

Guidance note

Prospective academy trustee/ director due diligence

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Overall purpose

Benefits of being a trustee/director/governor

Whilst the role of trustee/director/governor is a serious duty, there are various positive aspects to the role that can help an individual on a personal and professional basis:

- the knowledge that you are contributing to society and the future of young people
- building self-confidence and experience of committee work
- acquiring new skills – personal and professional – through training and information and sharing
- the enjoyment to be had from working with a group of individuals from different backgrounds who share a similar passion for education.

The role of academy trustee/director/governor is one that can offer considerable satisfaction, challenges and experiences, but it should not be forgotten that the position can be quite onerous and require a significant time commitment.

Academies are independent but state funded schools established as charitable companies limited by guarantee. As such, they are required to comply with legislation and regulation that applies to schools, charities and companies.

For academies it is essential that those responsible for the governance of an academy are aware of their legal duties as a trustee under charity law, as a director under company law, and as a governor under education legislation. It is because of this triple responsibility that the terms 'trustee', 'director' and 'governor' may be used interchangeably. For the purpose of this document, we use the terms trustee, director and governor to emphasize the triple legal duties.

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the ICSA information centre: **020 7612 7035** | informationcentre@icsa.org.uk

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Prospective academy trustee/ director due diligence

This guidance note assumes that the academy employs a company secretary, or other governance and compliance professional (who is not the chief executive officer) to provide guidance and support to the governing body.¹

Before applying for a board position in an academy, potential trustees/directors/governors should undertake some research into the work a prospective academy trust performs and its governance arrangements. This will provide assurance that there is a match between the academy and the skills and interests of the prospective board member.

Why undertake due diligence?

Before accepting an appointment, prospective trustees/directors/governors should undertake their own thorough examination of the academy to satisfy themselves that it is an organisation in which they can have confidence and in which they will be well suited to working. By making the right enquiries, a prospective board member can reduce the risk of unwelcome surprises and increase the likelihood of success in their role.

As the role is one of leadership and governance, prospective trustees/directors/governors should be fully aware of the range and potential type of risks and liabilities they could face.² It is therefore advisable for an interested individual to have as many facts at hand to help decide whether this is the right position, with the right academy.

¹ Further details on the role of the charity secretary can be found in an ICSA guidance note of the same title, *The Role of the Company Secretary*.
² See ICSA's guidance note on trustee liabilities for further information.

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How to undertake due diligence

The prospective trustee/director/governor should read the academy's latest annual report and accounts and Ofsted report and look at the website to see how the academy articulates its position on fulfilling its educational objects. The prospective trustee/director/governor should pay attention to:

- its governance arrangements
- sponsorship arrangements and other significant partnerships
- recent academic performance, including impact, strategy, risks and uncertainties, sustainability and financial performance.

Other sources of information a prospective trustee/director/governor may wish to review include:

- any 'glossy' reports or prospectus produced by the academy other than the annual report, such as an impact report or annual review
- marketing material
- press coverage.

It should be noted that published material is unlikely to reveal wrongdoing; however a lack of transparency may be a reason to proceed with caution.

In addition to the information obtained from published documents and regulatory returns, the prospective trustee/director/governor may have a number of questions they would like answered to help them with their decision.

Before accepting a role, a prospective trustee/director/governor may have pre-appointment meetings with the chairman, chief executive/headteacher, company secretary and possibly existing board members. It may be beneficial to meet these people in pairs, or in small groups (rather than solely relying on one-to-one meetings) as this can give an indication of the dynamics within and between each group. The individual may wish to meet representatives of the academy's sponsor(s). It may be useful to observe a governing body/board or committee meeting.

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If the individual is joining with the intention of taking on the role of chairman of the academy or chair of the audit committee,³ meetings should be set up with the auditors and other professional advisers.

The prospective trustee/director/governor should check scheduled meeting dates for the year ahead at an early stage in the due diligence process to ensure he/she will be able to attend most, if not all, of the planned meetings in the first year.

The prospective trustee/director/governor should be aware that the academy will be unable to disclose certain confidential or sensitive information prior to the formal appointment.

Due diligence questions

The list below is not exhaustive, but is intended to be a helpful basis for the pre-appointment due diligence process. The answers to some of the questions can be found by reviewing the documents listed in this guidance note. Where answers cannot be found, or should supplementary questions develop, the academy should be approached for the answers, possibly at the one-to-one meetings with key individuals within the academy.

The academy

- What are the exact nature and extent of the academy's educational (and other) activities?
- What is the academy's current financial position and what has its financial track record been over the last three years (where that is possible)?
- What is the academy's strategy?
- What are the academy's mission, vision, values and culture as set by the governing body/board?
- Who are the academy's stakeholders beyond pupils, parents and staff?
- What is the academy's unique position within its area of operation and how does that differ from other schools in the area?
- What are the key issues being faced by the governing body/board at the moment?

³ Where the academy trust has one.

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Governance

- How well does the academy articulate its position on governance in the annual report?
- What governance challenges has the academy dealt with in the last two years?
- Does the company secretary have a reporting line into the chairman on board governance matters?
- Does the chairman report personally on governance, and about the role and effectiveness of the board?
- Is the academy embracing or developing best practice that is proportionate to the organisation?
- Do the academy's governance arrangements reflect the principles set out in *Good governance: A code for the voluntary and community sector*⁴ or other appropriate governance standards?
- Is succession at both senior management and board levels covered, and in what kind of detail?
- Are you satisfied that the internal regulation of the academy is sound and that you can operate effectively within its stated corporate governance framework?
- What did the most recent Ofsted report say with regard to the effectiveness of the academy's governance arrangements?

