

Scheme of Governance

King Edward VI Academy Trust Birmingham

July 2017

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1 Introduction

This Scheme of Governance (**Scheme**) has been made by the Trustees of the King Edward VI Academy Trust Birmingham (the **Academy Trust**) to set out a framework under which the Academy Trust is governed and managed, and in particular:

- how the individuals which are involved in the governance of the Academy Trust work together effectively;
- the relationship between the Trustees, the local governing bodies (**LGBs**), The Schools of King Edward VI in Birmingham (the **Foundation**) and the Foundation's senior leadership team (the **Foundation Office Senior Leadership Team**) which for the avoidance of doubt includes the Executive Director; and
- how the Trustees ensure compliance with the various legal and regulatory requirements placed on them.

This Scheme shall be reviewed by the Trustees annually and, in doing so, the Trustees shall have regard to any new legislation or guidance affecting the provisions of these documents.

This Scheme may only be altered, added to or repealed by the Trustees at a meeting held in accordance with articles 111A, 119A and 120A of the Academy Trust's articles of association (the **Articles**). This means that this Scheme can be altered, added to or repealed only where:

- each Trustee has been given twenty one clear days' written notice (to include the agenda) of the meeting at which the revision of the Scheme is to be considered;
- a quorum of 75% (rounded up) of the Trustees holding office and entitled to vote is present;
- the greater of nine or two-thirds (rounded up) of those Trustees present and voting approve the exercise of the intervention rights; and
- a majority of the Members in office approve the decision of the Trustees.

A copy of this Scheme and any subsequently amended version of the Scheme shall be given to the Members of the Academy Trust, every Trustee, each member of an LGB (**Local Governor**), the Executive Director, the Principals of the Academies operated by the Academy Trust (the **Principals**), the Foundation's Director of Finance (the **Chief Financial Officer**) and the Company Secretary (if appointed).

This Scheme is to be read in conjunction with the Academy Trust's "Decision Making Matrix" (as defined in the Academy Trust's articles of association (the **Articles**)) which will be given to the Members of the Academy Trust, every Trustee, each Local Governor, the Executive Director, the Principals, the Chief Financial Officer and the Company Secretary (if appointed).

2 The Academy Trust

The Academy Trust is a charitable company limited by guarantee with exempt charitable status. Its constitution is its Articles of Association. The Objects of the Academy Trust (the purposes it exists to further) are:

- a. to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing, by establishing, maintaining, carrying on, managing and developing schools offering a broad and balanced curriculum ("**the mainstream Academies**") or educational institutions which are principally concerned with providing full-time or part-time education for children of compulsory school age who, by

reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them (“the **alternative provision Academies**”) or 16 to 19 Academies offering a curriculum appropriate to the needs of its students (“the **16 to 19 Academies**”) or schools specially organised to make special educational provision for pupils with Special Educational Needs (“the **Special Academies**”), and

- b. to promote for the benefit of the inhabitants of the areas in which the Academies are situated the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants

The Academy Trust is responsible for King Edward VI Aston School, King Edward VI Camp Hill School for Boys, King Edward VI Camp Hill School for Girls, King Edward VI Five Ways School, King Edward VI Handsworth School, and King Edward VI Sheldon Heath Academy and any schools that join the Academy Trust in the future (collectively the **Academies**).

The Academy Trust has entered into a Master Funding Agreement and separate Supplemental Funding Agreements for each Academy under section 1 of the Academies Act 2010 with the Secretary of State for Education in relation to the funding of the Academies (**Funding Agreement**).

The Funding Agreement places a number of requirements on the Academy Trust including the requirement to comply with the Department for Education's (**DfE**) Academies Financial Handbook (as updated from time to time) (**Handbook**).

There are a number of roles involved in the running of any multi-academy trust and these are as follows:

- the **Members**;
- the **Trustees**;
- the **Executive Director**;
- **LGBs**: each Academy has an LGB formed by the Trustees as a committee of the Trustees. The members of the LGBs are called **Local Governors**; and
- the Principals who have responsibility for the day to day running of their respective Academy.

2A The Foundation

The charity known as The Schools of King Edward VI in Birmingham (registered charity number 529051) is more commonly known as the Foundation and is referred to throughout this Scheme and documents referred to therein. The Foundation is the sponsor of the Academy Trust and has both a governance based and contractual based relationship with the Academy Trust. Please see sections 11 and 11A.

3 Members

3.1 The role of the Members

In simple terms, the Members have similar rights to shareholders of a for-profit company, but, in the case of an academy trust, as a charitable company, they do not have the right to receive any dividends from the company. They have a number of rights, including:

- the right to appoint the auditors;
- the right to appoint up to six Trustees, as detailed within the Articles;
- the right to remove any of the Trustees (provided that a specific procedure is followed which includes the right of the relevant Trustee to make representations);
- the right to amend the Articles; and
- the right to receive the annual accounts.

The Members are required to provide a guarantee that, if the Academy Trust were to be wound up and the assets did not meet all of its liabilities, they would each contribute £10.

The Members will often meet just once a year at the annual general meeting (**AGM**). Please note, however, the Articles do not require the Academy Trust to hold an AGM and so Members will, in practice, meet only when there is Members' business to be transacted. Notwithstanding that there is no requirement to hold an AGM in the Articles, the Academy Trust may if it wishes hold a Members' meeting each year.

3.2 The appointment of the Members

Members are appointed in accordance with Articles 12 to 18. There must be a minimum of three Members at any one time.

On appointment, all Members are required to complete a consent to be a member form (attached at Appendix 1) and a declaration of business interests form.

The Company Secretary will update the register of Members as appropriate. Companies House does not need to be notified.

As of 1 September 2016, the Handbook requires the appointment of any new Member to be notified to the DfE via Edubase within 14 days of appointment to enable an assessment of his or her suitability.

4 Trustees

4.1 Capacity of Trustees

Each Trustee is:

- a director of the Academy Trust; and
- a charity trustee.

The Trustees meet together as the Board of Trustees (the **Board**) to carry out their duties and functions.

All Trustees are required to:

- follow the Seven Principles of Public Life set out by the Committee on Standards in Public life (referred to as "the Nolan Principles" and set out in Appendix 2.
- comply with:
 - the Articles;
 - this Scheme;
 - the conflict of interests policy;
 - the requirements of charity law (including the Charities Act 2011) and company law (including the Companies Act 2006);
 - the Decision Making Matrix; and
 - the code of practice appended at Appendix 3 ;
- ensure they understand their duties, rights and responsibilities, and that they are familiar with the function and role of the Academy Trust;
- not misuse information gained in the course of their Trusteeship for personal gain, nor seek to use the opportunity of service to promote their private interests or those of connected persons, firms, businesses or other organisations; and
- participate actively in the induction process and any relevant training.

4.2 Constitution of the Board of Trustees

The minimum number of Trustees is three although the number of Trustees is not subject to any maximum.

The **Board of Trustees** is constituted as follows:

- between six and eight 'Academy Trustees' appointed by the Trustees (who shall each normally be, but might not always be, the chairman of the LGB);
- up to six Trustees appointed by Members (initially comprising of LGB Governors and the head master of the Foundation (the **Head Master of the Foundation**));
- in the event that there is not provision for there to be at least two parent Local Governors on each LGB, two parent Trustees elected by parents or carers; and
- if appropriate, 'Co-opted Trustees' appointed by the Trustees who are not themselves co-opted.

