

# **The role of the DBE and Church Corporate bodies as a Member in academy trusts**

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Guidance from the Rochester Diocesan Board of Education for all academy trusts where the DBE or Church Corporate bodies serve in or appoints to the role of Member

May 2017

## INTRODUCTION

The purpose of this guidance is to explain the role of the Diocesan Board of Education (DBE) and Church Corporate bodies when they act as a Member of an academy trust which operates within the Diocese of Rochester.

The guidance sets out the roles and responsibilities of the Diocesan Board of Education and Church Corporate bodies as a Member and clarifies the distinction between the role of Members and the role of Directors/Trustees of an academy trusts.

This guidance is intended for all academy Trust Boards in the diocese where the DBE is a Member and/or where Church Corporate bodies serve as Members. The guidance should also be read by the Governors of Church of England schools who are considering changing status and becoming academies.

This guidance should be read in conjunction with the Department of Education's [Governors Handbook](#) and the [Competency Framework for Governors](#).

### **What is the Diocesan Board of Education (DBE)?**

The Diocesan Board of Education is a statutory body, which is recognised as the religious authority for Church of England schools within a diocese.

The responsibilities of the Diocesan Board of Education are set out in the [DBE Measure \(1991\)](#) and can be summarised as:

- promoting Christian education across the diocese
- promoting religious education and worship in schools across the diocese
- promoting church schools and advising the governors of church schools with matters affecting church schools in the diocese

### **Church Corporate bodies**

Church Corporate bodies are individuals and organisations who represent the Church of England in a legal capacity. Commonly, these are senior positions within the Church such as Diocesan Bishops, Archdeacons, Rural or Area Deans. Occasionally an individual Church minister or member of the clergy may act as a Member in an ex-officio capacity.

### **The role of the Member**

Governors in maintained schools and directors or trustees in academies have their duties set out in law, regulations and guidance, however there is less information about the role of "Members" in an academy trust.

The Member role is increasingly recognised as an important part in making academies work. In academy trusts where the Diocesan Board of Education or Church Corporate bodies acts as a Member or appoints Members we want to be clear about:

- our understanding of what the role of Member entails,
  - what we expect from the people we nominate or send to be Members,
  - and what we expect from the Academy trust they serve.
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Changing a Church school's status from Voluntary Aided (VA) or Voluntary Controlled (VC) to become an academy requires a legal change which means that the Church of England character and religious designation must be protected through legal documents known as the Articles of Association and the Church Supplemental agreement).

The Charitable Company, which is what an academy trust is, has as its foundation document the Articles of Association (known as 'the Articles'). In law, Articles are an agreement between members. In many non-charitable companies, these are the shareholders. Members may vary the terms of the articles within limits set out by the government under the conditions for the funding agreement.

The role of DBE and Church Corporate bodies appointed by the diocese who serve as Members of academy trusts ensures that the Church of England character and Christian religious designation of the school remains protected once the Governing body of the school ceases to be the legally responsible body for the school after academy conversion.

The Members always appoint the majority of the trustees – they must do so, otherwise they will not have control of the company they have agreed to create. The only trustees not appointed by members are any which are ex officio, for example the CEO can be appointed in this capacity, or co-opted or appointed by the board of trustees, or elected (such as parents). But these cannot together be in the majority.

### **The role of the Director (Trustee)**

Directors (sometimes known as Trustees) are appointed by the Members of academy trusts.

The role of Directors (who work together as a Trust Board with a Chair) is to be the legally responsible body for the academy trust and for the individual academies within the trust.

The Directors form the top tier of governance within an academy trust and are responsible for holding the Executive or Senior leadership (normally the Chief Executive Officer and other senior post-holders) to account for the effective operation of the academy trust.

[The Education Funding Agency \(EFA\) handbook](#) states:

*“The directors / trustees are the people responsible under the academy trust’s articles of association for controlling its management and administration. They have responsibility for directing its affairs, and for ensuring that it is solvent, well-run, and delivering the trust’s charitable outcomes for the benefit of the public”*

The Trust Board and Directors also hold the local governing bodies or advisory councils to account for their delegated functions as set out in the 'Scheme of Delegation', a document that sets out which tasks and responsibilities are delegated to the local level of governance.

Directors/trustees should not allow other elements of governance to compromise this clarity; either at Member or local governor level.

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## The role of the Accounting Officer and the Company Secretary

All Multi-Academy Trusts (MATs) must appoint an 'Accounting Officer' and a Company Secretary. The Accounting Officer is the senior executive leader of the academy trust, designated as accountable for value for money, regularity and propriety. In multi-academy trusts it should be the chief executive, or equivalent, of the overall trust.

