

INTRODUCTION TO:

Academy trusts – the role of members

School structures



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Contents		
	Introduction	3
1	Members – what are they?	4
2	Where do members fit in the governance structure of the trust?	5
3	How many members do we need?	5
4	How are members appointed?	6
5	Trusts with a religious character	8
6	Members – what do they actually do?	9
7	Holding the trust board to account – what questions should we be asking?	11
8	What does separation of powers mean and why is it necessary?	12
9	How often do members meet, and what happens at the meetings?	13
10	Annual general meetings (AGMs)	14
11	How do members make changes to articles of association?	16
12	How do we appoint and remove trustees?	17
14	Appendix 1 – Members myth busting	18



Introduction

The members of an academy trust are the guardians of the governance of the trust. They have a limited and distinct role, but one which is often misunderstood. It is probably fair to say that many trusts struggle to define the role, let alone to utilise it in an effective way. For a long time members were seen to be 'something we have to have' without serious consideration given to what role they should play. This wasn't helped by the fact that following the Academies Act 2010 the Department for Education (DfE) paid little attention to the members of trusts and did not appear to consider the issues which would follow from having only three members, who were often also trustees. A classic case of marking your own homework. Perhaps a more familiar scenario is where members wrongly assume or duplicate the functions of the trust board, in effect becoming 'super' trustees, leading to the intended purpose of the members' role being lost.

Another common issue is where there is very little separation between the trustee board and the trust's members, with most if not all trustees being members. While this was considered acceptable practice under earlier iterations of the model articles of association, it is now generally acknowledged that this is not conducive to good governance practice in the school sector.

Finally, there is the issue of how many members. The model articles require only three, but the DfE now recommends at least five. This is because for certain decisions, such as a change to the articles of association, there is a requirement that 75% of members vote in favour; with only three members, that means unanimity.

In this guidance, we address these issues, providing practical insights in to who members can be and how they should operate. In order to reflect current practice, we refer to the current DfE model articles of association. The specific member requirements for your own trust may differ, depending on your articles of association. However, it is worth saying that if, when reading this guide you find major deviations compared to your own articles, the chances are it is your articles of association, which are in need of a refresh.



1. Members – what are they?

Members are not exclusive to academy trusts – most charitable companies have members as a result of the requirements of the Companies Act 2006. As all academy trusts are set up as charitable companies, they too must have members. In effect, the members sign to say they wish to form a company.

The first members are the signatories to the memorandum of association drawn up when the trust formed. These members will also have agreed the trust's first articles of association, which include the trust's charitable objects – i.e. the purpose of the organisation. The members are the final stage in the process of changing the articles. The articles describe how the trust will be governed, including how many members can be appointed and by whom, their voting rights and so on.

While members hold the trust board to account for the effective governance of the trust, the members themselves have a minimal role in the actual running of the trust. It is the trust board, not the members, who are the organisation's key decision makers. In its model Funding Agreement, the DfE state: 'Charity Trustees means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust'. However, there are some critical decisions that sit with the members and even more so if the trust is failing.

Members have often been compared to shareholders of a company limited by shares. As this draws parallels with profit making organisations and paying dividends, it could give the impression of individuals becoming involved in the governance of the organisation out of self-interest; this is incompatible with the values of charity governance, and especially so in the school sector, where members of academy trusts are safeguarding publicly funded community resources. However, it can be useful to think about how shareholders, like members, have a real interest in the success of a company. In the case of a company limited by shares, shareholders will judge 'success' against how much money the directors are generating to pay to the shareholders. In the case of a charitable company, members will judge 'success' against how much the trustees are doing to achieve the charitable objects of the charity.

Like shareholders, members too have an annual general meeting (AGM) at which they can express their views and, depending on their rules, can vote on certain key issues such as remuneration policies. But beyond this, shareholders have no day-to-day role in running the company.

