



**Confederation  
of School Trusts**

# Governing a School Trust



**November 2021**



*The proposition of governing a School Trust is fundamentally different from governing a maintained school. These four domains and twenty elements arise in the specific context of trust governance. They draw on the governance literature from within and from outside our sector, notably from the charity sector and the corporate sector where boards are their own legal entities and have duties as employers, under Charity Law and/or under Company Law. While there may be comparable problems in maintained schools, problem-identification and solutions will be specific to trust governance. Without domain-specific knowledge of School Trust governance, trustees will be hampered in carrying out their role. This guidance is intended to **supplement** not replace the regulatory framework set out in the [Academy Trust Handbook](#) and can be used together with CST's [Assurance Framework for Trust Governance](#).*

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## Introduction

### Legal basis of Academy Trusts

The Academy Trust (which CST calls School Trust) is a charitable company. Typically (but not always), a trust has a single charitable object – to advance education for public benefit. School Trusts are specialist organisations set up to do just one thing – to run and improve schools to give children a better future.

CST's [new narrative](#) for School Trusts makes the case that a trust is a group of schools working in collaboration as one entity to improve and maintain high educational standards across the group.

### What is governance and why is it important?

The need for governance exists anytime a group of people come together to accomplish an end. And what can be more important than the education of children and young people? The governance literature proposes several definitions, but most rest on three dimensions: authority, decision-making and accountability. We adopt the working definition of the Canadian [Institute on Governance](#) which has the following dimensions:

- Who has power?
- Who makes decisions?
- How do other players make their voices heard?
- How is account rendered?

England has one of the most autonomous education systems in the world. In an era of diminishing centralisation, of increased institutional autonomy, governance is essential. Those responsible for governance must ensure that corporately the board is **effective**, **accountable**, and **ethical**. These three principles underpin the domains and elements of governance explored in this guidance.

Ultimately the task of governance in School Trusts is to advance education for public benefit. In doing so, the Trust Board must enact a sacred duty of holding trust on behalf of children. This is a task bigger than one person – bigger than the executive trust leader because we are all fallible – we all have moments of blindness alongside our capacity for insight. It is a task so important that it requires a group of people. The Trust Board.

Executive leaders hold their authority, power, legitimacy, and ability to make decisions because these are delegated by the Trust Board. And their first line of accountability is to the Trust Board.

The Trust Board draws its legitimacy from its contract with the Secretary of State in the form of the Funding Agreement. The task of governance is set out in the trust's governance document, the Articles of Association. Both the board and the Accounting Officer exist in complex systems of accountability. CST has written about these [here](#).

### Regulatory frameworks and guidance

The regulatory environment is complicated and there is often much confusion in the sector about what is required of trusts (the statutory and regulatory frameworks) and what is non-statutory guidance.

- **Annex A** sets out the **regulatory frameworks** that all trustees should know and have read.
- **Annex B** sets out the **most important DfE non-statutory guidance documents** that trustees should be aware of.

We would like to sound a note of caution about the non-statutory DfE [Governance Handbook](#) and [Competency Framework for Governance](#). Both guidance documents conflate the propositions of maintained school governance and trust governance. Although useful, this merging of two fundamentally different propositions of governance can undermine the clarity we need to bring to the proposition of trust governance.

We are less concerned with generic approaches to governance and more interested in building proficiency around the education-specific and highest-leverage work that trustees do in governing their trust. We do draw on the governance literature outside education because it helps to shine a light on how to tackle some of the problems. We think some of these problems are created by bringing the ‘mental models’ of maintained school governance into trust governance.

Governance in the trust sector is therefore weakly theorised. We think that it is now fundamentally important that we develop a strong theoretical basis for governing School Trusts, and that is what we attempt to do here.

### **An Academy Trust Governance Code**

CST is working with the Chartered Governance Institute to develop a sector-led Academy Trust Governance Code.

There has been a [Charity Governance Code](#) since 2005. The Code was developed by a number of sector bodies to develop good governance practice ‘for the sector, by the sector’. There have been three iterations of the main Code, with different versions aimed at smaller charities. Adoption of the Code is encouraged; however, compliance is voluntary and not mandated by the Charity Commission for England and Wales.

A governance code for the trust sector would enable good practice to be articulated in a single document which incorporates the specific issues affecting the way the sector is regulated and reflects the nuances in how academy trusts are governed. The Academy Trust Governance Code would reflect the legal requirements detailed in DfE documents and build upon those foundations to create a principles-based document with the aim of helping academy trust boards to develop robust, effective and proportionate governance for their organisation. This guidance precedes the publication of a Code and may be amended in light of it.

### **A word on language**

The trustees of the academy trust are both charity trustees and company directors. In this guidance we follow the principle in the [Academy Trust Handbook](#) and refer to them as trustees. However, in some academy trusts, such as church academies, those on the board are known instead as ‘directors’. In church academies, the term ‘trustees’ is reserved for those on the board of the separate trust owning the land.

We hope this guidance is helpful to you whether you are a new or existing trustee, executive or governance professional. CST is proud to be your sector body – the voice of School Trusts.

## Domain one: Board Leadership

*An effective Trust Board defines the Trust's vision and then sets a strategy to deliver these, underpinned by the values and behaviours that shape the culture across the whole organisation. The board will be able to explain how the core charitable purpose to advance education for public benefit is enacted both within and beyond the organisation, how the Trust enacts its civic role by working with other civic actors, the main factors affecting the Trust's long-term success and future viability and how these and the Trust's principal risks and uncertainties have been addressed.*

### 1. Setting direction

The board sets the overall direction for the organisation which is then operationalised by the executive team. The vision and strategy are typically a process of co-construction between the executive team and the board but are 'owned' by the board and operationalised by the executive team. Typically, the chief executive (or accounting officer) is responsible for proposing the strategy and for delivering the strategy as agreed by the board.

Boards have a responsibility for the success of the Trust and need to take a long-term view. It is easy for boards to become focused on the immediate and the urgent. An effective trust board will manage the conflict between short-term interests and a long-term orientation. The board will assess the impacts of its decisions on the long-term sustainability of the trust.

The board will also set the Trust's growth strategy. You may wish to refer to CST's [Growing and Merging: Guidance for Trusts preparing to expand](#) and the DfE's non-statutory guidance on [Building Strong Academy Trusts](#).

#### Questions for the trust board

##### *Strategy, future orientation, and long-term sustainability*

- Does the board have a strategy?
- Is the board clear about its ambitions and trajectory for growth or indeed whether it wishes to consolidate rather than grow?
- Does the board intentionally build relationships with regulators (ESFA and RSC?)
- How consistent is the Trust's strategy with the organisation's purpose and values, and responsibilities for long-term success?
- Does the strategy include an ambition to contribute to wider system capacity and the common good?
- Is there a balance between the focus on immediate issues and long-term success?

- What proportion of board time is spent on financial performance management versus other matters of strategic importance?

## 2. Culture and values

The trust board sets the framework of values within which the desired culture is enacted. Ownership of the values will be stronger if the culture of the organisation is co-constructed by executive and governance leaders. Values need to be embedded at every level of the organisation and in all the schools in the group. The trust board will need assurance from the executive that the Trust's purpose and values are embedded in all operational policies and practices. The board should assess and monitor culture for alignment with the Trust's purpose and values.

Executive leaders and trustees hold public office and are therefore bound by the [Principles of Public Life](#). Integrity, objectivity, openness and honesty matter at every level. The quality of governance will be evident in the way the Trust conducts its business - how it treats its workforce, pupils, parents, communities, and suppliers.

You may wish to refer to the Cabinet Office's [Code of Conduct for Board Members of Public Bodies](#) or CST's [Model Code of Conduct for Trustees and Boards](#).

With the Chartered Governance Institute, CST has published a report on [Organisational culture in academy trusts](#) and [A framework for understanding and auditing organisational culture](#).

### Questions for the trust board

- To what extent is the board's own way of operating a reflection of the values the organisation is promoting?
- How does the board demonstrate ethical leadership and display the behaviours expected from others?
- What does the workforce say about the 'tone from the top?'
- What steps have we taken to ensure that suppliers meet expected standards of behaviour?

## 3. Being a good employer – people and workforce

As the legal entity and the employer, it is important that the trust board establishes an expectation of 'one organisation.' A School Trust is not a loose collection of schools, but a single organisation with a strong culture and explicit values.

Part of being a good employer is to understand the strategic rather than transactional nature of human resources. Mandy Coalter in her book *Talent Architects*<sup>1</sup> argues that there should be a written People Strategy with the following four pillars:

1. Leadership, culture and climate;
2. Developing people and talent;
3. Pupil behaviour; and
4. Manageable workload and wellbeing.