Company secretaries are responsible for ensuring that an organisation complies with standard financial and legal practice and maintains high standards of corporate governance.

Company secretaries hold a strategic position at the heart of governance operations within an organisation and act as a point of communication between the board of directors and company shareholders, reporting in a timely and accurate manner on company procedures and developments.

Although they are not strictly required to provide legal advice, company secretaries must have a thorough understanding of the laws that affect their areas of work.

## SECTION A – The role of the Member in an academy trust

Members of academy trusts have a number of key functions including:

- Members act as the 'shareholder' for the Trusts and represent the Church's interests in the Trust
- Members usually have the power to **appoint and remove some or all of the directors/trustees**
- Members appoint and remove directors/trustees to ensure that the "objects" of the charity are fulfilled, they should therefore see that the directors/trustees are fulfilling those objects, the EFA Handbook describes this as "**oversight and challenge**"
- Part of Members role in ensuring the "objects" of the charitable trust will include making sure that **the character of any Church of England schools is promoted and protected** by the directors/trustees
- Members have the **power to change the "Articles"** of the academy trust (often in consultation with others) along with this they can expect to be consulted in certain other cases;
- Members are involved in an **Annual General Meeting (AGM)** of the trust.

These five areas of responsibility are set out in the "Articles" of the academy and this guidance examines these five areas.

It is important to remember that **the Members do not run the academy trust**, this is the duty of the directors/trustees.

### What Members are not

Shining a light on the role of Members runs the risk of distracting attention from the key role of the directors/trustees.

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Nothing should be allowed to dilute or confuse the key responsibilities that rest with the main board, if Members start doing the job of directors/trustees then something has gone wrong somewhere.

## **SECTION B - Appointing and removing directors/trustees**

In most academy trusts the Members appoint (and can remove) some or all of the directors/trustees, sometimes in consultation with others. They do this to populate a board which will be effective in fulfilling the objects of the trust.

Current DfE guidance is very clear that appointments should be made on a “skills basis” rather than to represent a particular school or group. When making appointments Members will therefore need to be informed by a recent “skills–needs–analysis” (sometimes known as a skills audit) that matches the priorities, risks, and context of the academy trust to the proposed directors/trustees.

The DBE recommends that each academy trust adopts a protocol for the recruitment, appointment and review of directors/trustees which sets out the following points:

- **How and when will a skills-needs-analysis be carried out, and by whom?**

This should be an annual exercise and should be conducted at board level. This exercise will highlight any gaps on the board and could identify the need for effective succession planning for directors/trustees.

- **What process will the board use for identifying potential directors/trustees?**

Although it will usually be the Members who actually make the appointment, in most cases it will be the board who are in the best position to recruit potential directors/trustees, working closely with DBE officers. [Applying the Nolan Principles of Public Life](#) requires that the process is transparent and fair. Academy trusts should consider whether the same process is used when existing directors/trustees are willing to be reappointed.

- **How will board members be appointed?**

Having identified the skills needed and matched them to potential directors/trustees the trust will need a process for actually appointing directors/trustees. Members will need to be involved at this point and will need to be informed by the skills-needs-analysis.

- **How will the board review the effectiveness of its directors/trustees, including the chair?**

Every board should have a rigorous review process that helps them to understand how effective they are in supporting better outcomes for children.

**Note: It will be appropriate for this to be shared with Members, and it will be within the powers of Members to require a board to conduct such a review.**

The protocol described in these points will be formulated and owned by the board of directors/trustees in accordance with the articles of association, but Members will need to have confidence in the protocol and it will be appropriate for Members to formally receive and note it.

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It should be remembered that in some cases Members have an absolute right to make appointments and may need to do so outside of the formal protocol.

In some academy trusts there is provision for a diocesan Member to appoint one or more director/trustee in their own right.

The power to remove a director/trustee is either explicitly described in the Articles or inferred from the power to appoint (if one can appoint, then one can un-appoint). The Articles may describe some of the circumstances in which a director/trustee ceases to serve, for instance for non-attendance etc.

There is an expectation that where a school is failing to meet the needs of pupils, and in particular is found to be doing so at inspection (Ofsted, SIAMS or some other) then Members will need to consider the effectiveness of the board and whether it has the right skills and capacity to serve the needs of its pupils.

### **SECTION C - Oversight and challenge**

Directors/trustees can be held directly accountable (with the “Accounting Officer”) by Ofsted, the Secretary of State for Education, the Education Funding Agency, Companies House and the Charity Commission, and by others. They are the legally constituted responsible body for most purposes. The role of Members must sit alongside these accountabilities and not be allowed to either compromise the core responsibility of the board, or create another layer of governance for its own sake.