One of the members' key responsibilities is the appointment of trustees. If the trust is not achieving its purpose, the members must consider if this is because the trustees are failing to carry out their three core governance functions. If they conclude that they are not, the members must remove trustees. This power to remove trustees extends to all trustees, regardless of whether they were appointed by the members or another body, for example, members can remove trustees elected by parents or staff in accordance with the procedure set out in the Companies Act 2006.



2. Where do members fit in the governance structure of the MAT?

Members are in effect the ‘guardians’ of the governance of the trust. That means they sit right at the top of the governance structure, as demonstrated in the diagram below:



The members’ role is discrete and distinct; they are tasked with assessing if the board of trustees is performing well and, as such, are ensuring that the purpose of the trust is being met, and its charitable object is being fulfilled. Therefore, members do not need regular business meetings or committees.

Many trusts are now including the responsibilities of members in their scheme of delegation, so it is clear to all that they are part of the governance structure and what governance functions they perform (e.g. appointing trustees). NGA’s model schemes of delegation may be a useful resource for trusts looking to develop this aspect of their governance.

External reviews of the governance of the MAT will be primarily targeted at the trust board, but should also consider the role of members, specifically whether there is the right number, clarity of role, and whether there is sufficient separation from the trust board. If you are a member as well as a trustee, you might want to consider which role is most suited to you, and resign from the other, suggesting that others likewise conflicted do the same.

3. How many members do we need?

Academy trusts must have at least three members, and the DfE advises that there should be ‘wherever possible’ at least five. This is because having fewer than five can cause issues ensuring that annual general meetings (AGMs) are quorate, and for making decisions via special resolutions, which require 75% agreement of the members (There is more on this in the section on AGMs).



However, there is no reason why there should not be more than five; NGA does not think that a very small number of people is robust governance.

NGA is aware of cases where members have died, or sponsors have withdrawn, or where they have not maintained contact without formally resigning, or where contact details have become out of date or even lost, resulting in members not being invited to attend meetings. Where there are only three members, the remaining two members have been left unable to make decisions via special resolution as two out of three members does not meet the required 75% in agreement (or otherwise) of the special resolution. An example of this is article 15A of the DfE's model articles, which allows the members to appoint additional members as they see fit. However, the appointment of additional members requires a special resolution. Therefore, if there are only three members, they will all need to agree to the special resolution to appoint additional members. Once there are five members, to meet the 75% threshold, only four will need to agree.

The number of members will of course vary from trust to trust, and while there is no official limit on that number, where a trust is looking to extend membership significantly, the DfE via its Regional Schools Commissioners (RSCs) may take a view on a case-by-case basis. It is unusual currently to have more than five members, but if the DfE objects, NGA would be happy to provide advice.

Details of all member appointments must be provided to the ESFA, within 14 days of appointment. The DfE is entitled to ask specific questions regarding the reason for the appointment and the skills these additional members would bring to the trust's membership. While this is specified in the current Funding Agreement, it did not appear in the earlier versions nor does it appear in the AFH or Governance Handbook.

A word on alternative membership models

NGA is currently exploring and advocating the potential for the widening of membership models within trusts, bringing greater community and stakeholder ownership and accountability. We have suggested that trust membership should be given a fundamental rethink; for example, trusts could have membership models that include all parents. However, while we are aware of one trust that has opened up its membership to a much wider group, the current expectation from the DfE is that the membership will reflect existing practice. This is still very much at the discussion stage; see [here for further information](#).

4. How are members appointed?

First, not everyone can or should be a member – employees of the trust are not allowed to be members unless the articles of association specifically state otherwise, and this is only the case for some historical articles. Indeed, the current model articles rightly do not allow any employees, including chief executive officers, to be members.

Second, those forming a new trust will need to be clear that the majority of members (and preferably all) should not also be trustees, so that they are a truly separate layer of governance.



