

Governance for Academies and Independent Schools

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Agenda

- Roles and responsibilities of members and charity trustees, and Covid-19 impact
- When to make a serious incident report
- How to make significant or material changes to your school
- Case study on incorporating a charity – why should you consider this and what are the options?
- Q&A

Roles and Responsibilities of Trustees and Members

- Academies and most independent schools are usually established and operate as charitable companies
- Key roles in governance structure – Members and Trustees
- The role of members is similar to that of shareholders in a company limited by shares – oversight
- Trustees are both charity trustees and company directors
- Members agree the first set of the articles of association and the trust's charitable purposes
- For academies, DfE recommendation is separation of power between members and trustees (majority members not trustees). From **1 March 2021**, members of an academy cannot be employees of the academy trust

Members

- Exercise their powers to further the trust's charitable object
- Where applicable, ensure that religious character of the school is preserved
- Step in if governance is failing
- Amend articles
- Appoint or remove members
- Change the name of the charitable company

Trustees

- The board of trustees is the key decision maker. Who trustees?
- Six key duties set out by the Charity Commission:
 1. Ensure that the school is carrying out the purposes for which it has been set up, and no other purpose
 2. Comply with the governing document, charity law requirements and other applicable laws
 3. Act in the school's best interests
 4. Manage the school's resources responsibly
 5. Act with reasonable care and skill
 6. Ensure the school is accountable

Trustees: decision making

- Act in good faith, and only in the interests of the school
- Make sure they are sufficiently informed
- Take account of all relevant factors they are aware of
- Deal with conflicts of interest and loyalty
- Make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances
- How to remove a trustee?

COVID-19 guidance for Trustees

- The Charity Commission has published updated guidance on its website in relation to Trustees' roles, duties and responsibilities throughout the ongoing COVID-19 pandemic
- To provide clarity and some flexibility throughout the pandemic
- Some of the relevant guidance for schools includes updates on:
 - Government financial support and managing financial difficulties
 - Holding, postponing and cancelling meetings (including AGMs)
 - Using reserves and restricted funds
 - Continue to report any serious incidents
- The guidance was last updated on 13 April 2021

Serious Incident Reporting

- It is the Trustees responsibility to report serious incidents to the Charity Commission.
- An important compliance and monitoring tool (3 main purposes):
 1. Reporting serious incidents demonstrates to the Commission that Trustees have identified a risk to the charity and are taking appropriate action to deal with it.
 2. The Commission may need to advise the Trustees or use its statutory powers.
 3. There may be potential risks to other charities.
- Recent trends:
 - most common types of incidents reported include fraud, theft and safeguarding issues.
 - incidents relating to COVID-19.
 - number of incidents have increased.
 - casework continues to find serious incidents that should have been reported but were not.

What to report?

- Trustees must report an incident if it results in, or risks, significant:
 - harm to your charity's beneficiaries, staff, volunteers or others who come into contact with your charity; or
 - loss of your charity's funds or assets; or
 - damage to your charity's property; or
 - harm to your charity's reputation or business.

Reportable incidents

- The main categories of reportable incident (education):
 - Protecting people and safeguarding incidents;
 - Financial crimes and significant financial losses;
 - Other significant incidents:
 - forced withdrawal of banking services/insolvency
 - significant data breaches/losses
 - incidents involving partners that materially affect the charity.
- ‘Examples Table’
- ‘Supplementary Examples Table’ (COVID-19)

When to report?

- Your charity should report an actual or alleged incident **promptly**, meaning:
 - as soon as is reasonably possible after the incident happens; or
 - immediately after your charity becomes aware of it.

How to report?

Independent Schools:

Online form '*Report a Serious Incident*'

<https://ccforms.charitycommission.gov.uk/>

Academies:

If you are an academy, you have to comply with the same reporting obligations, but it needs to be made to the Education & Skills Funding Agency (ESFA) rather than the Commission as the DfE is the principal regulator for academies

Top tips and useful reminders

- The online form cannot be saved and then progressed at a later date (Independent Schools)
- It is a criminal offence to knowingly or recklessly provide false or misleading information (including suppressing, concealing or destroying any documents)
- Remember to update the Commission/ESFA about the outcome (and periodically in between if needed)
- Your charity must sign a declaration in its annual return stating that there were no Serious Incidents during the previous financial year that should have been reported to the Commission but were not.

What is a Material Change?

- The ongoing pandemic has led to uncertainty for many schools. Various issues have arisen including:
 - Financial issues
 - Decrease in pupil numbers
 - Decrease in international students and boarders
 - The furlough of staff and/or redundancies
 - Changes to teaching through remote learning
 - Increases in parental complaints
- Governors may therefore be looking to review and revise their strategy in order to *'future proof'* their school.
- This may include organisational changes which are deemed a *'material change'*.

