

## Academy trust role descriptor: Members

### Role

Members play a limited but crucial role in safeguarding academy trust governance. While they must ensure they do not stray into undertaking the Academy Trustees' role, they should assure themselves that the governance of the trust is effective, that Academy Trustees are acting in accordance with the trust's charitable object(s) and that they, the Members, use their powers to step in if governance is failing. Academy trusts are founded by Members, who may then appoint additional Members to join them. The first Members are the signatories to the memorandum of association which is drawn up when the academy trust is first established. These first Members agree the academy trust's first articles of association, which include the academy trust's charitable purpose.

Members should not be involved in the day-to-day business of the academy trust and must ensure they do not assume the powers of the Academy Trustees. However, they do have an important role in an academy trust, based on a number of key powers set out in the department's model articles of association and in company law. In the case of trusts which include Church academies, the role of the Members is set out in the appropriate Church's model articles of association. These include powers to appoint and remove the board and direct the Academy Trustees to act in certain circumstances.

Members have a general duty to exercise their powers to further the academy trust's charitable object, which in the majority of trusts is 'to advance for the public benefit education in the United Kingdom'<sup>1</sup>. In trusts which include Church academies<sup>2</sup>, Members must also ensure that the religious character of the Church academy is preserved and developed as part of ensuring the charitable objects of the trust are met. It is essential

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<sup>1</sup> Article 4 in Academy Articles of Association: Model One

<sup>2</sup> Additional information on the charitable object of Church academies is available in the relevant model articles: <https://www.gov.uk/government/publications/church-academies-model-documents>

that Members are aware of the powers available to them and know when and how to use those powers effectively.

Members should make sure they are familiar with their own articles of association and funding agreement. Additional guidance that Members may find helpful is shared in the Further Information section.

## The powers of Members

Members help to ensure that Academy Trustees are exercising effective governance by utilising a range of powers including:

- **Appointing and removing Academy Trustees:** Members can appoint Academy Trustees and remove any or all serving Academy Trustees.
- **Appointing and removing Members:** There must always be a minimum of three Members. Members can appoint new Members or remove existing Members except:
  - the foundation/sponsor body or a related body, e.g. religious body, and any Members appointed by the foundation/sponsor.<sup>3</sup>
- **Directing Academy Trustees:** Members can, by special resolution, direct Academy Trustees to take a specific action where Academy Trustees are unable, or unwilling to act in the best interests of the academy trust. Members should consider using this power if they believe the trust board is failing to carry out its core functions, or is acting unlawfully. Other examples of when members might consider issuing a direction to Academy Trustees include where they believe an external review of governance should be carried out and the Academy Trustees have not done so, where the board has failed to act on child safeguarding, and where the academy trust is in breach of its funding agreement.
- **Amending the academy trust's Articles of Association:** Members can amend the articles of association (including the objects clause), subject to any restrictions in the articles, the funding agreement or charity and company law. Members can also change the name of the academy trust and wind it up. Academy trusts must gain permission from the Charity Commission for changes to some clauses; these are known as regulated amendments. These clauses relate to the academy trust's charitable object, benefits, and arrangements on dissolution or winding up of the academy trust.
- **Appointing and removing Auditors:** Members appoint the academy trust's auditors and will receive and review (but do not have to sign off) the academy trust's annual audited accounts (subject to the Companies Act).

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<sup>3</sup> The churches' model articles of association include specific provisions in relation to who can appoint and remove Members

## Structure

The academy trust **must** have at least three Members, although the department's strong preference is for academy trusts to have at least five Members. Having more Members increases the range of perspectives represented and ensures that Members can take decisions via special resolution without requiring unanimity.

Members can be individual people or corporate bodies. Employees of the academy trust must not be Members. The department's current model articles of association for trusts do not allow Members to be employees.

## Independence from the trust board

As the responsibility to conduct the academy trust's business sits with the Academy Trustees, it is important Members do not overstep their powers or undermine the trust boards' discretion when exercising its responsibilities. The department's strong preference is therefore for at least the majority of Members to not sit on the trust board.

It is important for Members to be kept informed about academy trust business so they can be assured that the trust board is exercising effective governance. This must include providing the Members with the academy trust's audited annual report and accounts.

One way in which some academy trusts decide to keep Members informed and engaged is for one or more Members to also serve as an Academy Trustee on the trust board, which may be through appointing the Chair of the Academy Trustees as a Member. When operating as an Academy Trustee such Members have no greater power than other Academy Trustees, and should remain conscious of the corporate nature of the trust board's identity and decision making and not seek to dominate the trust board because they are also Members. It remains the department's strong preference however that at least the majority of Members should remain independent from the trust board.

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