Third, during the process of either forming a new MAT or restructuring an existing MAT, the DfE will ask a series of questions in relation to the appointment of members such as their current responsibilities in terms of employment and other volunteering roles, and how these 'demonstrate expertise/skills required for role as member'. By this, the DfE is specifically referring to skills and expertise that would cover the following areas: leadership, educational improvement, finance, business, HR. These questions have unhelpfully set some hares running about how to appoint and indeed the role of the members.

For existing trusts looking to appoint additional or replacement members, it will be the role of the current members to appoint new ones. The trust should ensure that any potential member understands and is supportive of the trust's ethos and culture, and understands the need and desire to achieve the trust's charitable object. As with any governance role, members also need to understand their role and liabilities (see question 13 below) before they accept it.

Due to the limited scope of the members' role, the time commitment is far less than that of trustees and, as such, if there are trustees who are struggling with the time required to fulfil their role, they may consider being appointed as a member.

The particular needs of your trust may mean you wish to explore alternative skillsets and experience for member appointment. Nevertheless, the focus on skills should not lead trusts to lose sight of the limits of what the role entails. While it is important to have members who possess a good understanding of the charitable aims of the organisation, and who are willing to take action if the need arises, members do not need to go through the same internal review process as the trust board. An annual skills audit for example, while good practice for the trust board, would seem excessive for members, especially as in many cases members will only meet once a year.

If the MAT also has a sponsor, the sponsor will be a member. It is the sponsor as a corporate body, rather than as an individual, who is the member (although in early MATs this may have been an individual). This means that the actual person representing the sponsor may well change over time. The sponsor may have the power to appoint both some members and some trustees and this will be detailed in the trust's articles of association.

In the past, some trusts' articles have also dictated that the chair of trustees will, by default, be a member; the current models do not include such a prescription.

All member appointments must be formalised, with the details registered with the ESFA, as well as being recorded in the statutory book of the trust. In addition, the members' names, dates of appointment, and any relevant interests must be published on the trust's website. All members are required by *Independent School Standards (England) Regulations 2010* to have an enhanced Disclosure and Barring Service (DBS) check.

Where do we find people?



If you are having difficulty finding potential members for your trust, you can contact **Academy Ambassadors** who provide MATs with free support in finding trustees but may also be able to help with appointing members. Alternatively, you can seek to source your own members, from your local communities and businesses for example, or through existing recruitment contacts. Some trusts find that people they have tried to recruit as trustees simply do not have enough time to fulfil that particular role. However, as being a member is less time exhaustive, trusts may want to consider these individuals for that position instead.

If a member subsequently resigns, this can be accepted as long as the minimum number required by your articles remains (usually three). This is one of the reasons why it is a good reason to have more than the minimum number of members required. A resignation should be formalised through a notice in writing, which will then need to be signed by the person/persons entitled to remove them.

5. Schools/trusts with a religious character

The requirements placed on members, both in terms of how they are appointed and the official duties they carry out may differ slightly if the trust itself, or the schools forming the trust, have a religious character. For some trusts, it may be written into their articles of association that a certain number of members must be appointed from an organisation and accountable to that organisation. The foundation or sponsor body will by and large appoint a certain number of the members of the trust. It is the foundation, or sponsor body, not the individual appointed on behalf of them, who is the member. The foundation or sponsor body, be it a diocese or other religious body, will usually identify an individual to represent the body as a member. The DfE has produced memorandums of understanding for both the Catholic Church and the Church of England (CofE).

Catholic Schools

The Catholic Education Service prescribe that the members of a catholic multi-academy trust company are accountable to the Bishop. In this particular example, the members are then charged with having the oversight of 'the preservation and development of the religious and educational character, mission and ethos of the company'. This requirement reflects the wider role of members, but also the need for them to be able to reflect and be committed to upholding and maintaining the ethos and values of the trust. In a catholic multi-academy trust company, the Bishop may also be a member themselves. The model articles of association state that the membership shall include (where applicable) any person appointed by: the Diocesan Bishop/Religious superior; the Diocesan Trustee; the Vicar General; the Episcopal Vicar for Education; the Diocesan Schools Commissioner; and the Financial Secretary to the Diocese.

