Wembley Multi-Academy Trust
ACHIEVEMENT FOR ALL

WEMBLEY HIGH TECHNOLOGY COLLEGE

EAST LANE PRIMARY SCHOOL

NORTH BRENT SCHOOL

WEMBLEY MULTI-ACADEMY TRUST

THE ROLE OF MEMBERS







1. Members - Definition of Role
2. Main Responsibilities
3. Meetings & Annual General Meetings (AGMs)

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.

This guidance explains what members are and what they should and shouldn't be doing. Trust members should use this guidance to assure themselves of the remit and limitations of their role, but it should also be invaluable to the trust board who report to the members.

Members

Members are not exclusive to academy trusts – most charitable companies have members as a result of the requirements of the Companies Act 2006. All academy trusts are set up as charitable companies so they too must have members. The first members sign to say they wish to form a company and are 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 will also be 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, by whom, and voting rights.

Members hold the trust board to account for the effective governance of the trust but have a minimal role in the actual running of the trust. It is the trustee board, not the members, who are the organisation's key decision makers. However, there are some critical decisions that sit with the members, especially if the trust is failing.

Members are essential to the integrity of an academy trust governance structure. They are the last line of defence from failures of governance and failure to uphold the charitable purpose of the organisation. Members must therefore remain informed of trust performance and be clear on how to appropriately interact with the trustee board.

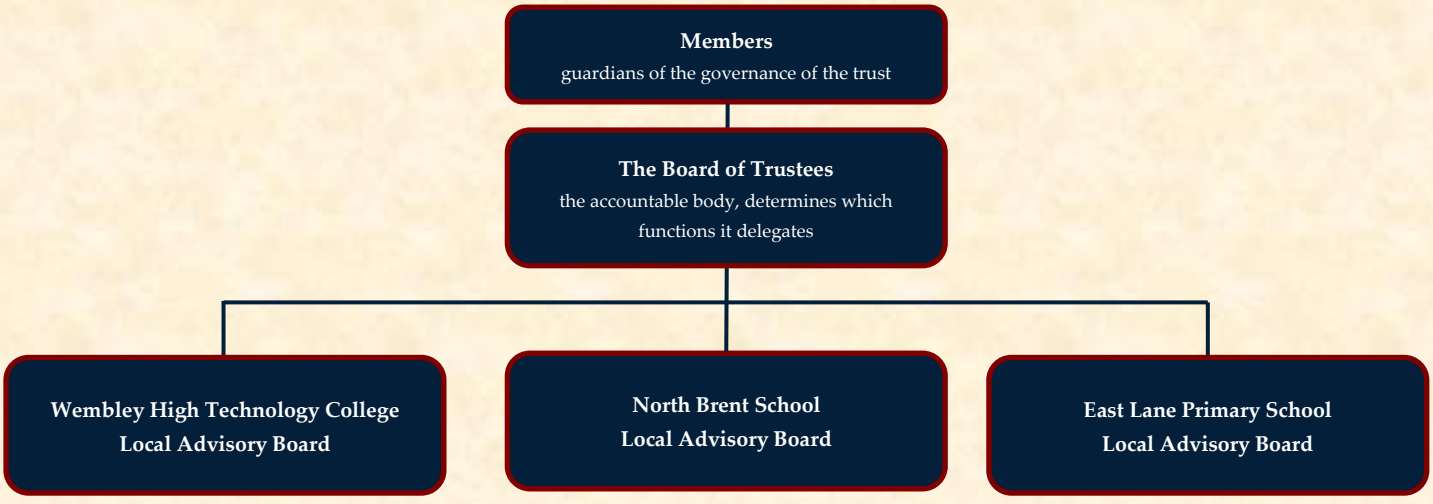
Academy trusts are set up as charitable companies limited by guarantee. As limited companies, it is the charity which is liable for its debts, not the people behind it, who are protected by limited liability. As charitable companies do not have shareholders whose liability is limited to the number of shares they have bought, they have members, with the members' liability limited to the amount of the guarantee set out in the charitable company's articles. In the case of academy trusts, members' liability is limited to £10.