At least eight of the Trustees must also be members of the board of trustees of the Foundation.

At least two of the Trustees must have experience of being either:

- a governor of a non-selective secondary school or non-selective secondary academy; or
- a trustee of an academy trust which operates non-selective secondary academies (and might also operate primary schools) only;

within the preceding three years of their appointment as a Trustee and who must not also hold office at the time of their appointment as either:

- a governor of a selective secondary school or selective secondary academy; or
- a trustee of an academy trust which operates any selective secondary academies.

The Trustees shall elect a Chair and a Deputy Chair from among their number each academic year.

The Articles and the DfE's Governance Handbook (as updated from time to time) require that there is an appropriate mix of skills represented on the Board of Trustees and that those making the appointments onto the Board bear in mind the need for the skills mix when making their appointments.

4.3 The appointment of Trustees

On appointment, all Trustees shall be required to:

- undergo an enhanced Disclosure and Barring Service (**DBS**) check;
- complete a Trustee declaration (attached at Appendix 3);
- complete an AP01 form for submission by the Company Secretary to Companies House (either in paper form or electronically); and
- complete a declaration of business interests form.

The Company Secretary shall update the register of Trustees in the statutory books. As of 1 September 2016, the Handbook requires the appointment of any new Trustee to be notified to the DfE via Edubase within 14 days of appointment to enable an assessment of his or her suitability.

4.4 Recruitment of Trustees

It is essential that the Board of Trustees has a proper mix of skills and experience. The Trustees must therefore be able to identify potential new Trustees in order to plan for succession which combines continuity of experience and expertise with new ideas and energy.

The Board as a whole is responsible for ensuring that:

- the skills of any new Trustees fit in with the Academy Trust's requirements in the short, medium and longer term;
- each new Trustee is not disqualified from acting as a Trustee by any provision of the Academy Trust's Articles (including the requirement that he is not disqualified as a company director or charity trustee);
- there is a system in place which ensures that all relevant checks, including an enhanced DBS check (countersigned by the Secretary of State in the case of a new Chair), are completed before or as soon as practicable after a Trustee takes up position; and
- the new Trustee understands the responsibility he or she is taking on and consents to act as a Trustee.

Each new Trustee will be properly inducted to ensure that he or she understands the nature and extent of his role and responsibilities. It is the duty of a new Trustee to ensure that he or she is familiar with the Objects of the Academy Trust; its history and ethos and the nature and extent of its activities; and the content of the Academy Trust's Articles.

The Trustees shall provide each new Trustee with a copy of:

- the Articles;
- this Scheme;
- the conflict of interests policy; and

- the Decision Making Matrix.

New Trustees should also be provided with copies of the Academy Trust's annual report and financial statements from the previous three years (when available).

4.5 Training and development of Trustees

The Trustees shall ensure that the Board has the skills and experience needed to perform its functions effectively. Trustees shall also be kept up to date with developments in the legal and regulatory framework in which the Academy Trust operates.

The Trustees must have in place a system for evaluating Trustees, with a view to identifying potential gaps in their skills and any requirements for training. Such evaluation shall be carried out annually.

4.6 Accountability of Trustees

The Trustees are chiefly accountable to:

- the beneficiaries of the Academy Trust (pupils at the Academies and their parents) and to the local community for the quality of education and pastoral care at the Academies, for matters of health and safety and for safeguarding and promoting the welfare of the students;
- the DfE, the ESFA and specifically the Secretary of State under the terms of the Funding Agreement;
- the Secretary of State (in his or her role as principal regulator in respect of charity matters) for operating the Academy Trust for the public benefit, for the prudent management of the Academy Trust and its financial efficiency, and for compliance with legislation including charities legislation;
- the employees of the Academy Trust for their working environment, and for compliance with the contract of employment and employment law requirements and matters of health and safety; and
- other regulatory authorities for compliance with regulated responsibilities to which the Academy Trust and the Academies are subject, including, for example, the Charity Commission.

4.7 Powers, functions and responsibilities of Trustees

The Trustees are responsible for the governance and supervision of the Academy Trust, its committees (including the LGBs) and the management of the relationship with the Foundation Office Senior Leadership Team (in relation to the provision of services provided to the Academy Trust and the Academies by the Foundation Office Senior Leadership Team through the PSA¹).

The Trustees have a number of duties and responsibilities relating to the management of the Academy Trust and its finances. In summary, the Trustees are responsible for:

- establishing the vision, mission and values for the Academy Trust;
- carrying on the Academy Trust in accordance with the objects of the Academy Trust as set out in the Articles and safeguarding the assets of the Academy Trust;

¹ See section 11 below.

- designing strategy and structure for the operation of the Academy Trust;
- oversight of the operation of the Academies and directing the education, pastoral care, financial and other policies of the Academies in accordance with the Articles and the Funding Agreements (including the Handbook);
- ensuring sound management and administration of the Academy Trust, and ensuring that managers are equipped with the relevant skills and guidance;
- financial controls and the financial management of the Academy Trust in accordance with the provisions of the Handbook, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements;
- setting standards of conduct and values, monitoring performance and the achievement of objectives, and ensuring that plans for improvement are acted upon;
- risk management, that is identifying, quantifying and devising systems to minimise the major risks affecting the Academy Trust; and
- ensuring the Academy Trust and the Academies are conducted in compliance with the general law.

The duties and responsibilities of the Trustees are explained in further detail in Appendix 5 and *CC3: the essential trustee: what you need to know, what you need to do* (Charity Commission, July 2015).

4.8 Conducting Trustees' business

The Trustees are required to:

- act together and in person and not delegate responsibility of the Academy Trust to others (save as may be permitted by the terms of the Articles with regard to certain functions including, for example, the creation of the LGBs);
- act strictly in accordance with the Articles;
- act in the Academy Trust's interests only and without regard to their own private interests;
- manage the Academy Trust's affairs prudently;
- not benefit personally from the Academy Trust unless expressly authorised by the Articles, the Education and Skills Funding Agency or the Charity Commission (as the case may be); and
- take proper professional advice on matters in which they are not themselves competent.

The Trustees should also hold the Executive Director, the Principals and the Chief Financial Officer accountable. They should offer support, constructive advice, be a sounding board for ideas, a second opinion on proposals and help where needed, but will also challenge, ask questions, seek information and improve proposals where appropriate and at all times act in the best interests of the Academy Trust.

The Trustees shall have regard to the framework for inspecting schools in England under section 5 of the Education Act 2005 (as amended) issued by the Office for Standards in Education, Children's Services and Skills (**Ofsted**).

The Trustees shall comply with the requirements of the Handbook, which shall be circulated to all Trustees.

4.9 **Chair of Trustees**

The Board shall appoint an individual from among their number to act as Chair. The procedure relating to the appointment of the Chair is detailed at Articles 82 to 92 of the Articles. A change of Chair will require a notification to be made to the DfE, including a DBS disclosure form to be submitted via the DfE.