Church of England (CofE)

There are over 4,600 CofE schools in the country, and these are supported by their local Diocesan Board of Education. 250 of these are sponsored academies and 650 are converter academies making the CofE the biggest sponsor in England. Each individual diocese runs a Diocesan Board of Education. There are various membership models within CofE based MATs, especially if it is a mixed MAT, consisting of both CofE schools and community schools. It is common for the church to appoint the majority of members. Trusts are advised to look at the guidance on which model



Memorandum and Articles to use, but legal professionals may be employed to work on various models of trust membership, although it is usually the expectation that there will be minimal changes to the model articles. The DfE states in its memorandum of understanding with the DfE that it expects 'no dilution of the level of church governance and involvement as it was immediately prior to conversion' – this includes at both member and director (trustee) level. The model articles of association state that the members shall include the Diocesan Board of Education acting corporately by the hand of its Director and two nominated individual members of the Diocesan Board of Education.

Mixed MATs

Mixed MATs run a diverse network of schools falling under different corporate bodies. It is likely that a mixed MAT will have provisions in the articles dictating a specific number of members appointed by the foundation or religious body. For example, one particular mixed MAT, the Star academies, prescribe that the members shall include a majority of members appointed by the foundation body including the signatories to the memorandum, the foundation body itself and up to three persons appointed by the foundation body.

6. Members – what do they actually do?

The DfE's *Governance Handbook* makes it clear that the role of members in the running of the trust is minimal and one of oversight. The guidance clarifies that members must 'avoid over stepping their powers or undermining the boards'. The trust board, not the members, are responsible for delivering the three core governance functions and for conducting the 'business of the trust'.

I. The members sign the memorandum and articles of association

The very first thing that the original members will do when forming a new trust is **sign the memorandum of association** and **agreeing the trust's first articles of association**. From then on, members retain responsibility for the existence and constitution of the trust, as well as some very specific and integral tasks.

Just as members agreed the first iteration of the trust's **articles of association**, they retain responsibility for these going forwards. It is unlikely that the articles will be changed frequently and the trustee board will do the main work in identifying the changes that need to be made before these can be approved by the DfE and then are passed to the members to agree – see section 11 for more information on the process.

II. The members determine the name of the trust

Members retain the power to change the name of the organisation. This requires a special resolution.



III. The members appoint members and trustees

The articles will also describe how **members are recruited and replaced**, another role reserved for the members themselves, as discussed in section 2.

As well as appointing other members, members will also **appoint some trustees and have the power to remove all trustees as discussed in sections 1 and 12.**

IV. The members appoint and remove the auditors

Members appoint independent auditors who will certify whether the accounts present a true and fair view of the trust's financial performance and position. A contract between the trust and the auditors must be set out in writing but will include the right for the members to remove an auditor at any time. The decision to remove an auditor will require a majority vote from the members, who will then need to give their reasons for their removal, and present these to the trust board. The trust board will then have to notify the EFSA.

V. Members are entitled to receive a copy of the Annual Accounts and Report

Members are entitled to receive a copy of the signed Annual Accounts and Report. It is the trustees who sign-off the accounts and report. There is a not-uncommon misconception that this is the role of members - it is not.

General practice (where an AGM is held) is for the Annual Accounts and Report to be presented to members at this meeting. If an AGM is not held because the articles do not require it then the accounts and report must be sent to members.

VI. The members ensure the success of the trust

As confirmed in a recent Court case (July 2018), as the 'guardians of the governance' of the trust, members have responsibility for **ensuring that the academy trust's charitable objective** - which for most trusts can be summarised as '**advancing education for the public benefit**' - is being met. If it is a trust with religious character, the charitable purpose is also likely to include upholding or advancing the faith. Essentially, this means focusing on:

- Outcomes - are the pupils in the trust making expected progress and reaching the required levels of attainment?
- Financial oversight - is the trust spending public money wisely?