The second of Coalter's pillars, professional development, perhaps warrants a little more detail given that the quality of teaching is perhaps the biggest strategic improvement opportunity within a School Trust. CST proposes that [Trusts are knowledge-building organisations](#) and that the role of the Trust is to mobilise for every teacher the best evidence from research through professional development. The role of the board is to hold the executive to account for the execution and impact of the 'people strategy.'

The Board's role is also to ensure the wellbeing of its workforce. This is particularly important in the post-pandemic period where workload and wellbeing may be negatively impacted.

### Questions for the trust board

- How does the board execute its responsibilities as an employer? How does it ensure that the trust is a great place to work?
- Is there a written People Strategy? Does it include a focus on professional development as a strategic improvement initiative?
- What steps have our executive leaders taken to communicate values and expected behaviours widely and clearly across all our schools?
- How have the values and expected behaviours been reinforced in our recruitment, promotion, reward, performance management and other policies, processes and practices?
- What does staff wellbeing look like in the Trust?
- How does the Trust promote flexible working?
- What does the board know about workload in the group of schools?
- How does the board ensure that leaders, teachers and staff have a manageable workload?

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<sup>1</sup> Coalter, Mandy. (2018) *Talent Architects*: How to make your school a great place to work.



## 4. Making good decisions

Good decisions do not happen by accident and are the cornerstone of good governance. Good decisions depend on good judgement, a consideration of the available evidence, and where necessary seeking expert and/or external advice. Table one below provides an ethical matrix for good-decision making, which CST has developed based on the Seven Principles of Public Life. Some Trusts publish this on the reverse of board agendas.

<b>Table one: An ethical matrix to ensure good decision-making</b> (based on the <a href="#">Seven Principles of Public Life</a> )	
Selflessness	All our decisions have been taken in the public interest.
Integrity	We have not acted or taken decisions in order to gain financial or other material benefits for ourselves, our family, or our friends
Objectivity	Our decisions have been taken impartially, fairly and on merit, using the best evidence and without discrimination or bias
Accountability	We are comfortable submitting ourselves to external scrutiny
Openness	We have taken decisions in an open and transparent manner
Honesty	We have been truthful in our actions, decisions and reporting
Leadership	We have demonstrated the highest standards of public life in our individual and corporate behaviour

Conflicts of interest, emotional attachments, unconscious bias, and inappropriate reliance on previous experience can distort decisions. In fact, the Financial Reporting Council says that: “Many of the factors that lead to poor decision-making are predictable and preventable. Boards can minimise the risk of poor decisions by investing time in the design of their decision-making policies and processes, including the contribution of committees and obtaining input from key stakeholders and expert opinions when necessary.”<sup>2</sup> Table two below outlines some common risk factors for poor decision making. This table has been adapted from the Financial Report Council’s Guidance on Board Effectiveness.

<b>Table two: Risk factors for poor decision-making</b> (Adapted from: <a href="#">Guidance on Board Effectiveness</a> , FRC, 2018)
<ul style="list-style-type: none"> <li>• Lack of time for debate and truncated debate</li> </ul>

<sup>2</sup> [Guidance on Board Effectiveness](#), FRC, 2018, page 9

- Complacent or intransigent attitudes
- Undue focus on short-term time horizons
- Dominant personality or group of trustees on the board, inhibiting contribution from others
- Insufficient diversity of perspective on the board - 'group think'
- Excess focus on risk mitigation or insufficient attention to risk
- A compliance mindset and failure to treat risk as part of the decision-making process
- Insufficient knowledge and ability to test underlying assumptions/inability to challenge effectively
- Failure to listen to and act upon concerns that are raised
- Failure to recognise the consequences of running the trust on the basis of self-interest and other poor ethical standards
- A lack of openness by trust leaders, a reluctance to involve trustees, or a tendency to bring matters to the board for sign-off rather than debate
- Inadequate information or analysis/poor quality papers/insufficient notice

If one or more of these risk-factors are present in your board meetings, you can use this table as a resource to invite trustees to reflect on whether they recognise any of these risk factors and then give consideration to how you will mitigate or address the risks.

The Financial Reporting Council recommends that boards may wish to put in place extra steps for significant decisions:

- Describing in board papers the process that has been used to arrive at and challenge the proposal prior to presenting it to the board.
- Where appropriate, putting in place additional safeguards to reduce the risk of distorted judgements by, for example, commissioning an independent report, seeking advice from an expert, introducing a devil's advocate to provide challenge, establishing a specific sub-committee, and convening additional meetings.
- Ensuring that board minutes document the discussion that led to the decision, including the issues raised and the reasons for the decision.<sup>3</sup>

### Questions for the trust board

- Have relevant members of the executive team been invited to explain the issues at the earlier stages, enabling all trustees/directors to share concerns or challenge assumptions well before the point of decision?

<sup>3</sup> [Guidance on Board Effectiveness](#), FRC, 2018, page 10

- Does the board have a well-established process for identifying, and does it understand the reporting arrangements for, related party transactions?
- Does the board have a process for considering the impact on key stakeholders and/or taking consultation with stakeholders into account?

## 5. The civic role of trusts and community anchoring

CST believes that [School Trusts are a new form of civic structure](#).<sup>4</sup> As such, leaders have a duty to engage with their communities, stakeholders and other civic actors for the wider good. It is increasingly important that Trusts have a strong approach to community and stakeholder involvement that includes but goes beyond consultation. It is also important in the post-pandemic period, where Trusts will need to work together with other civic partners, to ensure the value of the child, build coherent public services, and ensure that the collective actions of all civic actors protect high-quality education.

The ‘public benefit’ aspect of the charitable purpose of Trusts means that boards cannot and should not just see their role only as serving the children, families and communities that their schools serve, but must look beyond this and work in a *connected* system.

School Trusts as anchor institutions are a new form of civic structure. Trusts must be anchored in their communities. An ‘anchor institution’ is an organisation with an important presence in a place. Examples include local authorities, NHS trusts, universities and housing associations. Anchor institutions are significant because they have a large stake in their local or regional area.

Anchor institutions, alongside their main purpose, play a significant role in a locality by making a strategic contribution to the greater common good.

The board should explore ways in which their Trust is anchored to its communities and can leverage assets to benefit the local area and local people – in other words for School Trusts to offer not just educational value in a locality, but wider social value.

### Questions for the trust board

- Does the board have a strong process for community and stakeholder involvement?
- Has the board sought input from stakeholders to be comfortable that it has a rounded view on decisions?
- Can the board explain how the impact on key stakeholders has been taken into account?

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<sup>4</sup> Our use of the term ‘civic’ relates to the duties or activities of people in relation to their local area. We do not see this term relating only to urban conurbations or cities – but rather as an expression of the importance of place.

- How does the board understand its wider civic responsibilities and work in partnership to build relations across the local education community?

## Board Leadership: selected further reading and resources

Cabinet Office, 2019, [Code of Conduct for Board Members of Public Bodies](#)

Chartered Governance Institute and Confederation of School Trusts, 2019, [Organisational culture in academy trusts](#)

Committee for Standards in Public Life, 1995, [Seven Principles of Public Life](#)

Confederation of School Trusts, 2018, [Model Code of Conduct for Trustees and Boards](#)

Confederation of School Trusts, 2018, [A framework for understanding and auditing organisational culture](#)

Confederation of School Trusts, 2021, [Growing and Merging: Guidance for Trusts preparing to expand.](#)

DfE, 2021, non-statutory guidance on [Building Strong Academy Trusts](#)

DfE Workload reduction [toolkit](#) for governors and trustees

Financial Reporting Council, 2018, [Guidance on board effectiveness](#)

Joy and Murray, 2016, [It starts from the top: improving governance, improving impact](#)

## CST support for Board Leadership

### Chairs' Leadership Forum

CST's [Chairs' Leadership Forum](#) is a unique development network for the Chairs of School Trusts. It provides professional support and development opportunities at a time of unprecedented change, through a blend of expert input on the key issues that trust boards face, professional learning groups, networking and peer support.

### Essential Trustee Programme

The CST [Essential Trustee Programme](#) gives you a practical grounding in trusteeship. It builds the knowledge that you need of governance, education and finance, reinforces the values of public life, and identifies the behaviours that will make you an effective board member.

The programme provides high quality trustee development for busy people. 16 hours of learning is delivered by trust governance experts in eight virtual seminars across two terms to fit with your other commitments and create opportunities for ongoing discussion and reflection.

### CST Masterclasses

[CST Masterclasses](#) are a unique mini-series of virtual seminars that provide expert guidance on the strategy and practice of running School Trusts as you lead your learning communities through recovery and growth.