The main role of the Chair is to chair meetings of the Board of Trustees. He or she also provides leadership to the Trustees and acts as the main point of contact between the Trustees, the Executive Director and Chief Financial Officer.

Apart from any special responsibilities or powers given to the Chair in the Articles (e.g. the right to chair meetings of the Board of Trustees and to have a second or casting vote in any case of an equality of votes at a meeting of the Board of Trustees), the Chair has no special powers or rights over any other Trustee. If the Chair is to carry out certain specific functions (for example, the power to approve an overspend in a certain area of the budget or the Executive Director's appraisal) then this must be delegated to him by the Board in accordance with an appropriate power of delegation in the Academy Trust's Articles.

4.10 **"Liaison" Trustees**

The Board shall in respect of each Academy Financial Year select one of their number to liaise and engage with the Parent Local Governors and another one of their number to liaise and engage with the Staff Local Governors in such manner as the Trustees shall from time to time determine (and such Trustees shall be referred to together as the "**Liaison Trustees**"). Provisions relating to the appointment of the Liaison Trustees are set out in Article 52A.

The main role of the Liaison Trustees (in their role as Liaison Trustees) is to engage with the Parent Local Governors and Staff Local Governors on the Local Governing Bodies and to act as the main point of contact between the Trustees and the Local Governing Bodies in that respect.

The Liaison Trustees will have no additional or special powers or obligations over and above the powers or obligations of any other Trustee. If a Liaison Trustee is intended to exercise any such special power, then this must be delegated to him or her by the Board in accordance with the Trustees' powers of delegation.

4.11 **Meetings of Trustees**

There will be at least three meetings of the Trustees in every academic year. Meetings will normally be held towards the end of each term and the dates will be published at the beginning of each academic year. The quorum for meetings of the Trustees is seven.

All meetings of the Trustees shall be convened and conducted as provided by the Articles.

Each meeting of the Trustees will ordinarily cover the following:

- a report on the financial position, including income and expenditure and financial commitments against agreed budgets;
- whether adequate financial monitoring of budgets and activities is being undertaken;
- progress on any action identified to improve financial arrangements;
- significant contracts proposed to be entered into;
- a review of educational standards and attainment;

- details of any significant matters affecting:
 - staff;
 - pupils' welfare or education; and
 - assets.

In consultation with the Chair, the Executive Director shall prepare an annual plan for the meetings of the Trustees.

4.12 Risk management

Statements of recommended practice (Charities SORP FRS102 and Charities SORP FRSE) set out requirements for reporting on the risks to a charity. These requirements apply to all charities which meet the charity audit threshold, regardless of whether they are reporting under FRS102, which applies to larger charities, or FRSE, which applies to smaller charities.

If the Academy Trust meets the charity audit threshold, the Trustees' report must include a description of the principal risks and uncertainties facing the Academy Trust and its subsidiary undertakings, as identified by the Trustees. The report must also include a summary of the Trustees' plans and strategies for managing these risks. The Trustees must identify specific risks and describe ways to combat each one, rather than making general statements regarding risk management.

The Trustees are therefore responsible for:

- identifying the major risks that apply to the Academy Trust, including:
 - operational risks (employment issues, health and safety, fraud, service quality and development etc.);
 - financial risks (accuracy of financial information, cash flow, reserves, over-reliance on funding sources etc.);
 - external risks (changes in government policy, economic factors, demographic changes, adverse publicity etc.); and
 - regulatory risks (compliance with legislation, changes in policies of the regulators etc.).
- making decisions (based where appropriate on advice from professional advisors) as to how to respond to those risks; and
- making appropriate statements regarding the management of risks in the annual report.

To enable the Trustees to fulfil their responsibilities in relation to risk as noted above:

- each Principal will be responsible for preparing a risk register for their Academy and this will be presented to the Academy's LGB for approval;
- the Executive Director will:
 - assist each LGB in reviewing the risk register compiled by the Principal and reporting key risks to the Trustees (in an agreed form) for consolidation into the Academy Trust's risk register;
 - prepare the risk register for the Academy Trust; and

- prepare a procedure by which the risk registers shall be subject to regular review and made available to all staff. The risk registers shall have named individuals assigned to manage each area.

The following policies shall be approved by the Trustees:

- a risk management policy
- a fraud policy
- a whistleblowing policy
- an anti-bribery and anti-corruption policy
- a gifts and hospitality policy.

4.13 The management of conflicts of interest

The Companies Act 2006 imposes a statutory duty on the Trustees to avoid situations in which they have or could have an interest which conflicts (or could conflict) with the interests of the Academy Trust. The duty is to:

- avoid any conflict of interest between that interest and the interests of the Academy Trust; and
- in the event that a conflict exists, declare the nature and extent of any interest in any matter relating to the Academy Trust.

In addition, charity law and guidance issued by the Charity Commission confers obligations on the Trustees to avoid conflicts of interest wherever possible and, in the event that any conflicts arise and are unavoidable, to manage any conflict between a Trustee's duty to the Academy Trust and their own personal interests or for a Trustee to be influenced by conflicting duties to the Academy Trust and a third party.

Trustees which are nominated or appointed by other institutions have the same powers and duties as all other Trustees and owe their duties to the Academy Trust only. They must not allow those duties to come into conflict with duties they may owe to their nominating / appointing body.

Further details are set out in the Academy Trust's conflicts of interest policy with which the Trustees are obliged to comply.

5 Delegation of powers of Trustees

Trusteeship (and directorship which necessarily follows) is a personal office of trust and responsibility and this cannot be transferred to another individual. However, in order to ensure the proper management of the Academies, the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations.

It is for the Board of Trustees to determine what decisions it will take for itself, what will be delegated to committees, working groups or individual Trustees (e.g. the Chair) and what will be delegated to the Executive Director and the Chief Financial Officer. The Trustees must also consider when and from whom they should take professional advice.

Delegation can be made to:

- Trustee committees (or individual Trustees);

- the LGBs (which are established as committees);
- the Foundation Office Senior Leadership Team (including the Executive Director) (through the PSA); and
- the Principals.

In determining whether delegation is appropriate, the Trustees will have regard to the following principles:

- except when it is impracticable to do so, executive powers should be delegated to the Executive Director and the Chief Financial Officer, who may authorise further delegation; and
- every act of delegation is only a delegation of powers and does not relieve the Trustees of responsibility and the Trustees must receive reports of actions taken by those to whom powers have been delegated.

The Trustees must not delegate any of the powers listed in Appendix 6 (Reserved Matters).

6 Committees

The Trustees may appoint committees with functions related to the Academy Trust. The constitution, membership and proceedings of any committee shall be determined by the Trustees under terms of reference.

Each committee shall be chaired by a Trustee (with the exception of an LGB which may or may not be chaired by a Trustee).

Membership of a committee may include persons who are not Trustees provided that (with the exception of the LGBs) a majority of the members of the committee are Trustees.

Except in the case of an LGB, no vote on any matter shall be taken at a meeting of a committee of the Trustees unless the majority of members of the committee present are Trustees.

The Trustees shall ensure that they receive adequate feedback on the work of any committees.