The DfE compares members to shareholders of a company limited by shares, but this comparison can be unhelpful due to shareholders being due a dividend, while academy trusts are not-for-profit organisations, where members volunteer with no monetary reward. While members are focused on the success of the organisation, success should be measured against the achievement of the charitable object of the organisation.

While members have no day-to-day or week-to-week role in running the company, a key responsibility is the appointment/ removal 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, members need to seriously consider if they need to remove trustees, or if other action is required, such as commissioning an external review of governance.

How do members contribute to academy trust governance?

As the guardians of its governance, members sit at the top of the trust's governance structure, as demonstrated in the diagram below:



It is key that both the members themselves and the trustee board remain committed to keeping the members' role discrete in order for it to fulfil its function. Where members overstep their role, a significant barrier to effective, accountable, transparent governance is formed. Members need to be kept free and untainted in order to assess if the board of trustees is performing well, and that the charitable objects are being fulfilled.

External reviews of the governance of the trust 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.

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, members should not also be trustees. Given members are the guardians of the governance of the trust, it is logical that they 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 significant separation, particularly within MATs, is made explicit in both ATH and the Governance Handbook: *"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 reduces the objectivity with which the members can exercise their powers and increases the risk of unchecked 'group think' by the board. The Department's strong preference is for at least a majority of members to be independent of the board of trustees."*

A common argument for having the same people to serve as both a member and a trustee is that it will enhance communication across the governance structure. But good communication should not depend on duplicating roles with individuals governing at several levels acting as a conduit for disseminating information. Good governance requires a separation of roles to ensure objectivity and avoid conflicts and individuals having undue power and influence.

MAIN RESPONSIBILITIES

Members do very little unless the board of trustees is under- performing. Members need to pay attention to the limitations of their role, and avoid undermining the board. The trustee board, not the members, is responsible for the core governance functions and conducting the business of the trust. As the guardians of the governance of the trust, while members don't make the actual governance decisions, they need to ensure they are satisfied that the standard of governance across the trust is high. In 2020 the DfE produced a series of role descriptors including one for academy trust members. This prescribes that members must safeguard the governance of the trust, and therefore need to seek assurance that governance is effective. The role descriptor specifically states that members must not assume the powers of trustees, but also must be aware of the powers afforded to them.

a) 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 agree 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.

b) The members ensure the objects of the trust are met and the success of the trust

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 the following questions:

- Is the board of trustees ensuring governance is strong?
- Is the board of trustees ensuring the pupils in the trust are making expected progress and reaching the required levels of attainment?
- Is the board of trustees ensuring robust financial oversight?

In order to do this, members need to remain informed about the work of the trustees, but not actively seek to participate in it. While trustees should think about how to keep members informed, they must ensure the integrity of the governance structure prevails.

c) The members determine the name of the trust

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

d) The members appoint members and trustees and ensure that appropriate procedures are in place for the recruitment of Member Appointed Trustees

The articles will also describe how members are recruited and replaced, As well as appointing other members, members will also appoint some trustees and have the power to remove all trustees.

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:

- Special resolutions, which require approval by at least 75% of the members; with only three members, decisions that legally require a 75% majority actually need all members to vote in favour to reach the 75% limit. A resolution 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.
- Ordinary resolutions, which require a simple majority. Anything not classed as a special resolution.

Appointment and Composition of Members

The Members of WMAT Trust will comprise:

- the signatories to the Memorandum (until such time as they cease to be a Member)
- any person appointed under Article 15A of the WMAT Articles of Association.

The minimum number of Members shall not be less than three.

Restrictions

An employee of the WMAT cannot be a Member.

e) 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. 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.

f) Members are entitled to receive a copy of the annual report and accounts

It is the trustees who sign off the annual report and accounts, but a common misconception remains that this is the role of members. The annual report and accounts should be presented to members at the AGM. If an AGM is not held (because the articles do not require it) then the report and accounts must be sent to 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. NGA considers it good practice for all trustee boards to also present a report on the quality of their governance but this is not yet common practice. By including a 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.

g) The members meet, usually once a year at an annual general meeting

The current model articles require trusts to hold an AGM (it was previously optional). It is advised that all trusts hold an AGM to secure public accountability.