Each Masterclass explores the subject in hand from a strategic, technical and practical perspective. Our trainers combine deep understanding of the School Trust system with specialist expertise from professional practice. Opportunities for discussion and group work in each seminar enable knowledge sharing and the creation of new connections.

**CST Masterclass: Joining, Merging and Growing Trusts**

This CST Masterclass in [Joining, Merging and Growing Trusts](#) is delivered in partnership with Stone King LLP to give you an overview of the key considerations of trust growth, including the policy context, expectations of RSCs and the legal process.

## Domain two: Structures

*A School Trust is a dynamic organisation. If the Trust has a group of schools, then governance is also a complex activity. The structures of governance are therefore dynamic and should change when ‘inflection points’ are reached. An inflection point is a non-incremental point of change in an organisation’s growth. This section should be read alongside the DfE’s guidance on [Academy Trust Governance: Structures and Role Descriptors](#) and CST’s guidance on [Governance Structures](#).*

### 6. Significant separation

The [Academy Trust Handbook](#) states (paragraph 1.6) that there should be significant separation between the individuals who are members and those who are trustees. If members sit on the board of trustees this may reduce the objectivity with which the members can exercise their powers and increases the risk of unchecked ‘group think’ by the board. The Department for Education’s “strong preference” is for a majority of members to be independent of the board of trustees.

Significant separation does not mean that no trustee can serve as a member. Arguably having one trustee serving as a Member can help with the task of keeping Members informed.

The Governance Handbook states that one way to keep members informed and engaged is for one or more members to serve as a trustee on the board, which may be through appointing the chair of trustees as a member. However, the Governance Handbook cautions that when operating as a trustee such members have no greater power than other trustees and should remain conscious of the corporate nature of the board’s identity and decision making. They should not seek to dominate the board because they are also members.

CST believes careful consideration should be given to having the Chair of the trust board serve as a member. This is because of a potential conflict of interest – if the members hold the trust board to account, then it does not make sense that the Chair as a member holds themselves to account.

CST believes that the principle of significant separation should also apply between trustees and the local tier of governance. This is because there may be conflicts of interest between a chair or governor understandably wanting to represent the interests of an individual school and the duty of trustees to act in the interests of all the schools in the trust.

The DfE’s [Academy Trust Governance: Structures and Role Descriptors](#) has an excellent description of the role and powers of members.

### Questions for the trust board

- Does the Trust have at least three members (although the DfE's strong preference is that Trusts should have at least five members)?
- Is there significant separation between members and trustees?
- What mechanisms are in place to keep members informed so that they can exercise their powers where necessary to further the academy trust's charitable purpose?
- Is there significant separation between the trust board and the local tier of governance?
- What mechanisms are in place to ensure good communication between the tiers of governance?
- Does the trust provide details of its governance arrangements in its accounts and on its website, including the structure and remit of the members, board of trustees, committees, the trust's scheme of delegation and information for each trustee and local governors serving at any point over the past 12 months?

## 7. Division of responsibilities

It is vital that boards understand and respect the division of responsibilities between executive and non-executive functions.

- Executives (Senior Trust Leaders) have day-to-day responsibility for the operation of the Trust.
- Non-executives (Trustees) provide constructive challenge, strategic guidance, specialist advice and hold the executive to account.

Warning signs to look for:

- Boundary-crossings: where the non-executives try to step into operational control and/or where the executives try to control the board.
- Boundary skirmishes: where the executives and non-executives are in a state of boundary disputes or open warfare such that the board cannot focus on its duties or do its work.

Patrick Lencioni<sup>5</sup> in his book *The Advantage*, sets out some criteria for a healthy organisation:

- Minimal politics
- Minimal confusion
- Balance of support and challenge
- High morale/high trust

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<sup>5</sup> Lencioni, P. (2012) *The Advantage: Why Organizational Health Trumps Everything Else In Business*. Jossey-Bash.

- A focus on what matters most

**The chair** is pivotal in creating the conditions for overall board and individual trustee effectiveness, setting clear expectations concerning the style and tone of board discussions, ensuring the board has effective decision-making processes and that the board holds the executive to account.

**The chief executive** is responsible for ensuring that the executive provides the board with accurate, timely and clear information in a form and of a quality and comprehensiveness that will enable it to discharge its duties. In their role as Accounting Officer, the chief executive has certain statutory responsibilities. CST's guidance on the role of the Accounting Officer is [here](#).

The role of **governance professional** as strategic advisor and in-house counsel to the trust board is increasingly important.

### Questions for the trust board

- Do those responsible for governance at all levels understand their roles, responsibilities, and accountabilities?
- Are the board papers accurate and clear, and in a form and of a quality and comprehensiveness that will enable the board to discharge its duties?
- Does the board foster a culture where constructive challenge is welcomed; thinking is diverse; a variety of experiences and perspectives are welcomed; and continuous improvement is the norm?
- Is the board culture that of minimal politics, minimal confusion, a balance of support and challenge, high morale, and a focus on what matters most?
- Does the board understand the role of the governance professional as in-house counsel and advisor?

## 8. Delegations

The scheme of delegation is a vital document within a School Trust. The [Academy Trust Handbook](#) (paragraph 2.4) states: "The board cannot delegate overall responsibility for the academy trust's funds. However, it **must** approve a written scheme of delegation of financial powers that maintains robust internal controls. The scheme of delegation should be reviewed annually, and immediately when there has been a change in trust management or organisational structure."

CST has published a [Scheme of Delegation Checklist](#) which is designed to help trusts develop a clear and comprehensive scheme of delegation. The checklist draws directly from the Governance Handbook and Academy Trust Handbook. The source guidance is directly referenced throughout. In



setting out the suggested areas that should be included (with a particular focus on operational delivery and compliance), the checklist will help to guide the development of your scheme of delegation.

Effective practice is to draft the scheme of delegation with input from governance stakeholders. Once approved by trustees the scheme of delegation should be embedded within the operations of your trust. The scheme of delegation must be published on your trust's website, and should be included in the induction of trustees, senior leaders and local governance.

The scheme of delegation must make clear what is delegated to the executive team, committees of the Trust Board and the local tier of governance. Note that Academy Trust Handbook states that:

- There **should be a finance committee** to which the board delegates financial scrutiny and oversight, and which can support the board in maintaining the trust as a going concern.
- Trusts with an annual income over £50 million **must have an audit and risk committee**, appointed by the board. Other trusts must either have a dedicated audit and risk committee or can combine it with another committee, such as finance. The audit and risk committee should meet at least three times a year.

### Questions for the trust board

- Is there a published scheme of delegation that details the full range of delegations required by the Academy Trust Handbook? (See CST's [Scheme of Delegation Checklist](#))
- Has the scheme of delegation been formally approved by the trust board?
- Is the scheme of delegation reviewed at least annually?
- Is there a finance committee and is there evidence that the finance committee is effective in relation to financial scrutiny?
- Is there an audit and risk committee separate from the finance committee where the trust's income is over £50 million?

## 9. Local governance

CST's position is that the local tier of governance is absolutely essential to effective governance of a complex organisation in a multi-academy trust. While trusts have different approaches to the local tier of governance, it is essential that trusts are clear about what functions of governance are delegated. In some cases, the local tier of governance holds no formal governance functions and is advisory only.

In CST's view, the local tier of governance is essential for the following reasons:

- Local governors are the Trust’s ambassadors in the local community and indeed hold deep knowledge of the community and their specific needs. This knowledge and understanding is essential to the trust board.
- Local governors can play a very important role in relation to safeguarding and safety as they know their schools intimately and will, in many cases, have closer involvement in the school than the trust board.
- Local governors can play a very important role in the scrutiny of education quality and performance. This is particularly important in the context of Ofsted inspections. Ofsted’s Education Inspection Framework 2019 assesses whether “those responsible for governance understand their role and carry this out effectively. They ensure that the provider has a clear vision and strategy and that resources are managed well. They hold leaders to account for the quality of education or training. Inspectors will always seek to meet those responsible for governance during the inspection.”

There are a range of names for local school committees. CST’s guidance is that the naming of this tier of governance should reflect the functions which are delegated:

- **Local advisory committees or councils** – no delegated governance functions or powers – the advisory committee is tasked with meaningful engagement with parents and local communities;
- **Local school committees** – limited delegated governance functions (but no powers), for example scrutiny of standards, health and safety and safeguarding, and community engagement;
- **Local governing boards** – a fuller set of delegated functions and some powers, which may include some decisions over school level finance.