Members’ oversight and challenge grows in part from their role in appointing directors/trustees. In appointing people to run things they need to know if the appointments are effective; but this scrutiny of the work of the board is not the same as the more direct and detailed accountabilities between the chief executive officer and the board.

#### **The use of Reporting Frameworks**

The DBE recommends that in all academy trusts use a framework to report to Members which can be used to structure the agenda for the Annual General Meeting (AGM) and other meetings during the academic year.

These frameworks will differ depending on context, but the DBE would expect to see some common areas covered on an at least annual basis:

a)	Has the academy trust as a whole met the key performance indicators set by the board over the last twelve months?
b)	Can the board demonstrate how they have contributed to the performance of the academy trust over the last twelve months?
c)	What are the key performance indicators for the academy trust as a whole, in the next twelve months?
d)	What does the board identify as the main challenges for the academy trust as a whole, over the next twelve months?

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e)	What will be the priorities <i>for the board</i> in the next twelve months?
f)	What will be the main challenges <i>for the board</i> in the next twelve months?
g)	What is the longer term strategic vision for the academy trust (for example, how many schools and of what sort in five years, teaching school status, sponsor status etc) and how does the board intend to meet that vision?
h)	Does the board have the capacity to meet the challenges of the next twelve months? What evidence is there for this? (refer to the skills-analysis or skills audit)
i)	Has the board been effective in protecting and promoting the Christian character and ethos of its church school(s)? How does the board know this to be the case?
j)	Are there significant financial risks facing the academy trust in terms of overall viability, the viability of individual schools, or other financial risks of which the Members should be aware?
k)	Are there significant risks to standards and outcomes for children facing the academy trust overall, or within individual schools? (including but not exclusively schools at risk of an Ofsted or SIAMS 3 or 4 judgement if inspected this year) Is the board confident in the trust's capacity to meet these risks?
l)	Does the board operate a robust and effective compliance system which assures the board that they are meeting their financial, statutory and legal obligations?

These twelve questions relate to matters which the board should be addressing and recording in various ways anyway and so should not require undue additional workload. Members should be careful not to introduce un-necessary additional reporting burdens.

The framework should set out how and when these (and other) points will be reported to the Members. It will be important for this report to be part of a conversation so that oversight can then engage what the EFA call "challenge" and this will usually mean that the report is available in writing in advance of a Members' meeting.

Although the board will appropriately rely on executive officers for professional leadership relating to these and other matters it should be noted that the role of Members is to oversee and challenge the board as a whole, not the Chief Executive Officer in particular; in the context of the Members' meeting it is important that the board as a whole is answerable for the performance of the trust.

### **Christian character and ethos**

When a church school or schools are part of an academy trust then one of the responsibilities of all the directors/trustees (not the Members) is to ensure that the character and ethos of those church schools is promoted and protected: in other words that they continue to thrive as church schools.

Although the mechanisms for protecting and promoting the church school will vary, all church academies fall within the SIAMS framework (as described in Section 48 of the Education Act 2005) and this should form the basis of the scrutiny brought by Members as part of the AGM.

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***It is for directors/trustees to ensure that these questions are answered for every church school in detail.***

The DBE recommends that Members should receive a report, as part of the AGM, addressing this aspect in the framework, which allows them to be confident that directors/trustees:

- have strong mechanisms in place for addressing the four key areas of the SIAMS inspection framework and
- that they operate those mechanisms effectively, that is to say that directors/trustees understand the impact on outcomes for children.

This report does not have to be prepared specifically for Members, it could for instance be a report from an “Ethos Committee” to the main board or a summary of actions taken by the board recorded in minutes.

In the event that a SIAMS inspection report judges a school “inadequate” in any of the four core areas then Members will expect to review the effectiveness of their appointments as director/trustee

#### **SECTION D - Approval of changes to articles and requirement to consult Members**

Detailed guidance on making changes within an academy trust is published by the DfE. The expectation of the DBE is that in cases where DfE permission is required, even under fast-track arrangements, then Members should be consulted. It will usually be appropriate for the documentation prepared for the RSC/DfE to be used for Member consultation.

In some cases a formal resolution of Members will be required, for instance in the case of a change to the Articles or a change in the Funding Agreement. Where this is the case then the usual expectation is for a meeting of Members to be arranged rather than a poll by correspondence. The directors/trustees can decide how to organise such a meeting and it may not be necessary for all directors/trustees to attend, such a meeting should however be properly clerked with formal notice and agenda arrangements in place.