The trust board is required to produce Annual Accounts and Report and these must be sent to the members.

The annual report will include a governance statement, which the members should pay particularly close attention to, especially in those trusts, which are producing audited accounts for the first time. This must include details of the trust board's composition, and what trustees have done to



review and develop their governance structure. If they are an established trust, they should also include an assessment of the trust's governance, incorporating a review of the composition of the board in terms of skills, effectiveness, leadership and impact. By including the self-review of the trust board, members are provided with an overview of how well the trust board thinks they are meeting the trust's charitable objective and the members will be able to use this to help confirm that the trust board is carrying out its role effectively.

VII. The members meet, usually once a year at an annual general meeting

Members will need to check their specific Articles of Association for the requirements about meetings. Early versions of the model articles contained a requirement for an annual general meeting (AGM). However, the current Model Articles (updated December 2017) contain an optional clause for an AGM.

Where there is no requirement for an AGM in the Articles there will be provision for members or trustees to call a general meeting. NGA recommend that the members do meet once annually.

More details about the procedure for calling meetings and their proceedings can be found in section 8.

VIII. The members dissolve the trust

If the trust is failing, it is the responsibility of the members of the trust (in conjunction with the DfE), to dissolve the trust. Academy trusts are charitable companies limited by guarantee. This means that, in the event that the trust becomes insolvent, the members of the trust could be liable to the amount detailed in the trust's articles of association. Each member will therefore undertake to contribute such amount, as may be required (not exceeding £10) to the academy trust's assets and for up to one year after s/he ceases to be a member.

A word about what members DO NOT do

Members do not:

- Tell the trustees how to run the trust. The business of the academy trust is primarily conducted by the trust board themselves, not the members.
- Attend trustee meetings (unless they are also a trustee). Furthermore, they do not have voting rights at trust board meetings.
- Set the trust board's agendas and/or priorities.
- Appoint or performance manage the senior executive leader.

7. In holding the trust board to account, what questions should we be asking?

Holding the trustee board to account is the most important role that members play. The members will do this in a hands-off manner, through monitoring the work of the trust board. This is done by:



- Hearing directly from the board of trustees once a year at the AGM or General Meeting, verbally receiving information and updates on progress made and plans going forward.
- Receiving the trust's Annual audited accounts and annual report
- There is no particular right reserved for members to see the minutes of trustee meetings

However, they have the same right as any other member of the public to do so. Members may consider asking for the approved versions of trustees' minutes to be sent to them as a matter of course in order to assist with their consideration of the effectiveness of the trustee board.

Before hearing from the chair of the trust board at the AGM or general meeting, members should consider the questions they will ask in order to ascertain how the trust board is performing. The following questions are not exhaustive and are meant only as a guide; the individual needs of each trust will need to inform the exact line of questioning:

1. Does the trust board reflect the ethos and values of the trust?
2. Is the trust board effectively fulfilling its three core governance functions?
 - a. Is there a clear vision for the trust and is progress being made against the strategic aims being pursued to realise this vision?
 - b. Are senior leaders being held to account for the performance of the trust?
 - c. Is financial oversight sound?
3. How well does the trust board know the school(s) in the trust and how are the needs of the school(s) are being met?
4. How engaged are stakeholders and is this reflected in the reputation of the trust?
5. Has the trust board reviewed its own performance and have members received a copy? Was it internal or external and what does the self-evaluation tell us?
6. Are the right people around the table and are there any skills gaps?
7. Is there evidence to show that the charitable objective of the trust are being met and that the governance of the trust is effective?