On balance, it is probably not helpful to use the language of a governing board if no governance powers are delegated to local level. A trust board may use wholly advisory bodies at local level to engage meaningfully with parents and local communities to understand their views and needs and listen to their feedback.

The [Governance Handbook](#) makes clear that even where local school committees are wholly advisory in nature, **they are a full and formal part of the governance structure**, as determined by the Articles of Association. The DfE expects the trust board (or any committee established by the trust board to exercise the governance functions on its behalf) to have very close links with the advisory committee and actively take into account and respond to the issue and risks it identifies and escalates.

CST advises that it is useful to talk about **the Governance Community** to refer to the entire governance structure. CST also advises that the local tier of governance and the delegations to them are kept under review as the trust grows.

There should be a continuous feedback loop between the trust board and local tier of governance so that the trust board has oversight of the effectiveness of the local tier of governance. CST's advice is that there should be a strong sense of a single governance community with a shared sense of mission, vision, values and culture, a shared sense of purpose and the execution of the strategy set by the trust board.

CST's advice is that trust boards should exercise oversight of the work of their committees and should be able to assess the relative strengths of each local school committee. This is particularly important where a trust board delegates the governance functions of the scrutiny of educational performance and/or finances.

### Questions for the trust board

- Are the delegations to the local tier of governance clear in the scheme of delegation and are these delegations reflected in terms of reference (where these exist)?
- Is there absolute clarity on the role and remit of each part of the governance structure and the relationship and reporting arrangements between them?
- Does everyone in the governance community (including trustees and those responsible for executing the local tier of governance) understand what governance functions, if any, are delegated? Where governance functions are not delegated, is there a clear remit for the local tier of governance?
- How does the trust board maintain relationships and communication with the local tier of governance? Are the processes for communication and oversight of the work of local governance by the trust board clear?

## 10. Succession, appointments, and diversity

Members appoint some trustees – and have the power to remove trustees. The Trust's Articles determine how many trustees are appointed by members. Usually, members appoint 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.

The trust board themselves may have a role in recommending candidates to members. 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 [UK Corporate Governance Code](#)<sup>6</sup> states that: “There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. There should be a nomination committee which should lead the process for board appointments and make recommendations to the board.”

A nominations committee is typically part of an organisation’s corporate governance structure – but this is not yet typical of school trusts.

As boards consider succession and appointments, it is essential that as a sector we address the issue of diversity. Too few of our boards are diverse. The Financial Reporting Council states that “Diversity in the boardroom can have a positive effect on the quality of decision-making by reducing the risk of group think.”

With input from members, boards need to decide which aspects of diversity are important in the context of the trust, bearing in mind the community it serves. According to the FRC, diversity of personal attributes is also very important.

### Questions for the trust board

- Has the board assessed what knowledge-domains and skillsets are required when recruiting trustees?
- Has the board reassessed its make-up as a result of growth/changes and emerging trends?
- Has the board taken account of the knowledge and technical skills required by its committees when recruiting trustees?
- Does the trust have a transparent appointment process for new trustees?
- Does the appointment process comply with the Articles?
- How are conflicts of interest tested through the appointments process?
- How is consideration given to diversity during the appointment process?
- How does the board guard against becoming self-appointing and perpetuating?
- Is there a proper induction process for new trustees?

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<sup>6</sup> The Financial Reporting Council (FRC) sets the UK Corporate Governance and UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries. As the Competent Authority for audit in the UK the FRC sets auditing and ethical standards and monitors and enforces audit quality.

## **Governance structures: selected further reading and resources**

Confederation of School Trusts, 2020, [Governance Structures](#)

Confederation of School Trusts, 2020, [Scheme of Delegation Checklist](#)

Confederation of School Trusts, 2020, [On Diversity – an essay collection](#)

Department for Education, 2020, [Academy Trust Governance: Structures and Role Descriptors](#)

Financial Reporting Council, 2018, [The UK Corporate Governance Code](#)

## **CST support for Governance Structures**

### **Masterclass: Developing Effective Layers of Governance**

[Developing Effective Layers of Governance](#) is delivered in partnership with Trust Governance Professionals and Stone King LLP. It will help develop your understanding of the principles and structure of school trust governance and the role and purpose of each governance layer. The course will demonstrate why an effective scheme of delegation sits at the heart of your trust's governance and share insight on how and when to review it.

The sessions will focus on approaches to enable effective practice as well as providing opportunities for participants to share practice and raise questions on the areas covered.

## Domain three: Accountability

*Accountability is first and foremost the obligation of an individual and organisation to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. Executive leaders hold their authority, power, legitimacy, and ability to make decisions because these are delegated by the trust board. The trust board is therefore the first point of accountability. The trust board must be able to hold executive leaders to account. But in order to do so, they need to understand the systems of accountability within which they operate and to finely balance three different forms of accountability: democratic accountability, regulatory accountability and professional accountability. CST has written about this in our paper on [Intelligent Systems of Accountability](#). In this section, we explore the specifics of the domain of accountability.*

### 11. Educational quality and improvement across the group of schools

Typically, the single charitable object of the School Trust is to advance education for public benefit. Trusts are set up to do just one thing – run and improve schools to give children a better future. Therefore, the **quality of education** must be at the heart of everything the board does.

The Board must have sufficient education knowledge and ability to test underlying assumptions about the process of improvement and/or data to be able to challenge the executive effectively. It is therefore a good idea to have an educator on the board.

The Board will need to ensure that it has timely and clear information on education quality in a form and of a quality and comprehensiveness that will enable it to discharge its duties. The DfE's guide for governors and trustees, [Understanding your Data](#), encourages seven lines of enquiry:

1. Pupil numbers/attendance and exclusions
2. Attainment and progress
3. Curriculum planning – staff and class sizes
4. Financial management and governance
5. Quality assurance
6. Safeguarding and well-being
7. The school community – staff, pupils and parents

The quality of education in a School Trust cannot exceed the quality of its teachers. CST believes that trusts are [knowledge-building organisations](#), with the capacity to do school improvement at scale across a group of schools. As such, the goal is for every teacher in every classroom to be as good as they can be in what they teach (the curriculum) and how they teach (pedagogy). For this to happen, the trust must mobilise for every teacher the best evidence from research. There is no improvement for pupils without improvement in teaching, and no improvement in teaching without the best professional development for teachers. Thus, boards need to assure themselves that the trust is facilitating the best professional development - and thus better teaching and improvement for pupils.

The [Regional Schools Commissioner](#) (RSC) is the regulator that will hold the trust to account through the annual conversation for the quality of education and pupil outcomes across the group of schools. RSCs also make decisions about whether a trust can grow. The RSCs use a [Decision-Making Framework](#) to make regulatory decisions. The DfE has published guidance on [Building Strong Academy Trusts](#) setting out how to grow trusts and what RSCs look for when making decision on growth.

### Questions for the trust board

- Does the board have sufficient education expertise to hold the executive team to account for the quality of education?
- Is information on education quality in a form and of a quality and comprehensiveness that will enable it to discharge its duties?
- Does the trust have a published school improvement strategy that is understood at board level?
- Is there a strong, evidence-informed professional development programme across the group of schools and evidence of improvements in the quality of teaching?
- Does the board know and understand the organisation's curriculum philosophy, the rationale for this and the importance of a broad and balanced curriculum?

## 12. Fiduciary duty and financial governance

The word "fiduciary" comes from the Latin word fiducia, or "trust." So, a fiduciary is someone in a position of trust. A fiduciary duty is held by trust boards and individually by trustees as the board collectively and the individuals are trustees of public money. Specific duties include:

- **The Duty of Care:** This applies to the way the board makes decisions that affect the future of the organisation. The board has a duty to fully investigate all possible decisions and how they may impact the organisation.
- **The Duty to Act in Good Faith:** Even after it reasonably investigates all the options before it, the board has the responsibility to choose the option it believes best serves the interests of the organisation.
- **The Duty of Loyalty:** This means the board is required to put no other causes, interests, or affiliations above its allegiance to the organisation. Board members must refrain from personal or professional dealings that might put their own self-interest or that of another person or business above the interest of the organisation.

If a member of a board of directors is found to be in breach of their fiduciary duty, they can be held liable in a court of law. Fiduciary duty goes to the heart of ethical behaviour and good financial governance.

The Academy Trust Handbook (paragraphs 2.1 and 2.2) states that “Trustees and management **must** maintain robust oversight of the academy trust” and “The trust **must** take full responsibility for its financial affairs, stewardship of assets and use resources efficiently to maximise outcomes for pupils.”