Where Members are asked to make a formal resolution then directors/trustees should ensure that Members have the information available to them that will allow them to make a good decision. For example, an explanation of how the proposal will improve outcomes for children, what the risks are, and whether a full business case has been considered by the main board.

Directors/trustees should be aware that in some cases where a change of Articles was once required this may no longer be the case.

Early legal advice from DBE officers is strongly recommended.

#### **SECTION E - The Annual General Meeting (AGM) and Meeting with the DBE**

The time when the Members are most visible tends to be at the Annual Meeting. This takes very different forms in different academy trusts.

Guidance from the Charity Commission explains that not all charities need to hold an “Annual General Meeting” and that the business that should take place will vary, but there is one very clear piece of advice: when an annual meeting does take place, everyone should be clear

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about the purpose and business of the meeting. This will include who calls it, who should attend, and who runs the meeting.

For an academy trust the need for an annual meeting will usually be set out in the Articles. They typically provide for an annual meeting in each academic year and any number of General meetings for Members, as well as arrangements for meetings of the directors/trustees. In some Articles (particularly earlier versions) it can be hard to see whether individual clauses are referring to Members or directors/trustees, however the academy should always be clear about who is doing what, even if the Articles are not so clear! In some cases it may be wise to seek clarification from the solicitors who initially drew up the Articles.

The AGM is the occasion when the trustees must report to the members the activities of their (the members') company to them. It is the main point of accountability of the trustees to the members who appointed them to run their company. It is akin to a shareholders' meeting with directors in a commercial company.

In law, the Members also have a duty to ensure that auditors are appointed for the company (trust). Normally the board of trustees will do this, but if they do not, then the members must do so. So the members must be told at the AGM that auditors have been appointed and who they are.

Responsibility for arranging and managing an annual meeting will usually lie with the directors/trustees, not with the Members (or with the DBE) but in general the DBE recommends:

- During the course of the year there should be an opportunity for Members to exercise oversight and challenge, at least around the twelve questions described in section B and to address all or most of the board, not just the Chair of the board.
- Members are not the "public face" of an academy, so directors/trustees should consider whether a more public annual meeting to which stakeholders are invited is more appropriate for directors/trustees, rather than for Members
- An annual meeting with Members should allow Members to focus on their responsibilities and not encourage them to stray into the role of the directors/trustees.

At least two weeks notice must be given to all Members of an extra-ordinary meeting of Members.

The dates for the AGM should be set at the beginning of the academic year, at least one year ahead in order to allow all Members to attend and avoid having to send proxy representatives.

In cases where Articles are potentially unclear about the pattern of Member and annual meetings, we strongly recommend that directors/trustees seek legal advice and adopt a protocol that sets out what pattern they will adopt and how the meetings will serve to improve outcomes.

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## Meeting with the Diocesan Board of Education

In addition to the AGM, the Chair and Chief Executive Officer of the academy trust will be invited to attend a meeting of the Diocesan Board of Education on a cyclical basis to speak to members of the DBE and update the DBE on developments of the Trust.

This is an additional opportunity for academy Trusts to talk about their strategic plans for the trust and to answer questions from DBE members in an informal manner.

This meeting does not replace the AGM and the right of the DBE as a Member to exercise its responsibilities as set out in the guidance.

### SUMMARY

These are the recommendations of the DBE in all academies where the DBE or Church Corporate bodies serves as, or appoints, a Member or Members.

- The board of directors/trustees will have regard to this guidance
- The board will adopt a **protocol for the recruitment, appointment and review of directors/trustees** as described in Section B
- The board **should be an agree to use a framework of reporting from the board to the Members** as described in Section C
- Members should receive a **written report** at least annually that relates to the board's responsibility for the **effectiveness of schools as church schools**, as described in Section D
- The board should be clear about **the purpose and conduct of an annual meeting** as set out in Section F
- The board should make arrangements to allow Members to exercise proper **oversight and challenge** as set out in Sections C and D, this should include an at least annual meeting between Members and directors/trustees where those conversations can take place

The DBE undertakes

- To offer **training and support** to Members including Church Corporate bodies
- To **support academies in the appointment of directors/trustees** within an agreed protocol
- To offer **training and support** to directors/trustees
- To articulate and offer a vision for the **flourishing of all children**, not just the children in church schools

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### Notes

This guidance has been produced with the help of the Chief Executives of the Church Multi-Academy Trusts within the Diocese of Rochester.

With thanks to the Truro Diocesan Board of Education for sharing its own policy document.

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