While members should not be interfering in trust board agendas or dictating the work of the trust board themselves, if the members are not satisfied that the trust board is effective, then they will need to step in. If there has not been an external review in any one three year period, the members should then act to direct the trust board to convene one. If ultimately the trust is underperforming, and the members cannot see evidence that the trustees have the capacity to ensure that the situation improves, the members should seriously consider if they need to appoint different, or additional trustees.

8. What does separation of powers mean and why is it necessary?

In this context, 'clear separation' between the layers of governance means that the individuals making up one tier of the governance structure of the organisation are not the same as another tier; in other words, ideally members should not also be trustees.



The need for separation between members and trustees has long been a point of debate with some arguing that, particularly in a single academy trust or a small MAT, it is impractical to find unconnected individuals to become members especially as academy trusts are already held to account by the regional schools commissioners (RSCs) and the DfE. Indeed DfE did not require separation until more recently.

However, the reality is that RSCs and their teams do not have the capacity to provide constant oversight of every academy trust, and the likelihood is that they will only become involved when problems have already manifested and escalated significantly. As guardians of the governance of the trust, it is logical that members are different people to the trustees, for the simple reason that it is difficult to hold oneself to account. Therefore, this additional layer adds to the system's checks and balances.

The requirement for separation, particularly with MATs, is made explicit in both the *Academies Financial Handbook* (AFH) and the *Governance Handbook*, with the AFH stating:

“The Department’s view is that the most robust governance structures will have a significant degree of separation between the individuals who are members and those who are trustees. If members also sit on the board of trustees this may reduce the objectivity with which the members can exercise their powers. The Department’s recommendation is for a majority of members to be independent of the board of trustees”

Separation between members and senior executive is even more important and the DfE guidance on this has changed with no room for negotiation. Unless you are still operating on earlier articles of association, employees of the trust must not be members. This is because of the inherent conflict: the senior executive leader is accountable to the trust board, which is in turn accountable to the members. As such, if the senior executive leader is a member and/or a trustee, these relationships become circular; not least because the members have the power to appoint and remove trustees. This could (and has) led to the position where a chief executive acting as a member has removed the chair of the board.

9. How often do members meet, and what happens at the meetings?

The articles of association for each trust usually specify how often members must meet. Usually, the minimum requirement is for an annual general meeting (AGM) where the audited accounts and annual report are received and trustee appointments and removal can be addressed. Even if there is no specified minimum in the articles, it is NGA's view that members should meet once a year.

Although most articles contain no obligation to meet more frequently than this, some trusts are looking at different ways to maintain members' engagement without 'treading on the toes' of the trust board. We suggest that this is done by accepting invitations to school events, rather than by formal meetings. Some trusts have considered or opted for additional meetings of the members, but this is not something NGA recommends, and even if this approach is taken, it must be made clear that these should not be approached in the same light as trust board meetings. The



accountability for decisions relating to areas such as school improvement, local governance and financial performance rests with the trustees, not members. Members should not therefore be meeting to make strategic decisions and plans about these areas.

Some trusts do gather together members as frequently as once a term but it should be stressed that additional meetings should serve an appropriate and specific purpose, in line with the members' role. This may be something a trust would consider only in times of concern or if the trust had undergone a major restructure of governance on the back of previous underperformance of the trust board.

10. Annual general meetings (AGMs)

It is the trustees, not the members, who determine the time and place of the AGM.

The model articles make it clear that article 19 (which sets the requirement for an AGM) is an optional article – this means that, technically speaking, an AGM is not necessarily required under the current model articles. However, a footnote recommends that article 19 is adopted as an AGM presents an 'appropriate vehicle' for regularly reviewing the appointments to the trust board, although NGA's view is that the most compelling reason for holding an AGM is to secure public accountability. Assuming article 19 is adopted, an AGM should then be held once every financial year, and must take place within 15 calendar months of the previous AGM.

