funding routes. For example, a school might make its premises available for a fee to community groups outside of normal school hours. Any income will need to be re-invested into the school for the benefit of the pupils, and the governors will also need to decide how they manage any income.

Who sits on the board of trustees?

Appointment of trustees

Trustees are appointed in different ways. Who appoints which trustees is set out in the Articles. The following appointments are compulsory:

- members of the company will be the majority of trustees;
- parents of the pupils at the school will elect parent trustees. (In a MAT parents might be represented at local governing body level or trust level).

The following appointments can be made if they are provided for in the Articles:

- foundation members can be appointed by any foundation body (e.g. church) in a faith ethos school. They will have the task of ensuring that the faith ethos is upheld;
- staff governors can be elected by the employees of the school;

- the LA can have the right to appoint some governors;
- a sponsoring body (e.g. a charity, business), who will normally be a corporate member, can have the right to appoint and remove nominated governors; and
- co-opted governors can be appointed by the governors.

Qualifications

Trustees need to be over 18 and not currently a student of the school in question. They will not be qualified to act if they are subject to bankruptcy proceedings or if they are disqualified to act as a company director or trustee under company and charity law. They will not be able to act if they have ever been removed from the board of a charity because of misconduct or if they have been the subject of a criminal conviction which is not spent and for which the maximum sentence is more than a fine.

Once a candidate is chosen, they will need to submit to the chair of governors a Disclosure and Barring Service (DBS) check at an enhanced disclosure level and the chair will need to satisfy themselves that the person is suitable to work with children. Please note that members also need to submit to a DBS check.

Rules on composition

Beyond that, free schools have considerable leeway to choose the governance structure that most suits them. However, there are certain minimum rules that all governing bodies will need to adopt:

- it must be made up of a minimum of three governors;
- there is no maximum number, though guidance from the DfE suggests trust boards should not typically have any more than 12 governors;
- once the school is open a minimum of two parent trustees are required;
- a chair of trustees must be appointed who will have ultimate responsibility. They can also be a member;
- the total number of employees of the school (including the principal) shall not exceed 1/3 of the governing body;
- conflicts of interest should be avoided by not appointing a governor who would be conflicted or by making arrangements for that governor to not have a say on matters in which they are conflicted; and
- The academy trust must ensure that the LA does not have more than 19.9% of the voting rights or seats on the board of trustees (so no more than this percentage can be LA employees, including employees of maintained schools).

How should the board of trustees operate in a SAT?

Delegation

The governing body can delegate any powers to an individual trustee/governor, committee, the principal or other holder of an executive office subject to the terms of their Articles. Although duties and decision-making can be delegated, the ultimate responsibility for the running of the school stays with the governing body so any decisions made by a committee for instance will need to be reported in the general meeting of the governing body following the making of that decision.

The DfE recommends delegation to committees in order to reduce the considerable workload of the governing body as a whole and to keep the number of actual governors manageably small. Committees can also include individuals who are not governors but who offer specific expertise on a matter, provided that the majority of the members of a committee are also governors.

The most common committee which is formed is the finance committee as the members of this committee will need specific knowledge and experience to competently manage the finances of the school. The governing body as a whole will have the responsibility of signing off on the budget and reporting all the necessary financial information, but the finance committee can be in charge of producing them.

Other committees that can be formed are, for example, curriculum, attainment, audit or safeguarding committees. We would recommend that only a small number of permanent committees are created so that the governance structure does not become unwieldy. Ad hoc committees can be created occasionally to deal with particular issues such as admissions appeals or staff reviews.

Any system of delegation to committees will need to be reviewed each year so that the governing body can ensure that the committee is carrying out its duties effectively and within the terms agreed by the governors.

Governors with specific roles

Meetings of the governing body will be headed up by the chairman and vice-chairman. They will be chosen from amongst the governors each year. Being a chair of governors requires a certain skillset to oversee the management of the school. Specific guidance for chairs is given by the National Governors' Association (NGA) guidance in their note '[Leading governors: the role of the chair of governors in schools and academies](#)'. The NGA can offer more general guidance for governors on their website, [here](#) (though as a membership organisation you will need to join in order to access their more detailed services).

The governing body should appoint a senior executive (usually the Principal in a single school or the chief executive of a MAT) as the accounting officer. The accounting officer must take

personal responsibility for assuring the board that there is compliance with the Academies Financial Handbook, the Funding Agreement and all relevant aspects of company and charitable law. They must be able to assure Parliament and the public of high standards of probity in the management of public funds. The accounting officer also has responsibilities for keeping proper financial records and accounts, and for the management of opportunities and risks.

Running the governing body

Meetings of the board of trustees should be held at least three times a year while committees can meet as many times as is necessary. In addition, it is recommended that governors visit their school regularly in order to have a thorough understanding of how it works and how the pupils are progressing, rather than simply being told about this by the principal or other members of staff. The DfE currently suggest that the role requires a commitment of a minimum of 20 hours a year. However, we would suggest that effective governors in a free school are likely to need to put in a significantly larger time commitment, due to the increased scope of their work. More information on what is required of a governor can be found in the governance handbook, [here](#).