Committees will act in an advisory capacity to the Trustees, except where powers have been specifically delegated to them by the Trustees. The specific committees to be appointed are as follows:

- a Finance;
- a HR Committee; and
- an Audit Committee.

The terms of reference of each committee of the Trustees must be approved by the full Board of Trustees and reviewed at least once in every 12 months. They provide the sole agreed framework within which each committee operates.

7 Local Governing Bodies

The Trustees will establish an LGB in respect of each of the Academies (although may in accordance with the Articles, if appropriate, appoint one LGB in respect of two or more of the Academies²). The LGB is a committee of Trustees established under the Articles. They are constituted and operate under terms of reference which are set out in a separate document ('Local Governing Bodies: Constitution and Terms of Delegation') which may only be altered, added to or repealed by the Trustees at a meeting held in accordance with articles 111A, 111B, 119A and 120A of the Academy Trust's Articles.

The terms of reference will confirm what powers the Trustees have delegated to the LGB.

In summary, the role of the LGB is to:

- provide advice to the Trustees on the functioning of that Academy;
- act as a key link between the Academy Trust, parents and the Academy community;
- act as a sounding board for the Principal and Foundation Office Senior Leadership Team and offer challenging but positive support to the Principal;
- continually review the overall impact of the Academy; and
- assist with and review the implementation of certain academy policies, such as student admissions and behaviour.

The LGB is made up of individuals who may or may not also be Trustees in accordance with the Articles.

8 Intervention Rights

Intervention in times of concern

The Board of Trustees remains ultimately responsible for the Academy Trust and the conduct of the Academies. The operation of the various elements of governance outlined in this Scheme and the Decision Making Matrix are crucial to its success. However, there will be circumstances (more the exception than the norm) where the Board of Trustees might need to intervene and, for example, withdraw delegated authority for a particular element of governance.

In such circumstances, the Board of Trustees, along with the Foundation Office Senior Leadership Team (including the Executive Director), would work closely with any Academy or Academies concerned and those involved in their governance who would be expected to promptly implement any advice or recommendations made by the Board of Trustees and the Foundation Office Senior Leadership Team.

The Board of Trustees reserves the right to review or remove any power or responsibility which it has delegated, in particular, in circumstances where serious concerns in the running of an Academy or Academies are identified (either internally within the Academy Trust or by a third party), including where:

- there are concerns about financial matters;

² It is not the intention of the Trustees to appoint one LGB in respect of two or more Academies in respect of the Academies operated by the Academy Trust on the date of the adoption of this Scheme.

- insufficient progress is being made against educational targets (including where intervention by the Secretary of State is being considered or carried out);
- there has been a breakdown in the way the Academy is managed or governed;
- the safety of pupils or staff is threatened, including a breakdown of discipline; or
- the Board of Trustees considers such removal of power or responsibility appropriate in all of the circumstances.

The intervention rights may only be exercised by the Trustees at a meeting held in accordance with articles 111A, 111B, 119A and 120A of the Academy Trust's Articles. This means that the intervention rights can be exercised only where:

- each Trustee has been given twenty one clear days' written notice (to include the agenda) of the meeting at which the exercise of the intervention rights are to be considered;
- a quorum of 75% (rounded up) of the Trustees holding office and entitled to vote is present;
- the greater of nine or two-thirds (rounded up) of those Trustees present and voting approve the exercise of the intervention rights; and
- a majority of the Members in office approve the decision of the Trustees.

In accordance with Article 111B, if the Chair or the Deputy Chair in his absence determines that the exercise of the intervention rights requires urgent consideration, it shall be sufficient if the written notice and the copy of the agenda are given within such shorter period as he shall direct.

The delegated budget

Within a multi academy trust, the trustees are entitled to determine that a proportion of the budget of each academy is held centrally (often known as 'top-slicing') for the following reasons:

- to be allocated to the provision of central services received by the academies;
- in pursuance of the trust's reserve policy; and / or
- as otherwise may be determined by the trustees acting reasonably and in the best interests of the trust and the academies within it.

9 The Company Secretary and the Clerk

The Company Secretary (if one is appointed) is appointed and removed by the Trustees.

If appointed, the Company Secretary is the chief administrator with respect to the Academy Trust's administration affairs.

The Trustees shall also appoint a Clerk (who may or may not also be the Company Secretary). Initially, it is envisaged that the Clerk will be the Company Secretary. The Clerk shall not be a Trustee or a Principal. However, if the Clerk fails to attend a meeting of the Trustees, the Trustees may appoint any one of their number or any other person to act as Clerk for the purposes of that meeting.

10 The Executive Director

In accordance with the Articles, the Foundation may appoint a chief executive officer (who will be known as the **Executive Director**). The Executive Director will be accountable to the Trustees when acting on the Academy Trust's behalf. The Executive Director shall also be the Accounting Officer as set out below at section 14.

The Executive Director shall be responsible for implementing the strategic vision for the Academy Trust and providing services to the Academy Trust in accordance with the PSA including but not limited to, those set out in the Decision Making Matrix. The Trustees may delegate such specific powers as they consider are required by the Executive Director for the carrying out of the above responsibilities.

The Executive Director's performance is appraised annually by the Foundation and the Trustees shall support that performance management review.

11 The Foundation Office Senior Leadership Team

In fulfilling his or her role, the Executive Director is assisted by the Foundation Office Senior Leadership Team. The Foundation Officer Senior Leadership Team will arrange for the provision of services to the Academy Trust in respect of the Academies in accordance with the provision of services agreement (the **PSA**) which will cover the following areas:

- Accounting Officer function
- Strategic and Educational Support
- Finance
- HR and Payroll
- Admissions
- Insurance
- Capital Bids
- Contract Management
- Governance and Governing Body support
- Company Secretarial Support
- Risk Management
- Internal Audit
- Marketing and Communications
- Widening Access.

The PSA will be reviewed annually by the executive group (comprising the Foundation Office Senior Leadership Team (including the Executive Director) and the Principals) and the Board.

Transitional arrangements for new joiners will be determined on a case by case basis.

11A The Academy Trust's relationship with the Foundation

In accordance with the Foundation's standing orders adopted on 12 July 2017 and as amended from time to time, the Academy Trust and the Foundation shall work together as set out below.

Policy and Strategy

The Chair of the Board of Trustees from time to time is an ex-officio member of the Foundation's standing committee known as the Policy and Strategy Committee (**PSC**). The PSC shall recommend general strategy and a plan for the Foundation as a whole; recommend educational policy and strategy for the Foundation as a whole; recommend the allocation and distribution of the Foundation's resources for all purposes, in relation to the above, including matters relating to the Foundation Office; keep under review the role and performance of the Foundation's schools (which, for the avoidance of doubt, includes the Academies), in the light of any relevant national, regional and local comparative information; keep under review collaboration between the Foundation's schools, and the co-ordination of the standing committees of the Foundation.

Independent Schools Governing Body

The Board of Trustees may nominate one of the Principals of the Academies as a member of the Foundation's standing committee known as the Independent Schools Governing Body (**ISGB**). The ISGB deals with matters, including the annual setting of school fees, relating to the Foundation's independent schools known as King Edward's School and King Edward VI High School for Girls.