1. Who can attend an AGM?

An AGM may take different forms in different trusts. However, in every academy trust, all members are entitled to attend and, in NGA's view, attendance at the AGM should be the expectation placed upon all members.

In order for an AGM to go ahead, at least two members will need to attend. Trustees cannot count toward quorum but are entitled to attend and speak at the AGM, for example to put a case forward to demonstrate how the trustees are fulfilling their governance functions on behalf of the trust as a whole. The senior executive leader and finance director should also attend.

A note on chairing of the AGM - The Articles are slightly confusing in regards to this. It is important to recognise that there is a difference between the AGM and general meetings. The trustees call the AGM if they have that clause – all other meetings are classed as general meetings and can be called by the members. At general meetings, the articles specify that the members should vote as to who will act as chair, but it's a moot point whether that also applies to AGMs.

2. The purpose of the AGM

The audited accounts and annual report are formally **received** at the AGM. The AGM is the opportunity for members to hear from the trust board and the CEO about progress made during the last year as well as plans for the future. The members can – and should – question both the progress and future plans at these meetings, as this will inform their own assessment of the governance of the trust and the ability of the trust board to achieve the trust's charitable object.



NGA thinks that the AGM is also a good opportunity to invite other stakeholders (principally parents) to attend and indeed ask questions.

A typical AGM agenda is likely to include:

1. Minutes of the previous AGM
2. Audited annual accounts for members to receive. This should include the annual report on performance over the last year in terms of meeting the charitable objective of the trust and the vision, financial and educational performance of the trust
3. Major plans/outlook for the year ahead including plans for growth
4. Appointment/Re-appointment of auditors
5. Other potential items that may be covered include the appointment and removal of trustees or members and amendments to the articles of association (if any are being proposed), but these are not necessarily items that would be taken to the AGM.

3. Voting at AGMs

Members can vote on resolutions in a number of ways.

- By a show of hands, unless a poll is called for.
- A poll can be called for either by the chair, two members with voting rights or by member(s) representing at least 10% of those with voting rights.

There are two different types of resolution:

1. Special resolutions which require approval by at least 75% of the members. (This is another reason for not having only the minimum number of members (i.e. three); with only three members decisions that legally require a 75% majority actually need all members to vote in favour to reach the 75% limit.) With a 'special resolution of the members', it is not classed as a 'special resolution' unless the notice of the meeting specifically includes the text of the resolution with the intention to propose the resolution as a special resolution. Once the notice of the meeting has been specified as such, the resolution may only then be passed as a special resolution. Special resolutions are a change of name, changes to the articles of association, the appointment of members and any resolution required by the articles to be a special resolution.
2. Ordinary resolutions which require a simple majority. Anything which is not classed as a special resolution.



11. How do members make changes to the articles of association?

This guidance has mentioned that some trusts are operating with articles of association which do not now meet the DfE's current preferences. This highlights that it is important for trusts to, from time to time, review and amend their articles. While it is unrealistic to expect this to be an annual task, when the guidance changes or better practice is identified, this should be a trigger for a review.

Academy trusts may seek to change their articles for a range of reasons, including:

- Reflecting changes in DfE guidance, including changes to the *Academy Financial Handbook*.
- Reflecting changes to the DfE's model articles of association.
- Altering the minimum or maximum number of certain types of trustee.
- Altering selection procedures for board recruitment.
- Adapting to the evolving nature of the trust, for example after a period of sustained growth.
- Adopting better models or practice.

