

The role of Members in an Academy Trust

The Members of the Academy Trust are the equivalent of the shareholders in a commercial company (save that they do not receive dividends). In simple terms the Members "own" the Academy Trust. They have a number of statutory rights and rights set out in the Academy Trust's Articles of Association (the **Articles**).

The Members do not have any specific duties imposed on them by the Companies Act 2006 (the **Act**) but they are asked to provide a 'guarantee' such that if the Academy Trust were to be wound up and the assets did not meet all of its liabilities, they would be asked to contribute £10.

Members' business is conducted at Members' meetings (which are 'General Meetings'), or by written resolution. Typically, Members will only meet once a year at the Annual General Meeting (**AGM**). Please note, however, the model Articles do not require an academy trust to hold an AGM. Notwithstanding that there may be no requirement to hold an AGM in the Articles, the Academy Trust may, if it wishes, hold an AGM each year.

Members' statutory rights

1 The right to remove Trustees

- 1.1 The Members have the power to remove a Trustee (by means of an ordinary resolution, i.e. a majority vote) before the expiration of his or her term of office.
- 1.2 The Act contains a very detailed procedure that must be adhered to and we recommend taking legal advice before invoking this procedure.

2 The right to amend the Articles

- 2.1 The Members have the power to amend the Articles (by means of a special resolution, i.e. a 75% majority vote) subject to any consents required by third parties. For example, if amendments are proposed to the Academy Trust's charitable purposes, it is likely that the consent of the Charity Commission will be required and the Secretary of State for Education (via the Education Funding Agency (**EFA**)) would need to consent to either changes relating to the appointment and resignation/removal of Members and Trustees or all changes depending on the version of the Articles that the Academy Trust has in place.
- 2.2 It is also not possible for amendments to be made to the Articles which would cause the Academy Trust to cease being a charity.

3 The right to receive the annual accounts

- 3.1 Please note that this is a right for the Members to receive, and not to approve, the annual accounts. It is for the Trustees of the Academy Trust to approve the annual accounts once prepared.
- 3.2 The Academy Trust's financial year end is 31 August and the accounts must be filed with Companies House by 31 May the following year. It is this date (31 May) by which the Members must receive the annual accounts although they may, of course, receive them earlier.

4 The right to appoint the auditors

- 4.1 In each financial year, there is a 'period of appointing auditors' which is a 28 day period which starts to run from the date on which the audited accounts for the last financial year were circulated to the Members.

- 4.2 During this period, the Members may appoint or re-appoint an auditor. If this doesn't happen, the current auditor remains in office until the Members pass a resolution to re-appoint or remove them.

Members' rights under the Articles

1 The appointment of Trustees

- 1.1 It is likely that the Articles provide that the Members may appoint up to a specified number of Trustees through such process as they determine. We would expect that such appointments would take place either at a meeting of the Members or by written resolution.

2 The appointment and removal of Members

- 2.1 The Articles will provide that the Members may either pass a special resolution in writing (i.e. a 75% majority vote) or a written unanimous resolution to appoint additional Members and to remove any such additional Members, provided that such appointment or removal is in the best interests of the Academy Trust.
- 2.2 The Members may also be able to agree to remove any Member who was a signatory to the Memorandum (save that the agreement of the Member concerned is not required) and provided that such removal is in the best interests of the Academy Trust.

The Academies Financial Handbook (September 2016)

The Handbook issued by the EFA provides as follows:

- Members have an overview of the governance arrangements of the trust.
- Members can amend the articles and may do so to support stronger governance arrangements.
- While Members can be Trustees, retaining some distinction between the two layers ensures that Members, independent of the Trustees, provide oversight and challenge - this is especially important in multi academy trusts in which Trustees are responsible for a number of academies.
- Academy Trusts should be established with a minimum of three Members, although DfE encourages Academy Trusts to have at least five Members in total, as this:
 - Ensures enough Members to take decisions via special resolution (which requires 75% of Members to agree) without requiring unanimity; and
 - Facilitates majority decisions being taken by ordinary resolution (which requires a majority of Members to agree).
- Structures in which Members are also employees are not considered by DfE to be an effective model of governance for an Academy Trust and this is therefore prohibited under the latest model DfE Articles.

Administration

- The Academies Financial Handbook requires the appointment of any new Member to be notified to the EFA (via Edubase) within 14 days of the appointment.
- The appointment and resignation / removal of Members does not need to be notified to Companies House.
- The Academy Trust's statutory books / registers should include a register of Members which should be kept up-to-date particularly on appointment and removal / resignation.