Education Advisory Group

The Foundation's education advisory group (**EAG**) comprises the heads of all Foundation schools which includes, for the avoidance of doubt, the Principals of the Academies. The EAG is chaired by the Head Master of the Foundation and clerked by the Executive Director. The role of the EAG is to advise and submit recommendations to the Foundation, the PSC and to the Board of Trustees of the Academy Trust.

Reporting

The Chair (or, in his absence, the Deputy Chair or the Executive Director) is authorised by the Board of Trustees of the Academy Trust to report to the board of governors of the Foundation on the business of the Academy Trust. In making this general authority, the Trustees note their duty of confidentiality as further detailed in the Trustees' code of practice at Appendix 3 and whilst the Board aims to conduct its business in an open manner with the Foundation, it is inevitable that some matters must legally be kept confidential either for a time or always.

The Head Master of the Foundation

If the Head Master of the Foundation is not a Trustee, the Trustees shall invite the Head Master of the Foundation, or his representative, to Trustee meetings as a non-voting observer.

12 Reporting to the Board of Trustees

The Executive Director is responsible for the matters delegated to him or her by the Board but the Board retains responsibility for all strategic decisions in relation to the Academy Trust, which the Executive Director will ensure are considered by the Board.

In order to assist the Board to safeguard and apply the Academy Trust's assets in the most effective manner, the Executive Director will ensure that any significant or material matter that arises in the course of the Academy Trust's operations is reported to the Board, including in particular:

- special risk management issues, including insurance limits;
- the avoidance of wrongful or fraudulent trading;
- any correspondence from a regulator of a negative nature;
- matters which fall within the Charity Commission's definition of 'serious incidents' and which require a report to the ESFA;
- any matters which require referral to the Board under the scheme of delegation of financial powers;
- the acquisition and disposal of assets or liabilities with a value in excess of thresholds set out in the Academy Trust's Financial Regulations and Scheme of Financial Delegation³;

³ See section 16 below.

- any matters which may require specific consent of the Secretary of State for Education under the terms of the Handbook or otherwise;
- investments and capital projects which are material in the context of the Academy Trust's net assets or income; and
- contracts which are not in the ordinary course of the Academy Trust's operations.

The Executive Director (or a member of the Foundation Office Senior Leadership Team in his or her absence) shall:

- provide a report to the Board in writing; and
- attend the Board meeting to discuss the report, other relevant issues and answer questions.

The Executive Director shall maintain regular contact with the Chair of the Board between Board meetings and share all relevant information with them concerning the welfare and good reputation of the Academy Trust, the Academies and their community.

13 The relationship between the Board and the Executive Director

It is the role of the Board to act as a critical friend to the Executive Director. The relationship between the Board and the Executive Director should be one of mutual trust, confidence and candour if the Academy Trust is to succeed.

The Board will support and oversee the work of the Executive Director and hold him or her accountable for the authority that is delegated to him or her and how he or she exercises it. The Board will not without good cause and consultation (where practicable) interfere in the exercise of the Executive Director's executive powers and in particular, the role of the Executive Director in overseeing its work.

The Board must ask the Executive Director questions that ought to be asked and to satisfy themselves that the Academy Trust is being properly conducted. The Executive Director must give the Board enough information to ensure they are fulfilling their duties properly and expeditiously.

The Board must fully consider any views and proposals relating to any matter within the non-executive powers of the Board which may be submitted to them by the Executive Director or another member of the Foundation Office Senior Leadership Team.

When exercising his professional judgement, the Executive Director acts not only as the chief executive officer of the Academy Trust but as an advisor to the Board. Accordingly, the Board should follow the Executive Director's advice unless they have good reason not to do so.

The Trustees are entitled to trust the Executive Director and the wider Foundation Office Senior Leadership Team until there is reason to distrust them. However, the Board should exercise reasonable supervision and ask questions that ought to be asked.

Any issues surrounding the performance of the Executive Director should be raised directly with the Chair of the Board, and, likewise, any concerns the Executive Director has in relation to the Board or one of its number should be raised with the Chair (or the Deputy Chair in the case of the Chair).

14 The Accounting Officer

The Executive Director shall have the role of **Accounting Officer** as set out in the Handbook.

The role includes ensuring high standards of probity in the managements of public funds and in particular:

- value for money – this is about achieving the best possible educational outcomes through the economic, efficient and effective use of resources.
- regularity – dealing with all items of income and expenditure in accordance with legislation, the terms of funding agreement and the Handbook, and compliance with the trust’s internal procedures.
- propriety – the requirement that expenditure and receipts should be dealt with in accordance with Parliament’s intentions and the principles of parliamentary control – this covers standards of conduct, behaviour and corporate governance.

Included in the responsibilities of the Accounting Officer is a duty to take appropriate action if the Trustees, including any committees of the Trustees, or the Chair is contemplating a course of action that the Accounting Officer considers would infringe the requirements of propriety or regularity (including the provisions of the Funding Agreement or other documents setting out the financial duties of the Trustees or of any other rules governing the conduct of the Trustees), or would not represent prudent or economic administration, or the efficient or effective discharge of the Trustees' functions.

The Accounting Officer shall be required to provide a statement on governance, regularity, propriety and compliance in the Academy Trust's annual report. The format of the statement is included within the Accounts Direction which is issued annually.

The Accounting Officer may delegate or appoint others, such as the Chief Financial Officer, to assist in carrying out these responsibilities.

15 Chief Financial Officer

The Foundation Director of Finance shall be the **Chief Financial Officer** for the purposes of the Handbook and shall act as such pursuant to the provisions of the PSA.

In accordance with the Handbook, the Chief Financial Officer is responsible for, along with a wider remit, the following responsibilities:

- the day to day management of financial issues;
- the preparation and management of the Academy Trust's budget;
- the maintenance of effective systems of internal financial control; and
- ensuring that the annual accounts are properly presented and adequately supported by the underlying books and records of the Academy Trust.

The Chief Financial Officer is responsible for guiding the Trustees on financial, audit and charity accounting matters, as well as dealing with the day to day management of the financial position of the Academies and the maintenance of effective financial controls.

The Chief Financial Officer shall report to the Trustees at least termly and to the Audit Committee twice a year.

16 Financial regulations manual

The financial regulations manual (**Finance Regulations**), which shall be prepared by the Chief Financial Officer, shall be adopted by the Trustees, normally on the recommendation of the Finance Committee and Audit Committee.

The purpose of the Finance Regulations is to ensure that the Academy Trust maintains and develops systems of financial control which conform with the requirements both of propriety and of good financial management.

The Finance Regulations shall include:

- finance authorisation levels, which shall confirm the delegation of authority to key individuals up to a specified value (**Scheme of Financial Delegation**);
- appropriate procedures to monitor cash requirements to ensure that the Academy Trust will not become overdrawn;
- a competitive tendering policy for larger purchases in accordance with the Handbook; and
- a capitalisation limit for assets.

The Chief Financial Officer shall be responsible for preparing a policy for the disposal of assets for approval by the Trustees with a view to ensuring the best possible value is obtained from any disposal.

17 Budget approval

The Trustees shall be presented with a balanced budget⁴ for the year to 31 August for submission to the ESFA by 30 June or within six weeks of receipt of the final funding letter.⁵ In addition, the Trustees shall be responsible for ensuring that each Academy has a balanced budget.