What constitutes a material change?

- Changing the School's address
- Changing the proprietor
- Changing the maximum number of registered pupils
- Adding or removing boarding facilities
- Changing the gender dynamic (i.e. single sex to co-ed or the reverse)
- Changing the registered age range of the school
- Admitting one or more SEN pupils

Prior approval

- It is important to remember that, when material changes are being considered, there is a legal requirement to seek approval from the Department for Education (DfE) before implementing the change.
- The DfE have the power to approve or reject the proposed material change. If a request is rejected it can be appealed, but there is no guarantee it will be overturned.
- Failure to obtain prior approval may result in the school being removed from the DfE's register.
- The application form must be downloaded and submitted from the DfE's website:
(<https://www.gov.uk/apply-for-a-licence/registration-of-independent-school-1/dfe/change-1>)
- Decision times do vary (the last application we submitted stated a 4 month response time, but a decision was actually received in less than 2 weeks).
- An application for a material change automatically triggers an inspection, however the DfE will consider each application subjectively and decide whether an inspection is actually necessary.
- In practice, it depends on the type of material change being proposed.

Academies - Guidance

- Department for Education guidance on significant changes
- Any change that will have an impact on the number, type and/or location of school places at an academy
- Academy trusts must submit a proposal for change and follow the required process, in advance of the change being made
- Fast track / full business case
- Local consultation
- **Does not apply to governance changes, such as joining a MAT**

Fast track

- School eligibility requirements:
 - rated as 'Good' or 'Outstanding'
 - Progress 8 score at national average
 - Good financial health
- Adding boarding provision
- Increasing capacity
- Age range changes – but not adding / removing a sixth form

Full business case

- Contentious / precedent setting changes require a full business case (i.e. reducing places in an area of basic need, proposed changes which have received objections)
- Setting up a satellite site
- Changing the pupil numbers in a special school
- Changing the lower or upper age limit

The process

1. Carry out a 'fair and open local consultation' over four to six weeks.
2. Secure funding for the change and obtain any relevant planning or other consents.
3. Confirm that there will be no negative impact on local educational standards.
4. Submit the proposal using the DfE's enquiry form, at least three months before the proposed change.
5. The Regional Schools Commissioner will consider a range of factors and make a judgement when deciding whether to approve or reject a proposal.
6. The responsibility for amending academy trust documentation and registering the change on Get Information About Schools database lies with the academy trust.

Failure could constitute a breach of the funding agreement

Incorporating a Charity – a Case Study

Scenario:

Your school is unincorporated or you have an unincorporated charity associated with your school.

- Foundation charity
- Charity established by school
- Its governing document is out of date

The Charity may want to re-organise its structure for a number of reasons...

Reasons to restructure

- Limiting the personal liability of its trustees/members
- Future borrowing from a bank simplified
- Property held by corporate entity rather than individual trustees
- Modernising an out-of-date governing document
- Simpler to manage the Charity's business and enter into contracts

Potential structures (1)

Charitable company limited by guarantee:

- Most frequently adopted corporate legal structure and can be adapted to suit most purposes
- The structure is more widely recognised by lenders
- Governed by articles of association
- Directors (Governors/Trustees) will manage the business of the company on behalf of its Members. The Directors and Members can be the same individuals
- The Members' liability is limited by the amount they guarantee in the articles to contribute to the assets of the company if it is wound up (usually £1)
- The company is registered with and regulated by Companies House and the Charity Commission, and all of the associated filing and fee payment requirements

Potential structures (2)

Charitable incorporated organisation (CIO):

- First ready-made corporate structure specifically designed for charities
- Governed by its constitution, which must be in the form of the association model or foundation model
- Charity Trustees (Governors) manage the business of the Charity. The Charity Trustees and Members can be the same individuals
- Members have either no liability or limited liability
- CIO can only be a registered charity regulated by the Charity Commission
- No Companies House filing or fee payment requirements

How to incorporate...

Basic procedure (charitable company):

1. Approval of trustees/members of the Charity
2. Formation of a new charitable company
3. Application to the Charity Commission
4. Property and mortgage matters
5. Banking
6. Financial advice
7. Business transfer

Some pre-completion matters include:

- Timetable (subjective but could take 12-18 months to complete)
- DfE consent for a material change to change proprietor (up to 4 months)

Some post-completion matters include:

- Notify the Charity Commission of merger
- Notify UKVI if there are student visas
- Dissolve the unincorporated charity

Any questions?

Contact us



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