The use of an AGM is the key way in which the members receive information and discharge their responsibilities. An AGM should be held once every financial year, and must take place within 15 calendar months of the previous AGM.

As well as receiving the annual accounts, members should be provided at the AGM with a report on the quality of governance.

h) The members dissolve the trust

If the trust is failing, it is the responsibility of the members (in conjunction with the DfE) to dissolve the trust. Academy trusts are charitable companies limited by guarantee. 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 they cease to be a member.

Members DO NOT:

- Tell the trustees how to run the trust.
- Attend trustee meetings.
- Set the trust's vision or strategy.
- Set the trust board's agendas and/or priorities.
- Appoint or performance manage the senior executive leader.

Member Register of Interests are completed and are kept under regular review.

Holding the trust board to account

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 with a report on the quality of governance once a year at the AGM, as well as any additional updates/ information on progress made and plans going forward.

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 provide a starting point:

- Does the trust board reflect the ethos and values of the trust?
- Is the trust board effectively fulfilling its core governance functions?
- Is there a clear vision for the trust and is progress being made against the strategic aims being pursued to realise this vision?
- Is financial oversight sound?
- How well does the trust board know the school(s) in the trust and how are the needs of the school(s) being met?
- How engaged are stakeholders and is this reflected in the reputation of the trust and the decisions of the board?
- Are the right people around the trust board table and are there any skills gaps?
- Has the trust invested in a governance professional?
- Is there evidence to show that the charitable objectives of the trust are being met and that the governance of the trust is effective?
- Has the trust board reviewed its own performance and have members received a copy of the governance review report? What does it tell them and what is being done as a result?

Members should expect to see an external review of governance every three to five years, and internal reviews in between. If there has not been an external review in the last three to five years, the members should direct the trust board to commission one. If the members are not satisfied that the trust board is effective, then they will need to step in and in the first instance commission an external review.

Addressing trustee board under-performance

Addressing the under-performance of trustees is one of the most crucial and indeed most challenging roles that members have. Members can 'direct' trustees but this should be in exceptional circumstances only. Should it be deemed necessary, it must be via a special resolution. Circumstances where this might be a course of action are if members believe the trust
board is under-performing and therefore failing to carry out its core functions, is acting unlawfully, has failed to act on child safeguarding, is in breach of its funding agreement or would benefit from an external review of governance.

In any of these cases members may decide that they do need to attend a trustee meeting and engage in a conversation. If it is clear that the trust is under-performing, and the members cannot see evidence that the trustees have the capacity to ensure improvement, the members should seriously consider if they need to appoint different, or additional trustees.

In the case of any disputes arising out of these conversations between members and trustees, and where internal resolution does not seem likely, an external source of support and facilitation should be sourced as soon as possible.

MEETINGS

Members do not need regular business meetings or committees, and to introduce these would bring about a real danger of the members falling into the trap of simply replicating the work of the trustee board. Trusts should include 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).

The articles of association for each trust usually specify how often members must meet. Trusts. Even if there is no specified minimum in the articles, members should meet once a year.

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. No more than a second meeting of members during the year is suggested, unless there is a problem or there are identified weaknesses within the board of trustees. 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 under-performance of the trust board.

ANNUAL GENERAL MEETINGS

- It is the trustees, not the members, who determine the time and place of the AGM. The trust's governance professional should organise the AGM ensuring compliance with what is stipulated in the articles of association.

- All members are entitled to attend and attendance at the AGM should be an expectation placed upon all members. In order for an AGM to go ahead, quorum will need to be reached. The senior executive leader and finance director should also attend. The AGM can also present an opportunity to invite academy committee/local governing body members and other stakeholders (principally parents) to attend part of the meeting and ask questions.
  N.B. Members do not have a standing chair. A chair is appointed by the members present at each general meeting to chair that particular meeting. The chair of the trustee board should not chair AGMs.

- The audited accounts and annual report are formally received at the AGM. The AGM is the opportunity for members to hear from the trustee 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.



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