Financial governance includes:

- **Financial oversight** – setting and monitoring the budget, cash management and investments.
- **Basic control principles** – including ensuring delegated financial authorities are complied with, maintaining appropriate segregation of duties and good financial discipline.
- **Spending and procurement decisions** – including ensuring spending has been for the purpose intended and there is probity in the use of public funds, spending decisions represent value for money, internal delegation have been applied, a competitive tendering policy is in place and applied, and the procurement rules and thresholds in the Public Contracts Regulations 2015 and Find a Tender service are observed.
- **Management and mitigation of risk** – see below

All of these are set out in detail in part two of the [Academy Trust Handbook](#). The [Education and Skills Funding Agency](#) (ESFA) is the regulator that holds the trust to account for financial governance and the use of public money. Part 6 of the [Academy Trust Handbook](#) sets out the intervention powers of the ESFA as the regulator.

ESFA’s chief executive will send a ‘[Dear Accounting Officer](#)’ letter at least annually to academy trust accounting officers, covering issues such as developments in the accountability framework and ESFA findings. Accounting officers **must** arrange for the board to discuss it and take action, if necessary, to strengthen financial controls.

### Questions for the trust board

- Does the board know and understand its fiduciary duties?
- Does the board have in place financial policies and procedures including mechanisms for ensuring financial accountability?
- Does the board have strong internal control processes to ensure propriety and value for public money?
- Is there evidence of good financial oversight by the board?
- Are basic control principles in place?
- Are spending and procurement decisions compliant and well-managed?
- Does the board know how the financial health and efficiency of the organisation compares with similar organisations locally and nationally?



- Has the board considered the '[Dear Accounting Officer](#)' letter and taken any appropriate action to strengthen financial controls?

### 13. Audit, risk, and internal control

All trusts must have a programme of **internal scrutiny** to provide independent assurance to the board that its financial and non-financial controls and risk management procedures are operating effectively. Part 3 of the [Academy Trust Handbook](#) sets out the requirements for internal scrutiny. The DfE has also published supplementary guidance on [Internal Scrutiny in Academy Trusts](#).

The Audit and Risk Committee oversees, directs and approves the trust's programme of internal scrutiny to ensure that risks are being addressed appropriately, and must report to the board on the adequacy of the trust's internal control framework, including financial and non-financial controls and management of risks.

The trust **must** maintain a risk register. Overall responsibility for risk management, including ultimate oversight of the risk register, must be retained by the board, drawing on advice provided to it by the audit and risk committee. Risk management covers the full operations and activities of the trust, not only financial risks. HM Treasury has excellent guidance on the [Management of Risks – Principles and Concepts](#). This includes exploration of the three line of defence in risk management.

**Table four: Principles of Internal Scrutiny as set out in the Academy Trust Handbook**

Internal scrutiny must:

- be independent and objective – for example it must not be performed by the trust's own accounting officer, chief financial officer or other members of the senior leadership or finance team;
- be conducted by someone suitably qualified and experienced and able to draw on technical expertise as required;
- be covered by a scheme of work, driven and agreed by the audit and risk committee, and informed by risk;
- be timely, with the programme of work spread appropriately over the year so higher risk areas are reviewed in good time;
- include regular updates to the audit and risk committee by the person(s) or organisation(s) carrying out the programme of work; and
- be made available to all trustees promptly.

Under the Companies Act 2006, trusts must appoint an **external auditor** to give an opinion on whether their annual accounts present a true and fair view of the trust's financial performance and position

(appointment being by the members, other than where the Companies Act permits the trustees to appoint). Part 4 of the [Academy Trust Handbook](#) sets out the requirements for annual accounts and external audit.

The board, with advice from the audit and risk committee, **must** ensure there is an appropriate, reasonable and timely response by the trust's executive team to findings by external auditors, taking opportunities to strengthen systems of financial management and control.

The [Education and Skills Funding Agency](#) (ESFA) is the regulator that holds the trust to account for audit, risk and internal control. The ESFA also receives and analyses the trust's annual accounts.

### Questions for the trust board

- Are the trust board's arrangements for internal scrutiny secure and compliant?
- Is there a written risk register maintained by the board covering the full operations and activities of the trust, not only financial risks?
- Does the programme of internal scrutiny include financial and non-financial items and informed by the risk register?
- Is the programme of work spread appropriately over the year so higher risk areas are reviewed in good time?
- Are there adequate internal controls over risk?
- Is sufficient time allocated on the board agenda to enable a full discussion of the work of the audit and risk committee?
- How has the board assessed whether the audit committee has a balance of skills and competencies necessary to fulfil its remit?
- Are there clear procedures and triggers in place to elevate risks to the board quickly?
- Does the board ensure that there is an appropriate, reasonable and timely response to findings by external auditors?

## 14. Setting remuneration

The [Academy Trust Handbook](#) says that the board **must** ensure its decisions about levels of executive follow a robust evidence-based process and are a reasonable and defensible reflection of the individual's role and responsibilities. No individual can be involved in deciding their remuneration. The ESFA holds trusts to account for levels of executive pay. The DfE has published supplementary guidance on [setting executive salaries](#) for trusts.

There is a wider set of considerations relating to pay policy within the organisation. The Financial Reporting Council (FRC) has a helpful set of remuneration principles in its UK Corporate Governance Code.

**Table three: FRC Corporate Governance Code Remuneration Principles**

**Clarity** – remuneration arrangements should be transparent and promote effective engagement with shareholders and the workforce;

**Simplicity** – remuneration structures should avoid complexity and their rationale and operation should be easy to understand;

**Risk** – remuneration arrangements should ensure reputational and other risks from excessive rewards, and behavioural risks that can arise from target-based incentive plans, are identified and mitigated;

**Predictability** – the range of possible values of rewards to individual directors and any other limits or discretions should be identified and explained at the time of approving the policy;

**Proportionality** – the link between individual awards, the delivery of strategy and the long-term performance of the company should be clear. Outcomes should not reward poor performance;

**Alignment to culture** – incentive schemes should drive behaviours consistent with company purpose, values and strategy.

CST has a published [Code](#) which constitutes a set of principles for determining executive pay. With our partner Browne Jacobson LLP, we have also published [guidance](#) for trust boards on setting executive pay. We are working with XperTHR to create an annual independent survey of executive pay. The summary benchmarking report can be found [here](#). The full benchmarking service includes granular data across the number of employees and pupils on roll within a trust.

**Questions for the trust board**

- How does the board ensure its decisions about levels of executive pay (including salary and any other benefits) follow a robust evidence-based process and are a reasonable and defensible reflection of the individual’s role and responsibilities?
- Is there sufficient documentation setting out the rationale behind the decision-making process, including whether the level of pay and benefits reflects value for money?
- Is any individual involved in deciding their remuneration – or any person or trustee who may have conflicts of loyalty to an individual?
- How is executive remuneration aligned with the Trust’s wider pay policy?

- How does the trust’s pay policy address pay gaps and pay ratios between the different quartiles of the workforce, including action to reduce the gender pay gap?

## 15. External accountability

Part of the core definition of governance in our introduction to this guidance is about how account is rendered. And one of the seven principles of public life is accountability. In both governance and executive roles, we must be comfortable submitting ourselves to external scrutiny.

External accountability is complex. It is enacted by different regulators and the inspectorate. We have made clear how the ESFA and RSCs exercise regulatory accountability in the sections above. Here, we will focus on Ofsted.

Ofsted inspects schools under a published [Education Inspection Framework](#) (EIF). Inspectors examine how well those ‘responsible for governance’ deal with the following matters:

- Understanding their role and how well they carry it out.
- The school’s/academy’s vision, ethos, and strategic direction.
- The management of resources.
- The oversight of finance and ensuring that money, including the Pupil Premium Grant (PPG), is well spent.
- How well governors hold the executive leaders (the headteacher or CEO, for example) to account for educational performance, the performance management of staff and the quality of education and training.
- How well governors fulfil their statutory duties (like the ones placed on the school/academy by the [Equality Act 2010](#), the [Prevent Strategy](#) and [Keeping Children Safe in Education](#)).
- The way governors promote the welfare of learners and ensure that the education the school/academy provides positively impacts on all pupils.

The board should ensure that those responsible for local governance understand and prepare for the inspection of the individual school.

At the level of the trust, Ofsted can undertake [summary evaluations](#) of multi-academy trusts. The summary evaluation explores the extent to which the trust is delivering a high quality of education and improving pupils’ achievement. They consider key information about the trust, which includes inspection outcomes, discussions with trust leaders and survey visits to some of the schools in the trust. The aim of the summary evaluation is to give the trust recommendations on aspects that could be improved, and to recognise where the trust is having a positive impact on the quality of education that its schools provide. The summary evaluation is technically not an inspection.