Governing body/board composition

- Who are the current trustees/directors/governors, what is their background and record, and how long have they served on the board?
- Is the board composition sufficiently diverse to stimulate independent challenge and thought?
- Are there interest groups with a common agenda on the board, and what is their impact?
- Are you being brought on to the board to bolster an existing group, or to bring something new? If the latter, what is being expected of you and can you deliver it?
- Is there a range of skills on the board and are those skills, experiences and aptitudes aligned with the academy's strategic direction, or does the strategy represent new territory for all the board members?
- Is the board composition keeping pace with the speed of change at the academy? Does it meet the needs of the organisation?
- What actions are available to the board to acquire the skills they need if they are not represented on the board?

⁴ This can be downloaded from www.governancecode.org.

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Boardroom behaviours

- What are the dynamics of the relationships between chairman and the headteacher/chief executive, the headteacher and trustees/directors/governors, and within the board?
- How is the leadership of the chairman perceived?
- Does the chairman set clear expectations concerning the academy's culture, values and behaviours, and the style and tone of board discussions?
- Is constructive challenge from the trustees/directors/governors welcomed?
- Does the chairman allow adequate time for debate?
- Does the board have a high level of visibility and lead by example?
- What is the level of communication among trustees/directors/governors between meetings?

Operational matters

- Has adequate thought been given to the board's decision making processes?
- Do board papers provide high quality information, at a time far enough in advance of the meetings, to enable informed debate and high quality decision making?
- Does the board agenda focus on the right things? Have you seen the schedule of matters reserved for the board's decision?
- Are committee meetings structured so that there is sufficient time to allow a report to be submitted to the board meeting and is adequate time allowed in board meetings to discuss committee matters?
- What is the attitude to site visits? How often does the board collectively or individually visit key locations?
- How is the strategy away-day handled? What matters have been covered on previous away-days?
- What is the practice in a typical board meeting week? Are there meals before or after the meetings enabling the trustees to get to know each other better, meet senior leadership team members and discuss wider issues in a less formal and time-constrained environment?
- How frequently, where and at what time of day are board and committee meetings held? Could you commit to attending meetings already scheduled?

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Board evaluation

- Are there rigorous evaluations of the effectiveness of the board, its committees and the individual board members?
- In what format have evaluations taken place? Have external evaluations been undertaken?
- What are the key issues that came out of the last board evaluation?
- Does the chairman act on the results of board, committee and individual evaluations?
- Are there areas for development on the board and what plans are there to tackle them?

Role of trustee/director/governor

- Is the academy clear and specific about the qualities, knowledge, skills, aptitudes and experience that it needs to complement the existing board? Will you be able to make a positive contribution?
- Can the chairman explain why you are suited to the role?
- How long is the term of office? What procedures are in place to resign before then? Are there other ways the charity could remove trustees/directors/governors, if so, what are they?
- What is the time commitment required and can you make this commitment? Could you find the time to deal with emergency situations outside of the routine board and committee meetings?
- If the academy is not performing particularly well is there potential to turn it round and do you have the time, desire and capability to make a positive impact?
- Does the academy offer a suitable trustee/director/governor induction programme and adequate ongoing training/professional development? Is it clear from the academy how you will acquire an understanding of the main areas of educational activity, especially areas involving significant risk?
- Is there adequate internal support for the trustees/directors/governors (typically from the company secretary)?
- What are the internal protocols: does a new board member channel everything through the chairman, headteacher or company secretary?
- Would accepting the position put you in a situation of having a conflict of interest?
- Is it a good career move? Will you grow in terms of experience and/or ability as a result of joining the board?

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Stakeholder relations

- Who is the academy sponsor and what formal arrangements are in place for managing that relationship?
- What issues are of most interest to the sponsor regarding the development and performance of the academy?
- Who, other than current pupils, are the academy's potential beneficiaries?
- Has the academy identified all its stakeholders and put in place appropriate policies and procedures for engaging with each?
- What is the academy's attitude towards, and relationship with, its stakeholders?
- What questions were raised at the previous general meeting?
- How often does the chairman meet key stakeholders; what kind of questions do they ask?
- When do the trustees/directors/governors typically have the opportunity to meet with stakeholders?
- What are the most common themes within the complaints received by the academy and reviewed by the board?

Risk management

- What are the main risks the academy faces, and how are these risks managed?
- What is the risk appetite or tolerance of the academy in the achievement of its educational, charitable and strategic objectives?
- Are the risk assessments underpinned by proper analysis?
- Does the academy have sound and effective systems of internal controls?
- Is there anything about the nature and extent of the academy's activities that would cause you concern both in terms of risk and any personal ethical considerations?
- Is any material litigation presently being undertaken or threatened, either by the academy or against it?
- What, if any, liability and indemnity insurance cover is available to trustees/directors?



Trust through governance

ICSA is the chartered membership and qualifying body for professionals working in governance, risk and compliance, including company secretaries.

We seek to develop the skills, effectiveness and profile of people working in governance roles at all levels and in all sectors through:

- a portfolio of respected qualifications
- authoritative publications and technical guidance
- breakfast briefings, training courses and national conferences
- CPD and networking events
- research and advice
- board evaluation services
- market-leading entity management and board portal software.

Guidance notes are prepared by the ICSA policy team to support the work of company secretaries and other governance professionals working in the business and not-for-profit sectors, and in the NHS.

Guidance notes offer authoritative advice, interpretation and sample materials for the many issues involved in the management and support of boards. As such, they are invaluable for those helping their organisations to build trust through good governance.

There are over 100 guidance notes available to ICSA members at www.icsa.org.uk/guidance

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