The DfE recommends that the governing body should perform regular audits of the skills of the governors to make sure that their abilities and capacity meet the requirements it is likely to face. If any skills gaps are revealed it can either look to bring on board new governors or arrange training for existing ones. The National Governors Association and most LAs offer courses and resources to governors to train them towards their task.

Conflicts of interest

As well as carrying out a skills audit, governing bodies should also regularly check that no conflicts of interest may arise, under either company or charity law. They should establish and maintain a register of interests which helps to identify potential areas of conflict.

A director of a company must avoid a situation in which he has or can have a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the company. Members and directors (and family or connected people) of a charity should not benefit in any way from their involvement with the charity. Other than staff governors, the principal or the CEO, they should not work for, carry out transactions with or provide services to the school other than in exceptional circumstances. If the board wish to consider a governor, member or connected person entering into business with the school, because they consider that it will be in the best interest of the school, they should bear in mind the following:

- any trustee, member or corporate member may only be able to bid for contracts on an 'at cost' basis (not for profit);
- certain transactions with governors or persons connected with them, such as the acquisition or disposal of substantial property assets, require the approval of members and are illegal unless such transactions are so approved;
- there should be sufficient independence on the governing body to challenge any decision and to hold suppliers to account;
- that the restriction on benefits to trustees and members and conflicts of interest provisions in the Articles are followed; and
- that governors understand the need for all procurement to follow an open and fair competition process.

If a trustee or member thinks a conflict of interest might arise involving them or a connected person, they should notify the governing body of the conflict and absent themselves from the part of the meetings discussing the relevant issue.

It is crucial to be aware of the potential conflict issues when setting up your school. You will need to decide who will best be suited to be a member, a governor and who wishes to work in the school. The DfE will strongly discourage members of a group taking up all three roles.

How do you change the board of trustees?

Change in the organisation groups will need to set out how they wish to organise their board of trustees in their Articles, so their structure will need to be determined early on. The Articles need to be adopted before a group applies to the DfE. Although all the governors need not be appointed at application stage, groups will need to have determined what structure will work for their school in the application form.

It will be possible to change the governance structure at a later date. Systems of delegation to committees should be reviewed every year and changes can be made within the structure by agreement of the governing body. If changes are more significant however, this may require an amendment to the Articles, for example if you want to add a new category of governor. The members will need to approve any change in the Articles. In principle, you will not need to seek the approval of

the DfE but you may need the consent of the Charity Commission (if you change the objects, trustee benefits or dissolution clauses) and you will need to file any amendments at Companies House.

One change that you may need to make is if you are a single-academy trust operating one school and you and the DfE decide that you could operate several schools under a MAT. To run a MAT, you will need to amend your governing documents: your Articles and, if it is signed, your funding agreement. You may decide to do this in the pre-opening stage, when you have not yet signed the funding agreement so that you only have to change the Articles. The DfE has produced a document on MATs [here](#). If you require further guidance on MATs, please refer to our note on governance models, [here](#).

Changing the trustees

Generally, trustees serve for a term of four years. The chair of trustees will be elected each year. Trustees can be re-elected for a further term if necessary and there are occasions when trustees will want to or be required to leave the governing body before the end of their term.

If necessary, trustees can resign from their post or be removed by the members of the trust that appointed them. They can be disqualified to act as a governor under company law or charity law if they suffer from any of the disqualifications mentioned in the section above, during their term of service. If the governor becomes aware of any such disqualification, they will need to notify the governing body.

If there is a change of trustee or member in an academy trust, the board of trustees will need to notify the DfE of the change and make sure that all the necessary checks have been carried out in relation to the additional person.

Conclusion

Establishing the right governance structure for your school at the outset is crucial to ensuring that your school will be managed effectively and successfully.

Recruiting the right people to be on your board of trustees will be a key step in making sure that the structure is implemented properly. Look for volunteers who will be enthusiastic about the ethos of your proposed school. They should have the skills and expertise to help set up a small business and subsequently to run it.

You must also remember that setting up a school is a very different process, and requires different skills, to running it effectively. Trustees should also have the independence of mind to be able to challenge the leadership and hold the principal to account on how the school is run.

Further information

- The Governor's [handbook](#) which also applies to free school governors
- DfE [guidance](#) for pre-openers
- The DfE's model [Memorandum & Articles of association](#) and [Funding Agreement for single academy trusts](#)
- The [Academies Financial Handbook](#)
- Charity Commission's [guidance](#)
- NGA's [help page](#)
- SGOSS [guidance](#) on the role of governors
- Information for School and College Governors (ISCG) provides [guidance](#) notes for governors
- National Leaders of Governance provide [guidance](#) for chairs of governing bodies from the best chair of governors
- National College for Teaching and Leadership offer [guidance](#) on how to obtain a governance review