



Prince Henry's Grammar School

SPECIALIST LANGUAGE COLLEGE



GOVERNING BODY GUIDANCE AND DIRECTORS' DUTIES

OTLEY PRINCE HENRY'S ACADEMY TRUST ("THE ACADEMY TRUST")

The Academy Trust is a single academy trust, meaning that it has been established purely for the running of Prince Henry's Grammar School.

The Academy Trust is made up of two parts:

- Members of the Academy Trust; and,
- Directors of the Academy Trust.

MEMBERS

The Academy Trust was formed by those who signed the Memorandum of Association of the company, when it was first created. Those individuals are referred to as "the Members" of the Academy Trust in this booklet.

DIRECTORS (GOVERNORS)

There is a board of directors who fulfil the role of both company law directors and charity trustee, are responsible to the members of the Academy Trust and which have overall responsibility for the Academy. In this booklet, the board of directors is referred to as the "Governing Body".

WHAT IS A “MEMBER”?

The liability of the members of academy trusts is limited by the amount of the guarantee agreed by the member. For Otley Prince Henry’s Academy Trust, each member’s liability is limited to £10.

The functions of the members of the Academy Trust include:

- Overseeing the achievement of the objectives of the company;
- Taking part in Annual and Extraordinary General Meetings;
- Appointing some of the governors (*Please see later notes on “The Governing Body” for more information*);
- Signing off the company’s financial accounts and annual report; and,
- Having the power to amend the articles of association of the company and ensuring that they reflect the needs of the Academy Trust.

Overall, members usually have much more limited practical involvement in the management of the company than the governors and tend to be more involved at a strategic level.

WHAT IS A “GOVERNOR”?

When talking about academies, instead of referring to directors and/or trustees, we refer to “governors”.

Most of the day-to-day management decisions for the Academy Trust will be made by the Governing Body.

Some of the functions of the Governing Body are the same as before conversion to academy status; some are new. Among other things, the main responsibilities are to:

- Ensure the quality of educational provision;
- Monitor the performance of the academies and challenge where necessary;
- Effectively manage the Academy Trust’s finances;
- Take care of the Academy Trust’s property interests;
- Ensure that staff are managed appropriately; and
- Operate the Academy Trust in accordance with the Funding Agreement.

THE GOVERNING BODY

The articles of association of the Academy Trust set out guidelines for the constitution of the Governing Body.

The Governing Body should consist of:

- Up to 5 Governors appointed by the Members of the Academy Trust (in conjunction with the Prince Henry's Grammar School Foundation);
- Up to 3 Staff Governors (also subject to a cap of one third of the Governing Body);
- 1 Governor appointed by the University of Leeds;
- A minimum of 2, but not more than 6, Parent Governors;
- The Headteacher of Prince Henry's Grammar School; and,
- Up to 3 Co-opted Governors
- No more than 19.9% of Governors may be Local Authority Associated Persons (local authority employees, councillors, fire service employees or police force employees)

ADVISORY BODIES AND COMMITTEES

There may be occasions on which the Academy Trust wishes to take advantage of the expertise of a particular group of its governors.

There are a number of ways in which they may wish to achieve that objective, both with or without more extensive powers, including establishing advisory bodies or committees.

ADVISORY BODIES

An advisory body can be established either for a specific and short-term function or in a long-term role. For example, a group of governors may have particular expertise in finance; it may be that the Governing Body wishes to take their advice on finance but does not want to afford them the capacity to make their own decisions.

COMMITTEES

These are similar to Advisory Bodies in that they allow the Governing Body of the Academy Trust to delegate some of its powers to a smaller group of experts, either with or without a power to implement their decisions.

Committees can be established by the Governing Body of the Academy Trust for specific functions. Currently there are three committees: Resources, Leadership and Management, Student Outcomes and Quality of Provision. Terms of Reference are available for each of these committees.

GOVERNORS' DUTIES AS DIRECTORS

The Academy Trust is a company registered at Companies House. This means that governors are also directors of a company and that directors' duties under company law also govern any decisions that you make as a governor.

The seven general duties are:

1. To act within your powers as a director;
2. To promote the success of the company;
3. To exercise independent judgment;
4. To exercise reasonable care, skill and diligence;
5. To avoid conflicts of interest;
6. Not to accept benefits from third parties; and
7. To declare any interested in proposed transactions or arrangements.

DUTY ONE: TO ACT WITHIN POWERS

You must act in accordance with the documents that govern the company and must only exercise your powers for their proper purpose. You must comply with the Academy Trust's articles of association and any decisions that the members make as decisions of the company.

Exercising powers for a 'proper purpose' would generally be assessed by looking at the motivation of the director(s).

DUTY TWO: TO PROMOTE THE SUCCESS OF THE COMPANY

A director must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.

This duty applies both to the board of directors as a whole and to each individual director. When making decisions, you should, therefore, consider:

- The likely long-term consequences of any decision;
- The interests of the company's employees;
- The need to encourage good business relationships with the company's suppliers, customers and others;
- The impact of the company's operations on the community and the environment;
- The desire of the companies to maintain a reputation for high standards of business conduct; and
- The need to act fairly in respect of all members of the company.

The only time when this duty may vary is if the Academy Trust were in financial difficulties, at which time you would also need to consider the interests of the Department for Education and the Academy Trust's creditors.