The Trustees shall ensure that they put in place procedures to review their own effectiveness and skills available in overseeing the Academy Trust's financial performance, and the soundness of its internal control.

The Executive Director with support from the Chief Financial Officer shall be responsible for:

- establishing a written procedure and timetable for setting a budget in advance of each academic year;
- setting the annual budget (including the assumptions on which it is based) for approval by the Trustees and for monitoring progress against it during the year;
- ensuring that the LGBs properly notify all significant in year amendments to budgets to the Trustees for approval. The Finance and Audit Committee shall determine the appropriate thresholds and procedures for this;
- reporting to the Trustees on the accuracy of the assumptions which have been used; and
- reporting to the Trustees on the key financial performance indicators included in the budget.

Statutory Accounts

The Trustees shall be responsible for approving the final audited accounts and the Academy Trust's accounting policies, as set out therein.

⁴ As defined in the ESFA's Academies Financial Handbook from time to time and as at the date of the adoption of this Scheme in line with the 2016 handbook as "A formal budget plan setting out projected income and expenditure drawing on unspent funds from previous years as necessary. Trusts do not have to balance income and expenditure in each year to zero and can carry forward unspent GAG (if eligible)".

⁵ Please note that the Education and Skills Funding Agency's deadlines and requirements may change from time to time.

18 The Principals of the Academies

In line with their job descriptions and any terms of reference determined by the Trustees, the Principals are responsible to the Trustees for:

- the internal organisation, operational and financial management and control of his or her respective Academy;
- the implementation of policies approved by the Trustees that relate to his or her respective Academy and the preparation of policies which are consistent with Academy Trust wide policies as appropriate and in line with the Decision Making Matrix; and
- the direction of the teaching and implementation of the curriculum at his or her respective Academy.

The Trustees may delegate such additional powers and functions as they consider are required by each of the Principals to enable them to carry out the above responsibilities.

Appendix 1 Consent to be a Member

King Edward VI Academy Trust Birmingham (Company)

I hereby consent to being a Member of the Company.

As a Member of the Company, I hereby undertake to contribute to:

- 1 the assets of the Company in the event of it being wound up whilst I am a Member or within one year after I cease to be a Member;
- 2 payment of the debts and liabilities of the Company contracted before I cease to be a Member and of the costs, charges and expenses of winding up; and
- 3 the adjustment of the rights of the contributories among themselves, such amount as may be required;

provided that such amount does not exceed £10.

Signed

Full name

Address

.....

.....

.....

.....

Date

Please sign and retain the additional copy of this document with your records.

King Edward VI Academy Trust Birmingham: a company limited by guarantee

Company registration number: 10654935

Registered office: Foundation Office, Edgbaston Park Road, Birmingham B15 2UD

Appendix 2 The Seven Principles of Public Life set out by the Committee on Standards in Public Life ("the Nolan Principles")

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix 3 Trustees' code of practice

1 Introduction

This code of practice is designed to set out the conduct required of trustees in order to ensure the highest standards of integrity and stewardship.

2 General responsibilities

"Trustees must act reasonably and prudently in all matters relating to the Charity and must always bear in mind the interests of the Charity. They should not let their personal views or prejudices affect their conduct as trustees." (The Essential trustee: what you need to know (CC3), Charity Commission, February 2008).

"The primary duty of a trustee is to carry out the function of his or her office with the utmost good faith. He or she must be impartial and mindful of the interests of the beneficiaries of the Charity and of the objects for which the Charity is established". (Governance and management of charities, Andrew Hind, NCVO Publications, 1995)

Trustees should listen to the view of other trustees, staff, volunteers or external advisers respectfully, taking cognisance of differences of opinion. Trustees should not cause offence to others or undermine the standing of their colleagues as a member of the Board of Trustees.

3 Board papers

While the board aims to conduct its business openly, it is inevitable that some matters must be confidential either for a time or always.

All matters discussed at board meetings (save for items which are clearly neither confidential nor of a sensitive nature either legally, commercially, financially or personally) should be treated as strictly confidential and should not be discussed with anyone other than those present at the meeting when the matter in question was discussed unless authorised by the board to do so. If in any doubt, trustees should contact the chair.

4 Board meetings

Open discussion and debate is actively encouraged, in which every spectrum of objective opinion is welcomed.

As Trustees must act with probity, the Board should take and consider professional advice from internal and / or from external advisers in all decision-making.

Where consensus is not achieved, decisions will be taken during board meetings by calling for a vote by those present. Trustees who abstain on, or vote against, any motion may request an appropriate note be made in the minutes.

The Board must be accountable but delegate authority on various matters on which it is entitled to full reports as necessary.

5 Outside board meetings

Trustees should exercise restraint outside a meeting in relation to particular comments made within the Board meeting by individual members. Trustees must accept that it is inappropriate for any private or public references to "who said what", except in dialogue with other trustees.

Trustees should accept the need for care and restraint, honouring the spirit as well as the letter of the code of practice, when talking about board matters in any other forum.

6 Disagreements

Where a Trustee has a disagreement on any matter, he or she should raise the matter informally with the chair or through the normal procedures at a board meeting.

If not resolved, a trustee may request the matter be taken further by the chair.

If a satisfactory conclusion is not reached, the board may recommend the appointment of an independent mediator.

7 The Foundation Office Senior Leadership Team and the wider staff

Staff and Trustees are expected to deal with each other with respect and courtesy.

Trustees must ensure there is a clear understanding of the scope of authority delegated to the Executive Director.

Having given the Executive Director and the Foundation Office Senior Leadership Team delegated authority, Trustees should be careful, individually and collectively, not to undermine that authority either by word or action.

Trustees delegate the management of the Academy Trust to the Executive Director, which includes the management of staff.

If a Trustee has concerns relating to the performance of a member of staff, he or she should contact the Chair, who will take up the matter with the Executive Director.

Appendix 4 Trustee declaration

King Edward VI Academy Trust Birmingham (Company)

I confirm that I am willing to act as a Trustee of the Company (**Trustee**). I further confirm that I am not disqualified from so acting by virtue of any provisions of the Articles of Association of the Company, including, but not limited to, the requirement that I am not disqualified from acting as a charity trustee or director by virtue of section 178 of the Charities Act 2011 (extract included below).

Signed

Full name

Address

.....

.....

.....

.....

Date

Please sign and retain the additional copy of this document with your records.

King Edward VI Academy Trust: a company limited by guarantee

Company registration number: 10654935

Registered office: Foundation Office, Edgbaston Park Road, Birmingham B15 2UD

Extract from section 178 of the Charities Act 2011

178 Persons disqualified from being charity trustees or trustees of a charity

(1) A person ("P") is disqualified from being a charity trustee or trustee for a charity in the following cases—

Case A

P has been convicted of any offence involving dishonesty or deception.

Case B

P has been adjudged bankrupt or sequestration of P's estate has been awarded and (in either case)—

- a) P has not been discharged, or
- b) P is the subject of a bankruptcy restrictions order or an interim order.