### Questions for the trust board

- Does the board know and understand the purpose, nature and processes of formal accountability and scrutiny (e.g., regional schools commissions, ESFA, Ofsted, etc) and what is required by way of evidence?
- Does the board embrace the principle of transparency and is it comfortable submitting itself to external scrutiny?
- Does the board consciously and purposefully build relationships with regulators?
- Does the board ensure swift action is taken in relation to regulatory activity and findings?

### Accountability: selected further reading and resources

Charity Commission [Charities and investment matters – a guide for trustees](#)

Confederation of School Trusts, 2021, [Intelligent Systems of Accountability](#)

Confederation of School Trusts, 2021, [Knowledge building – school improvement at scale](#)

Confederation of School Trusts, 2021 [Code: Principles for Determining Executive Pay](#)

Department for Education, 2021, [Building Strong Academy Trusts](#)

Department for Education, 2021, [Understanding your data: a guide for school governors and academy trustees](#)

Department for Education, 2021, [Internal Scrutiny in Academy Trusts](#)

Department for Education, 2020, [Regional Schools Commissioners’ decision making framework](#)

Department for Education, 2019, [Setting Executive Salaries: guidance for academy trusts](#)

Department for Education [guidance and tools on financial health and efficiency](#) (*note that this page is not targeted directly at trusts but rather at school level. It has some value, but this is limited because the focus is at school rather than trust level*)

ESFA, ‘[Dear Accounting Officer](#)’ letters

HM Government, 2020, [Principle of Risk – Management and Concepts](#)

HM Treasury [Audit and Risk Assurance Committee Handbook](#)

Ofsted, [Education Inspection Framework](#) (EIF)

Ofsted, 2021, [summary evaluations of multi-academy trusts](#)

## CST support for the Accountability Domain

### Masterclass: School Improvement and Trust Collaboration

This CST Masterclass in [School Improvement and Trust Collaboration](#) is delivered in partnership with Stone King LLP. It will develop your understanding of CST's four propositions of school improvement, explore how to build your school improvement capacity to support others, and provide guidance on how to develop the networks, partnerships and leadership processes that underpin successful trust collaborations.

### Masterclass: Leading School Trusts Through Inspection

You do not run your school(s) for the benefit of inspectors, but you do want to be able to put your best foot forward during an inspection. This masterclass in [Leading School Trusts through Inspection](#) will help you to understand and have agency in the inspections taking place in schools in your trust. We break down the inspection process and provide you with policy updates, key information and insights relevant to executive leaders, headteachers, school leaders and trustees.

## Domain four: Compliance

*CST believes that we need a strongly theorised concept of intelligent regulation which goes beyond compliance. We have written about this in our paper on [Intelligent Systems of Accountability](#). However, there are key areas where compliance is essential. This section does not offer a comprehensive overview of all forms of compliance, rather it explores the most important areas of Charity and Company Law and those areas where persistent problems arise.*

### 16. Acting within powers

Trustees have legal duties under Company Law as Company Law Directors and under Charity Law as Charity Trustees. As such they are required in law to act within powers. This is one of the most important differences between the proposition of governing a maintained school and the proposition of governing a trust.

Table five below sets out a summary of trustees' duties under Company Law and table six sets out a summary of duties under Charity Law. Trustees should also read the Charity Commission's guidance, [The Essential Trustee – what you need to know, what you need to do](#).

Although these legal duties of trustees may seem vast, it is important to remember that acting sensibly and making good decisions in line with the Principles of Public Life will take the board a long way towards ensuring that they are acting within powers.

Table five: Summary of Duties under Company Law	
Duty under Company Law	Examples of what this means in practice:
Duty to act within powers <i>Obey the constitution (the Articles) and decisions taken under it.</i>	A director must act in accordance with the Articles of Association and use his/her powers only for the purposes for which they were given. Directors must therefore be familiar with the Articles. If in doubt, directors should seek advice.
Duty to promote the success of the company <i>Act in the trust's best interests, taking everything you think relevant into account.</i>	All directors are aware and fully informed of their duty to promote the success of the trust; the trust keeps a full record any discussions and factors which were considered when taking key decisions. The trust considers the matters such as the likely consequences of any decision in the long term, the need to foster relationships, the impact of the trust's operations on the community. The trust ensures these factors are addressed where relevant in board reports – therefore members of the executive team writing reports for the board will also need to be aware of this duty.
Duty to exercise independent judgement	In practice this duty is not infringed by a director if he or she is acting: <ul style="list-style-type: none"> <li>in accordance with an agreement or previous collective board decision which has duly been entered into by the trust;</li> </ul>



<p><i>You remain responsible for the work you give to others.</i></p>	<ul style="list-style-type: none"> <li>• in a way authorised by the trust’s constitution.</li> </ul> <p>Please note that this duty does not confer a power on the directors to delegate, nor does it prevent a director from exercising a power to delegate conferred by the Articles, provided that its exercise is in accordance with the Articles (see duty to act within powers above).</p>
<p>Duty to exercise reasonable care, skill and diligence</p> <p><i>Be diligent, careful and well informed about the trust’s affairs. If you have any special skills or experience, use them.</i></p>	<p>A director must exercise:</p> <ul style="list-style-type: none"> <li>• the same general knowledge, skill and experience as would be reasonably expected from a ‘reasonably diligent person’ carrying out the functions carried out by the director; and</li> <li>• the same general knowledge, skill and experience that the director has.</li> </ul> <p>This two-stage test means that a director must exercise his or her duty to a minimum standard and that the standard is raised if that director has specific skills or expertise. For example, a director with accountancy skills would be expected to exercise greater scrutiny of the accounts.</p>
<p>Duty to avoid conflicts of interest</p> <p><i>Avoid situations where your interests conflict with those of the trust. When in doubt disclose potential conflicts quickly.</i></p>	<p>A director must avoid situations in which he or she has or could have an interest (direct or indirect) that conflicts with, or could conflict with, the trust’s interests.</p> <p>This duty will apply to the exploitation of any property, opportunity or information regardless of whether the company is able to take advantage of that property, opportunity or information.</p> <p>The duty will not be infringed if the director cannot reasonably be expected to know that a conflict of interest has arisen.</p> <p>Where a director’s duty to avoid conflict arises, he or she may discharge that duty by authorisation by or disclosure to the directors.</p>
<p>Duty not to accept benefits from third parties</p> <p><i>Be honest and remember that the trust’s property belongs to it and not to you or the members.</i></p>	<p>Trusts must obtain the ESFA’s prior approval, using the ESFA’s on-line form, for contracts for the supply of goods or services to the trust by a director or a related party agreed on or after 1 April 2019 where any of the following limits arise:</p> <ul style="list-style-type: none"> <li>• a contract exceeding £20,000; or</li> <li>• a contract of any value if there have been contracts exceeding £20,000 individually or cumulatively with the related party in the same financial year ending 31 August.</li> </ul>
<p>Duty to declare an interest in a proposed transaction or arrangement</p>	<p>A director has a duty to declare to the other directors the nature and extent of any interest in a proposed transaction with the trust. The declaration must be made before the trust enters into the transaction. This duty only applies to an interest where the director is or ought reasonably to be aware of the interest.</p>





Table six: Summary of duties under Charity Law	
Duty under Charity Law	Examples of what this means in practice:
Ensure your trust is carrying out its purposes for public benefit	<p>Know:</p> <ul style="list-style-type: none"> <li>• what your trust can and can't do within its purposes – what you want it to achieve</li> <li>• how your trust is fulfilling its purposes and benefiting the public</li> <li>• what difference your trust is really making</li> </ul>
Comply with the Articles (governing document) and the law	<ul style="list-style-type: none"> <li>• Be familiar with your Articles</li> <li>• Keep up to date with filing accounts, returns and any changes to your trust's registration details</li> <li>• Be aware of other laws that apply to your trust</li> <li>• It is not about being an expert - but you do need to take reasonable steps to find out</li> </ul>
Act in your trust's best interests	<ul style="list-style-type: none"> <li>• Make balanced, informed decisions recognising and dealing with conflicts of interest</li> <li>• Be prepared to question and challenge</li> <li>• Accept majority decisions</li> <li>• It's not about preserving the trust for its own sake or serving personal interests</li> </ul>
Ensure your trust is accountable	<ul style="list-style-type: none"> <li>• Meet legal accounting and reporting requirements</li> <li>• Be able to show that your trust complies with the law and is effective</li> <li>• Be accountable to members and others with an interest in the trust</li> <li>• Ensure that staff are accountable to the board</li> <li>• Welcome accountability as an opportunity not a burden</li> </ul>
Manage your trust's resources responsibly	<ul style="list-style-type: none"> <li>• Manage risks, protecting assets (reputation) and people</li> <li>• Ensure <b>regularity</b> and <b>propriety</b> in use of the trust's funds, and achieve economy, efficiency and effectiveness – the three key elements of <b>value for money</b></li> <li>• Make sure the trust has (and follows) appropriate controls and procedures</li> <li>• Deal with land and buildings</li> <li>• Be responsible for, and to, staff</li> </ul>
Act with reasonable care and skill	<ul style="list-style-type: none"> <li>• Use your knowledge, skills and experience</li> <li>• Decide when you need advice</li> <li>• Prepare for meetings</li> <li>• Get the information you need (financial, management)</li> <li>• Be prepared in case something does go wrong</li> </ul>

### Questions for the trust board

- Is the board corporately and are trustees/directors individually cognisant of their duties to act within powers?