It is important to note that there are limitations to the changes you can make and these changes will be subject to any restrictions created by the trust's funding agreement and charity law. To amend the articles of association there is a specific procedure that must be followed, in order to comply with the *Companies Act 2006*. The process for amending your articles is as follows:

- 1) There will need to be a meeting of the board of trustees, where the trustees will need to agree the proposed amendments by majority vote. (At this stage it is also important to consult with the members, as their approval is needed later (see stage 3) so their concerns should be taken into account).
- 2) Send your proposed changes and the reasons for them to the DfE for written consent.
- 3) Once consent has been obtained, the amended articles must be presented to the members of the trust for approval. Agreement must be reached by **special resolution** (further details above) which needs the support of 75% of those voting, in order to pass.
- 4) The amended articles and a copy of the special resolution will need to be registered with **Companies House** no later than 15 days after both the resolution is passed and the amendment(s) take effect. It may also be necessary to complete and file a CC03 and/or CC02 form with Companies House – see below.
- 5) A copy of the amended articles and special resolution of the members must be submitted to the DfE.

It is important to note that certain sections with the articles must also be approved by the Charity Commission before the new articles are approved by the members. This creates an additional step between (2) and (3) above. It is advisable that you take legal advice before undertaking any changes to your articles to ascertain whether the changes require the Charity Commission's consent.



There may also be a provision in the funding agreement which requires the trust to provide a copy of the amended articles and special resolution to the DfE. It is therefore advisable that you check the trust's funding agreement or contact the DfE to confirm this requirement.

12. How do we approach the appointment and removal of trustees?

In the interests of the members fulfilling their function of ensuring the trusts charitable object is carried out, it is common practice for members to appoint a certain number of trustees by ordinary resolution, i.e. where at least 51% of the members are in favour. If the need to address vacancies does not tie in with any planned general meeting, appointments can be made on the basis of a written resolution.

In order to build a diverse board with a range of views, backgrounds and knowledge, members should ensure that their own appointments to the trust board are carried out as part of a wider, rigorous recruitment process for new trustees which includes a skills audit, role description and an interview. The trust board themselves may have a role in putting forward candidates to the members for them to appoint. Once appointed, it is the responsibility of the chair of the trust board, working with the senior executive leader, to provide a suitable induction to the board and the trust.

The Companies Act 2006 gives members have the power to remove any trustee, not just trustees they themselves have appointed.



Appendix 1

Myth busting – members of an academy trust

- 1. It is easier and makes more sense to have the same individuals as members and trustees**
It may be the easier option in the short term, but is poor governance practice. Separation between members, trustees and employees promotes objectivity and transparency while reducing concentrations of power, opportunities for ‘group think’ and the possibility of a majority getting ‘too close’ to the issues.
- 2. Members sign-off the annual accounts**
The board of trustees signs-off the annual report and the accounts. Members ‘receive’ the report and the accounts, and are able to use the information contained within them to discuss the progress the board is making in achieving the trusts charitable object.
- 3. Members are responsible for adhering to the funding agreement**
The trustees are responsible for adherence to the funding agreement (made between the trust and the Secretary of State). It is the trustees who are therefore responsible for the trust’s accountability to Parliament and to the Secretary of State (the Secretary of State is the Principal Regulator for academies which are classed as exempt charities).
- 4. Members agree the governance structure of the trust**
Members must approve any changes to the articles of association, the same doesn’t apply to the scheme of delegation. The articles themselves contain a broad outline of the constitution of the trust, rather than a detailed governance structure. The trust board is the accountable body and as such retains the power to delegate governance functions.
- 5. Members can conduct the work of the trust board and vote in trustee meetings**
Members should not be carrying out the business of the trust board and they do not have a right to vote or indeed attend meetings of the trust board (unless of course they are trustees themselves).
- 6. Members can only remove the trustees they have appointed**
Members have the power to remove any trustee, irrespective of whether the individual was appointed or elected to the board.
- 7. There should be a skills audit of members**
Whilst ideally any level of governance in an organisation would be made up of individuals with a perfectly balanced skills set, a skills audit isn’t required for members due to the limited powers that they have. The business of running the trust rests with the trustees and not the members.
- 8. Members are the accountable individuals**
Reflecting the limited role that they have in the trust, the liability of the members is limited to £10 per member and only payable in the event that the trust is wound up and has insufficient assets to meet all its debts.