Case C

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

Case D

P has been removed from the office of charity trustee or trustee for a charity by an order made—

- a) by the Commission under section 79(2)(a) or by the Commission or the Commissioners under a relevant earlier enactment (as defined by section 179(5)), or
- b) by the High Court,

on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or to which P was privy, or which P's conduct contributed to or facilitated.

Case E

P has been removed, under section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (powers of the Court of Session) or the relevant earlier legislation (as defined by section 179(6)), from being concerned in the management or control of any body.

Case F

P is subject to—

- a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/ 3150 (N.I.4)), or
- b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).

Appendix 5 Duties and responsibilities of Trustees as charity trustees

- 1 The Trustees (as charity trustees) must ensure that the Academy Trust remains solvent, well run and meets the needs for which it was established.
- 2 Broadly, the main powers and duties are as follows.

To carry out the Objects of the Academy Trust

- 3 The Trustees will need to act in accordance with the Articles of the Academy Trust and only exercise their powers for the purposes for which they are conferred. In practical terms, this means that the Trustees must ensure that all of the Academy Trust's assets are applied for the charitable objects of the Academy Trust.
- 4 The Trustees will also need to be satisfied that they have the requisite powers to pursue a particular activity. The powers which the Trustees have are set out in the Articles.

To manage any risks to the Academy Trust, the Academies and their reputations

- 5 The Trustees' Annual Report (contained with the accounts) must contain a statement confirming that "...the major risks to which the charity is exposed, as identified by the Trustees, have been reviewed and systems have been established to mitigate those risks." (See Charities (Accounts and Reports) Regulations 2008 (SI 2008/629)).
- 6 The Trustees will therefore need to identify the major risks to the Academy Trust and to the Academies; those which have a high likelihood of occurring and if they did would have a severe impact on operational performance, achievement of the Academy Trust's aims and objectives or which could damage the reputation of the Academy Trust.
- 7 The Trustees will need to put systems in place to minimise these risks. This might include transferring a risk to a third party (e.g. via insurance), avoiding the activity which gives rise to the risk or accepting it and putting processes in place to manage it. The obligation to monitor and assess risk is ongoing.
- 8 Failure of insurance may also be a major risk. Failure can arise for a number of reasons such as non-disclosure of a material fact, non-compliance with claims conditions (e.g. late notification), under-insurance or omitting to pay premiums.

To comply with legislation

- 9 The Trustees are responsible for ensuring that the Academy Trust complies with relevant legislation, in particular:
 - 9.1 charity law and the requirements of the Charity Commission; and
 - 9.2 company law and the requirements of the Registrar of Companies at Companies House.

To observe the Academy Trust's constitution

- 10 For charities incorporated as a company limited by guarantee, such as the Academy Trust, the constitution is the Articles of Association.
- 11 The Articles set out the charitable Objects of the Academy Trust and the powers (acting through its Trustees) that it has to fulfil these Objects.

- 12 The Trustees must ensure that the activities of the Academy Trust are within its charitable Objects and that the Academy Trust has all necessary powers to perform those activities.
- 13 The Articles of Association also prescribe how the Academies are to be governed. It sets out the rules relating to the composition of the Board of Trustees, how meetings are called and convened and decisions made etc.

To observe fiduciary duties including the duty of care

- 14 As charity trustees and directors, the Trustees must avoid taking any personal benefit from their position and should ensure that nothing arises from their own activities that gives rise to personal gain other than as authorised by the Academy Trust's governing instruments.
- 15 The Trustees must exercise their powers for the benefit of the Academy Trust, for the purposes for which they were given and with prudence and reasonable diligence. There are penalties for breach of these duties.
- 16 The Trustees must act in accordance with their duty of care, that is they must carry out their duties with such care and skill as is reasonable in the circumstances, having regard in particular:
 - 16.1 to any special knowledge or experience that a Trustee has or holds himself out as having; and
 - 16.2 if he or she acts as Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

To act prudently

- 17 The Trustees should act with the same degree of prudence as a reasonable person would act in the management of his or her own business affairs. In particular the Trustees:
 - 17.1 should ensure that the Academy Trust is and will remain solvent;
 - 17.2 must not cause loss or risk to charity property or get into a conflict of interests; and
 - 17.3 are required to carry out effective risk management.
- 18 In cases of doubt or difficulty a Trustee should take legal and other expert advice. If the advice is wrong but it was reasonable for the Trustee to have relied and acted on it, he or she may be relieved of liability.

To act impartially

- 19 The Trustees must be free to make decisions untainted by any considerations of personal gain or other conflicts. Not only must the Articles of Association specifically permit a Trustee to take this benefit if offered, but the decision-making process behind any award must be fair and open.
- 20 If a conflict of interest arises, it should be handled with transparency and in accordance with the governing instruments.
- 21 Any nominated Trustee must act independently of his nominating body and act in the best interests of the Academy Trust.

To delegate

- 22 Trusteeship is a personal office of trust and responsibility and this cannot be delegated or farmed out to another individual. The buck stops with the Trustee personally.
- 23 Academies, like any good business, need to be managed and the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations. An example is the formation of sub-committees of the Board to research certain aspects of trust work and report back for the decision making of the main Board on such issues as finance, states and buildings and curriculum.
- 24 The Trustees are entitled to trust persons in positions of responsibility until there is reason to distrust them. However, the Trustees must exercise reasonable supervision and ask questions that should be asked.
- 25 The Trustees may delegate the management of investments to expert third parties but must maintain regular checks and retain overall responsibility for those investments.
- 26 The overall test is whether a Trustee has behaved as a "prudent man or woman of business".

To protect and manage the property and assets of the Academy Trust

- 27 The Trustees must at all times act to protect the property and assets of the Academy Trust and this extends to land, money and intellectual property. The following should be arranged:
- 27.1 full insurance cover including public and employer's liability and trustee indemnity insurance;
 - 27.2 full security measures to protect premises and access to sensitive and valuable documents;
 - 27.3 clear office procedures and in particular systems of financial control;
 - 27.4 reporting procedures for staff to report to the Board including the ability of an individual to report suspected irregularities directly to a Trustee in confidence if the occasion demands (whistleblowing);
 - 27.5 reviews of investments with or without a third party expert according to need; and
 - 27.6 land management.

To ensure adequacy of funds

- 28 The Trustees must ensure the adequacy of funds for the Academy Trust's immediate needs and for its development.
- 29 The Trustees must invest trust property wisely, acting as a prudent person when making investments.
- 30 However, the pursuit of funds should not distort the aims of the Academy Trust. It is important to assess and justify why additional funds are being sought.

To hold and attend meetings

- 31 The Trustees must ensure that:

- 31.1 notices go out in a timely fashion;
- 31.2 accurate minutes are taken recounting precisely all decisions taken and the background reasoning;
- 31.3 they read all minutes (Trustees are responsible for all decisions whilst whether or not they were present at a meeting);
- 31.4 they maintain an up to date membership register;
- 31.5 they call an Annual General Meeting each year (if required); and
- 31.6 they call General Meetings to conduct special business where necessary.

32 However, in practice most of these will be delegated to the Clerk to the Trustees.

To satisfy information requirements

33 These include requirements to keep information at the registered office and to file certain documents with Companies House and the Education and Skills Funding Agency (where relevant).