- Does the board ensure that it complies at all times with its Articles?
- Does the board seek independent advice where necessary?
- Does the board corporately and do individual trustees/directors individually act always in the trust's best interests, putting these above any other personal or organisational interest?
- Does the board welcome accountability as an opportunity not a burden?

## 17. Regularity, propriety and value for money

**Regularity** is the requirement for all items of income and expenditure to be dealt with in accordance with legislation, the terms of the trust's funding agreement, the Academy Trust Handbook, and compliance with internal trust procedures. Regularity also means spending public money for the purpose intended by Parliament.

**Propriety** is the requirement to deal with expenditure and receipts in accordance with Parliament's intentions and the principles of parliamentary control. This covers standards of conduct, behaviour and corporate governance. Propriety means meeting high standards of public conduct, including robust governance and the relevant parliamentary expectations, especially transparency. It includes fairness, integrity, avoidance of private profit from public business, even handedness in the appointment of staff, avoidance of waste and extravagance

The term 'regularity and propriety' is often used to convey the idea of probity and ethics in the use of public funds – that is, delivering public sector values.

**Value for money** is "achieving the best possible educational and wider societal outcomes through the economic, efficient and effective use of all the resources in the trust's charge, the avoidance of waste and extravagance, and prudent and economical administration." (AFH, p. 45). A key objective is to achieve value for money not only for the trust but for taxpayers generally.

- Economic: Obtaining an outcome for the least possible input of resources.
- Efficient: Obtaining the best possible outcome for the resources input.
- Effective: Obtaining the desired outcome.

### Questions for the trust board

- How does the board ensure that funding is spent for the purpose intended by Parliament?
- How does it ensure that expenditure and receipts are in accordance with Parliament's intentions?
- What mechanisms are in place to ensure the best possible educational and wider societal outcomes through the economic, efficient and effective use of all the resources in the Trust?

## 18. Conflicts of interest and related party transactions

The law says that each individual trustee must avoid putting themselves in a position where their duty to act only in the best interests of the charity could conflict with any personal interest they may have.

### Conflicts of interest and conflicts of loyalty

According to the [Charity Commission](#), the term '**conflict of interest**' is often used to describe one of the following situations:

- Where a person is in a position where their duty as a trustee may conflict with any personal interest they may have.
- Where a person may not be able to act properly in a particular capacity because of a person or matter with which they are connected (connected person).
- Where a person may profit personally from decisions made in their capacity as trustee or from knowledge gained through holding such a position.

In broad terms, connected person means family, relatives or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse, unmarried partner or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights.

The Charity Commission also identifies **conflicts of loyalty**: this means a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could prevent the trustee from making a decision only in the best interests of the charity.

These conflicts of interest arise because, although the affected trustee does not stand to gain any benefit, the trustee's decision making at the charity could be influenced by his or her other interests. For example, a trustee's loyalty to the charity could conflict with his or her loyalty to:

- the body that appointed them to the charity
- the membership or section of the charity that appointed them to trusteeship
- another organisation, such as their employer
- another charity of which they are a trustee
- a member of their family
- another connected person or organisation

The test is always that there is a conflict of interest if the trustee's other interest could, or could be seen to, interfere with the trustee's ability to decide the issue only in the best interests of the charity. Some conflicts of loyalty arise because a trustee has a competing legal obligation or duty to

another organisation or person. Others result from conflicting loyalties which trustees owe or may feel towards family, friends or other people or organisations who are part of the trustee's network. A conflict of loyalty could also arise where the religious, political or personal views of a trustee could interfere with the ability of the trustee to decide the issue only in the best interests of the charity.

### Related Party Transactions

A related party is a person or a close member of that person's family related to a person who has control, joint control, or significant influence over the trust or is a member of its key management personnel.

#### Principles of Related Party Transactions according to the Academy Trust Handbook

Trusts must be even-handed in their relationships with related parties by ensuring that:

- Trustees comply with their statutory duties as company directors to avoid conflicts of interest, not accept benefits from third parties, and declare interest in proposed transactions or arrangements.
- All members, trustees, local governors of academies and senior employees complete the register of interests.
- No member, trustee, local governor, employee or related individual or organisation uses their connection to the trust for personal gain, including payment under terms that are preferential to those that would be offered to an individual or organisation with no connection to the trust.
- There are no payments to trustees by the trust unless permitted by the articles, or by authority from the Charity Commission, and comply with any relevant agreement with the Secretary of State. Trusts will need to consider these obligations where payments are made to other business entities who employ the trustee, are owned by the trustee, or in which the trustee holds a controlling interest
- The Charity Commission's approval is obtained where the trust believes a significant advantage exists in paying a trustee for acting as a trustee
- Payments provided to the persons referred to in section 5.49 of the Academy Trust Handbook satisfy the 'at cost' requirements.

The Academy Trust Handbook makes clear that where goods or services exceed £2,500, academy trusts must ensure that the element above £2,500 is provided at no more than cost and is supported by a statement of assurance from the related party confirming this.

The ESFA requires trusts to report all contracts and other agreements with related parties to ESFA in advance of the contract or agreement commencing, using ESFA's related party [on-line form](#). This requirement applies to all such contracts and agreements made on or after 1 April 2019.

Specifically, trusts must obtain ESFA's prior approval where any of the following limits arise:

- a contract or other agreement exceeding £20,000

- a contract or other agreement of any value that would mean the cumulative value of contracts and other agreements with the related party exceeds, or continues to exceed, £20,000 in the same financial year ending 31 August.

### Questions for the trust board

- Does the board maintain a register of conflicts of interest and loyalty and avoid or manage these honestly and purposefully?
- Does the board have effective mechanisms for addressing conflicts of interest and conflicts of loyalty where these arise?
- Does the board know and understand the regulatory requirements related to Related Party Transactions?
- Is the Trust compliant in relation to seeking approval for and/or reporting Related Party Transactions?

## 19. Safety and safeguarding, welfare and wellbeing

The board **must** ensure the safety and safeguarding of pupils and the safety of staff. Statutory guidance sets out what schools must do to comply with the law.

The statutory guidance [Keeping Children Safe in Education](#) sets out the legal duties schools and trusts **must** follow to safeguard and promote the welfare of children and young people under the age of 18 in schools and colleges.

Trust boards and indeed all those responsible for governance must ensure that all staff read [part 1](#) of this guidance which is available as a standalone document.

**All staff** should receive appropriate safeguarding and child protection training (including online safety) at induction. The training should be regularly updated. In addition, all staff should receive safeguarding and child protection (including online safety) updates, as required, and at least annually, to provide them with relevant skills and knowledge to safeguard children effectively.

‘Regulated activity in relation to children: scope’ describes work that a [barred person](#) must not do. The DfE has also published guidance on [disqualification under the Childcare Act 2006](#).

Ofsted has conducted a [review of sexual abuse in schools and colleges](#) which includes recommendations for schools and trusts. Trust board should be aware of this review and considering the recommendations accordingly. Further detailed information about sexual violence and sexual harassment can be found at [sexual violence and sexual harassment between children in schools and colleges](#).

Boards must also ensure that the organisation complies with statutory health and safety legislation. The [Health and Safety Executive](#) (HSE) is the statutory regulator for health and safety. Schools and trusts **must** comply with guidance published by the regulator. The DfE also has a suite of guidance documents on [health and safety in schools](#).

### Questions for the trust board

- What assurance mechanisms and processes are in place in relation to compliance with safeguarding and health and safety regulations and requirements?
- How does the board ensure the promotion of the welfare and wellbeing of children, young people and staff?
- How does the board ensure safeguarding and safety risks are managed, mitigated and tested as part of internal audit?
- How does the board assure itself that staff receive appropriate, regular safeguarding and child protection training?
- Does the board maintain strategic oversight of safeguarding processes and working between schools, colleges and local multi-agency partners?
- How does the board assure itself that appropriate arrangements are in place with regard to sexual abuse?
- Has the board received assurance that the new RSHE (relationships, sex and health education) curriculum is in place across all schools in the trust, including in teaching about sexual abuse, cyber bullying and pornography as well as healthy relationships and consent?
- Does the board assure itself that safeguarding arrangements include listening to the voices of children when reporting sexual abuse whether occurring within or outside school and whether/how victims receive timely and appropriate support?