DUTY THREE: TO EXERCISE INDEPENDENT JUDGMENT

Each director should exercise their powers independently and should ensure that their decisions are not influenced by others.

This duty impacts on a director's ability to delegate their powers. Before delegating your duties and powers, you should make sure that you do so within the Academy Trust's articles of association.

DUTY FOUR: TO EXERCISE REASONABLE CARE, SKILL AND DILIGENCE

A director should exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both:

1. The general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions that the director does; and
2. The general knowledge, skill and experience that the director actually has.

You should ensure that you have taken on a role that you are comfortable in fulfilling.

As a minimum standard to apply, a director should display the knowledge, skill and experience set out at point 1; where a director has taken on a specialist role or has specialist knowledge, that should be considered against point 2.

DUTY FIVE: TO AVOID CONFLICTS OF INTEREST

A director should avoid situations in which he has (or might have) an interest that conflicts with the Academy Trust's interests, for example, where a director owns or runs a company that provides services to the Academy Trust.

Practical steps that can be taken to avoid breaching this duty should include:

- Declaring any interest that might conflict with the companies' interests at the earliest opportunity;
- Any director that has a conflict of interest should not be counted towards the quorum for a board meeting in which the matter is to be discussed; and
- Any director that has a conflict of interest should not vote on any related matter.

Board Authorisation: The independent directors can take a decision to authorise the use of property or similar, in spite of the conflict of interest, if it ensures that the conflicted director(s) have taken no part in the decision-making process.

DUTY SIX: NOT TO ACCEPT BENEFITS FROM THIRD PARTIES

Directors are under a duty not to exploit the position of director for personal benefit.

You should not, therefore, accept a benefit from a third party that is conferred on you because you are a director of the Academy Trust or in return for taking or not taking any particular action as a director.

DUTY SEVEN: TO DECLARE INTEREST(S) IN PROPOSED TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANIES

Where a director has a conflict of interest in a proposed transaction (see also 'Duty Five'), he is under a duty to declare the nature and extent of that conflict to the other directors.

The declaration must be made before the Academy Trust enters into the transaction.

This can include an indirect conflict of interests so you would need to also consider making a disclosure if, for example, a partner or family member were the director of a company with which the Academy Trust were considering dealing with.

DUTIES AS A TRUSTEE OF A CHARITY

Academy trusts are exempt charities, which means that they are treated as charities but do not need to be registered with the Charities Commission. As an exempt charitable company, you will be accountable to the Department for Education as a trustee.

A conflict of interest for charitable purposes is any situation in which your personal interests, or interests that you owe to another body, may (or may appear to) influence or affect your decision making as a trustee.

The law states that you can not receive any benefit from your charity in return for any service you provide to the charity, unless you have express authority to do so.

Examples of conflicts of interest include:

- *Direct financial gain* or benefit to you, such as payment to you for services provided to the charity or the award of a contract to another organization in which you have an interest;
- *Indirect financial gain*, such as employment of your spouse or partner by the charity, in particular where finances are interdependent;
- *Non-financial gain*, such as if you were to enjoy the benefit of the charity's services while also serving as a trustee;
- *Conflict of loyalties*, such as if you were to be appointed by the Local Authority or by one of the charity's funders while serving as a trustee.

What to do if you identify a conflict of interest affecting a trustee

If the board of trustees has identified a conflict of interest, you should first find out whether or not the trustee(s) involved will receive a material benefit.

If there is a material benefit, it may be authorised. If the charity's governing document (in this case, the articles of association of the Academy Trust) provides authority, the trustee board should ensure that the authority is used appropriately and that the conflict of interest continues to be managed.

The trustees should consider and collect evidence of:

- Why it is in the **charity's** best interests to permit the benefit and resulting conflict of interest;
- Whether or not the benefit and conflict of interest will be ongoing or a one-off occurrence; and
- The procedures which the trustees have in place to ensure that conflicts of interests are managed transparently.

In practical terms, you should remove the trustee concerned from the decision making process, record details of relevant discussions and decisions made and continue to manage the conflict of interest after the decision has been made.

CONSEQUENCES OF BREACH

As a Company Director

Your duties are to the company and, in general, it will be the company in respect of which the breach occurred that brings any action against you for breach of your duties as a director.

Possible consequences are:

- Payment of damages;
- The transaction being “set aside” and the director having to account to the company for any profits received;
- Restoration of company property;
- Termination of the director’s service contract; and/or
- Disqualification as a director.

As a Charity Trustee

If a trustee has received a benefit which is not authorised, the possible consequences are:

- Being held in breach of trust so that the transaction could be challenged and, ultimately, the value may be required to be paid back to the charity;
- In cases it looks as though a trustee has deliberately placed their own interests in front of those of the charity in order to gain significant benefit at the expense of the charity, it may be treated as a matter of fraud.

Trustees should also bear in mind the non-financial consequences of breaching their obligations, including making it difficult for the board of trustees to continue to operate (as they may find it difficult to make a decision on matters involving fellow trustees) and damage to the reputation of the charity.

USEFUL RESOURCES

COMPANIES HOUSE:

www.companieshouse.org.uk

DEPARTMENT FOR EDUCATION:

www.education.gov.uk

CHARITY COMMISSION:

www.charity-commission.gov.uk