## 20. Care, skill and diligence – and the bond of trust

The board corporately and individual trustees/directors individually must be diligent, careful and well informed about the trust's affairs. Specifically as we can see from table five above, a Company Law director must exercise:

- the same general knowledge, skill and experience as would be reasonably expected from a 'reasonably diligent person' carrying out the functions carried out by the director; and
- the same general knowledge, skill and experience that the director has.

This two-stage test means that a director must exercise his or her duty to a minimum standard and that the standard is raised if that director has specific skills or expertise. For example, a director with accountancy skills would be expected to exercise greater scrutiny of the accounts.

This Company Law duty is also reflected in Charity Law where you are required to act with reasonable care and skill. This means using your knowledge, skills and experience; deciding when you need advice, preparing for meetings, getting the information you need and being prepared in case something does go wrong.

Beyond the legal duties, there is a higher moral duty to exercise care, skill and diligence in relation to the children, young people, families and communities your trust serves. CST draws its mission statement from Kofi Annan's words in the introduction to the State of the World's Children (2000):

*"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace."*

### **Perhaps the most important three questions of all...**

- Does the board in all its decisions and actions exercise reasonable care, skill, and diligence?
- Does the board put the charitable object of advancing education at the heart of governance?
- Does the board understand and accept the bond of trust it holds with children?

### **Compliance: selected further reading and resources**

Charity Commission, [The Essential Trustee – what you need to know, what you need to do.](#)

Charity Commission, [Conflicts of Interest – A Guide for Charities](#)

Charity Commission, [Trustee Expenses and Payments](#)

Department for Education, [Keeping Children Safe in Education](#)

Department for Education, [Working together to safeguard children](#)

Department for Education, [Sexual violence and sexual harassment between children in schools and colleges](#)

Department for Education, [Health and Safety in Schools guidance](#)

Department for Education, [Related Party Transactions: Information for Academy Trusts](#)

Department for Education, Related party transactions – [glossary of terms](#)

Department for Education, [Academies Risk Protection Arrangement](#)

Ofsted, [Review of sexual abuse in schools and colleges](#)

HM Treasury, [Managing Public Money](#)

## **CST support for the Compliance Domain**

### **Masterclass: Managing Data Risk and Evidencing Compliance**

This CST Masterclass in [Managing Data Risk and Evidencing Compliance](#) is delivered by our legal partners, Browne Jacobson LLP to set out what trust leaders need to know and do in order to protect its IT systems and the personal data that your schools rely upon.

### **CST Masterclass in Risk Assurance for School Trusts**

This CST Masterclass in [Risk Assurance for School Trusts](#) is delivered in partnership with Stone King LLP and RSM. It will give you a thorough understanding of risk management concepts and provide practical tools to enable your trust to achieve real assurance about its risks over time.

### **Masterclass: Strategic Safeguarding for School Trusts**

This CST Masterclass in [Strategic Safeguarding for School Trusts](#) is delivered in partnership with Browne Jacobson LLP. It will develop your understanding of what strategic safeguarding at trust level involves and how to structure, support and oversee it to ensure the requirements of Keeping Children Safe in Education 2021 are met and can be evidenced and your trust is delivering exceptional safeguarding.



## Postscript - a word on board evaluation

School Trusts are complex and agile organisations. The proposition of governance should therefore be a live conversation and boards should monitor and improve their performance continually. Board evaluation provides a powerful and valuable feedback mechanism for improving effectiveness, maximising strengths and highlighting areas for further development.

An objective independent external review of the effectiveness of the board can be a more powerful diagnostic tool than self-evaluation. This is particularly important before the board undertakes any significant change. The Financial Reporting Council's Governance Code recommends that FTSE 350 companies have externally facilitated board evaluations at least every three years.

It may be helpful to end where we started: Ultimately the task of governance in School Trusts is to advance education for public benefit. In doing so, the trust board must enact a sacred duty of holding trust on behalf of children. This is a task bigger than one person – bigger than the executive trust leader because we are all fallible – we all have moments of blindness alongside our capacity for insight. It is a task so important that it requires a group of people. The trust board. And that board must be responsible for its own improvement.

## CST support for the board evaluation

### External Reviews of Governance

CST specialises in Trust Governance. Our [advisory service](#), which includes external reviews of governance, draws on the daily experience of CST as the national organisation and sector body for school trusts.

## Annex A: Regulatory Frameworks

The [Academy Trust Handbook](#) (formerly the [Academies Financial Handbook](#)) is statutory guidance with which all academy trusts must comply as a condition of their funding agreement. It is a regulatory document.

Academy Trusts are exempt charities meaning that they are regulated by the Secretary of State for Education. The Academies Act 2010 deems that all academies approved by the Secretary of State are automatically charities and that all existing academies became exempt charities when the Secretary of State for Education is their Principal Regulator.

The Department for Education has entered a [Memorandum of Understanding](#) with the Charity Commission which sets out the protective and support powers of the Commission and a summary of the Secretary of State's key responsibilities. The Charity Commission's regulatory framework can be found [here](#).

Trustees also have [Company Law Duties](#) and required to comply with the law governing company law directors.

The Secretary of State delegates regulatory powers to two regulators – the Education and Skills Funding Agency (ESFA - also the funding body) and Regional Schools Commissioners (RSCs).

The Regional Schools Commissioners use a [Decision-Making Framework](#) to make regulatory decisions. Regulatory decisions about academies causing concern are made using the [Schools Causing Concern](#) statutory guidance. The statutory safeguarding guidance is [keeping children safe in education](#) and [working together to safeguard children](#).

The Board must consider [the Academy trust accounting officer letters](#) from the chief executive of the ESFA.

Separately from the regulator, there is an independent *inspectorate* that is responsible for judging the quality of education in schools at a point in time on behalf of parents, the taxpayer and parliament. **The inspectorate is not a regulator of schools.**

### Other regulatory guidance

#### The Charity Commission

The Charity Commission has a wide range of [guidance](#) much of which is relevant to Academy Trusts and supports Trustees to enact their Charity Law duties.

## Health and Safety Executive

[The Health and Safety Executive](#) (HSE) is Britain's national regulator for workplace health and safety. It prevents work-related death, injury and ill health. There are a range of [Statutory Instruments](#) owned and enforced by HSE.

The Health and Safety Executive publish a wide range of [guidance](#) which is directly relevant to Academy Trusts which are regulated by the HSE.

## Annex B: DfE non-statutory guidance

### The DfE's Governance Handbook

DfE's [Governance Handbook](#) is non-statutory guidance for both academies and maintained schools. It sets out the government's vision and priorities for effective school and trust governance.

### DfE's competency framework for Governance

The DfE's '[Competency Framework for Governance](#)' is non-statutory guidance which describes the knowledge, skills and behaviours needed for effective governance. Like the Governance Handbook, it conflates maintained school governance with trust governance.

### Academy Trust Governance: Structures and Role Descriptors

[Academy Trust Governance: Structures and Role Descriptors](#) is non-statutory guidance providing high-level information about the roles and responsibilities each structure and person holds in academy trust governance. The map and descriptors contained in this document serve as an introduction to, and clarification of the roles in the governance system. It is the only DfE guidance (rather than regulatory) document that pertains exclusively to the trust sector.

### Building Strong Academy Trusts

The DfE has recently published new non-statutory guidance on [Building Strong Academy Trusts](#).



The Confederation of School Trusts (CST) is the national organisation and sector body for School Trusts in England advocating for, connecting and supporting executive and governance leaders. We are a membership organisation of organisations. This means that the organisation – the Trust – is the member. Our mission is to build an excellent education system in England – every school part of a strong and sustainable group in which every child is a powerful learner and adults learn and develop together as teachers and leaders.

The Governance Advisory Service is delivered by CST Professional Development Ltd on behalf of CST. CST Professional Development Ltd is a wholly owned subsidiary of CST.

The Governance Advisory Service is a safe, confidential and quality-assured service run by specialists in School Trust governance and draws on the daily experience of CST as the national organisation and sector body for school trusts.

We provide bespoke advisory services to match your current and future needs as a trust, helping you to keep your governance fully aligned to the expectations on trusts, the operational reality of your schools and with national best practice.

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