34 In practice, administrative functions will be delegated to the Clerk to the Trustees.

To keep proper accounts

35 The Trustees must ensure that appropriately drawn and audited accounts and returns are filed with Companies House and the Education and Skills Funding Agency.

To have regard to legal matters in general

36 General legal matters include the following:

- 36.1 equal opportunities
- 36.2 data protection
- 36.3 child protection and safer recruitment
- 36.4 employment law; and
- 36.5 human rights and procedural fairness.

Not to receive a benefit from the Academy Trust unless authorised

37 Trustees must not receive any personal benefit from the Academy Trust in return for any service they provide to it unless they have express legal authority to do so. That legal authority can come either from the Academy Trust's governing instruments or from the Charity Commission.

38 The prohibition from receiving benefits is not limited to monetary payments and 'benefits' and also includes those to spouses, partners, relatives and other persons or businesses connected with the Trustee.

39 It is important that the Trustees do not receive any unauthorised benefits as the Commission's starting point is to require the repayment of any unauthorised benefits.

To manage and minimise any liabilities

- 40 As a distinct legal entity, a charitable company is liable for its own debts. However, the law allows a personal liability to be attributed to individual Trustees where the Academy Trust fails to fulfil its obligations and where that Trustee is held to be responsible for the loss caused by his or her negligence or deliberate fault.

Technical defaults

- 41 The Trustees, as directors, can be liable for a fine for breaching company and charity law requirements.

Criminal liability

- 42 A Trustee who knowingly and wilfully authorises or permits a company's criminal acts can become liable for those acts. These include not just financial or "white collar" crime, but also crimes such as corporate manslaughter.

Contractual liabilities

- 43 The Trustees may incur personal liabilities if they personally contract with third parties in certain limited circumstances, including:
- 43.1 where they do not make it clear that they are a Trustee and contracting on behalf of the Academy Trust;
 - 43.2 where the Trustee's authority is exceeded and the transaction is not ratified by the full Board of Trustees; and
 - 43.3 where a Trustee makes a fraudulent or negligent misrepresentation during negotiations; or where a Trustee guarantees the Academy Trust's obligations, and the Academy Trust defaults.

Insolvency

- 44 Notwithstanding its existence as a charity with considerable assets, as a company the Academy Trust is subject to the insolvency legislation and the Trustees should be aware of the implications of this. In the unlikely event that the Academy Trust becomes insolvent, the acts of the Trustees will be subject to scrutiny.
- 45 If it can be shown that a Trustee knew or ought to have known that there was no reasonable prospect of avoiding insolvent liquidation and he subsequently fails to take every step to minimise the potential loss to the Academy Trust's creditors (**Wrongful Trading**), the Court can order that Trustee to make a personal contribution to the Academy Trust's assets to meet the claims of its creditors to the extent that they have been put in worse position by his failure to act.
- 46 The Trustees can be made liable for the acts and omissions of their co-directors where they have proved to have failed to investigate or supervise activity.
- 47 Honesty and good faith alone will not avoid personal liability for Wrongful Trading. A Trustee's general knowledge, skill and experience are also taken into account.

Mitigation of the risk of personal liability

- 48 As directors of an incorporated entity, the Trustees will generally have no personal liability for the debts or liabilities of the Academy Trust. Trustees may in certain circumstances become personally liable if they act in breach of the duties and statutory / regulatory

obligations referred to above, but the risk in relation to this for the Trustees can be mitigated to a significant extent:

- 48.1 Indemnity insurance can put in place to protect Trustees. Provided that the terms of the insurance policy are complied with (e.g. premiums are paid up and circumstances which could give rise to a claim are notified to the insurer), this will protect Trustees unless the claim relates to:
- 48.1.1 any act or omission which the Trustees knew to be a breach of trust;
 - 48.1.2 a breach of duty which was committed by the Trustees in reckless disregard of whether it was a breach of trust or breach of duty or not; and / or
 - 48.1.3 if it relates to the costs of any unsuccessful defence to a criminal prosecution brought against the Trustees in their capacity as directors.
- 48.2 In addition to indemnity insurance, the Courts and the Charity Commission have a power to relieve a Trustee from personal liability where it is considered that a Trustee has acted honestly and reasonably and it is fair in the circumstances to do so, notwithstanding the consequences of his or her breach. Where, on the other hand, the Trustee has been involved in misconduct or mismanagement that was clearly intended or undertaken recklessly, the Court or Commission is unlikely to relieve him or her from personal liability.
- 48.3 The Articles expressly provide that the Trustees, officers and auditors of the Academy Trust are entitled to be indemnified by the Academy Trust if they incur any costs as a result of successfully defending legal proceedings or successfully making an application for relief from liability to the Court.

Conclusion

- 49 Instances of personal liability for Trustees are rare. The key points for Trustees are to ensure that they understand their legal duties and obligations, to ensure that their powers are properly exercised and, if they are in any doubt, to take professional advice.
- 50 We do recommend that Trustees also read one of the Charity Commission's publications *CC3: the essential trustee: what you need to know, what you need to do* (Charity Commission, July 2015), which provides additional details on these matters. This guidance can be found on the following link:

<http://www.charitycommission.gov.uk/publications/cc3.asp>.

Appendix 6 Reserved matters

The Reserved Matters are:

Members

(subject to such other consents / requirements as might be required by law or the Funding Agreement)

- 1 To change the name of the Academy Trust
- 2 To change the Objects (which would require Charity Commission and Secretary of State consent in any event)
- 3 To change the structure of the Board of Trustees
- 4 To amend the Articles of Association
- 5 To amend this Scheme (subject to complying with the Articles of Association)
- 6 To pass a resolution to wind up an Academy or the Academy Trust
- 7 To appoint the auditors ordinarily on the recommendation of the Trustees (save to the extent that the Trustees may make a casual appointment)

Trustees

(subject to such other consents / requirements as might be required by law or the Funding Agreement)

- 8 To change the name of the Academies
- 9 To determine the educational character, mission or ethos of the Academy Trust
- 10 To adopt or alter the constitution and terms of reference of any committee of the Board of Trustees (subject to complying with the Articles of Association)
- 11 To terminate a supplemental funding agreement for an Academy
- 12 To establish a trading company
- 13 To sell, purchase, mortgage or charge any land in which the Academy Trust has a proprietary interest which for the avoidance of doubt excludes any land in which the Academy Trust has a contractual interest only (e.g. a licence to occupy)
- 14 To approve the annual estimates of income and expenditure (budgets) and major projects
- 15 To appoint investment advisors
- 16 To sign off the annual accounts
- 17 To appoint or dismiss the Principals, the Company Secretary or the Clerk to the Trustees
- 18 To settle the division of executive responsibilities between the Trustees on the one hand and Executive Director, the Principals and the Chief Financial Officer on the other hand, and to settle the division of executive responsibilities between those individuals
- 19 To do any other act which the Funding Agreement expressly reserves to the Board of Trustees or to another body (including for the avoidance of doubt, terminating the Funding Agreement or any part of it)

- | | |
|----|--|
| 20 | To do any other act which the Articles expressly reserve to the Board of Trustees or to another body |
| 21 | To do any other act which the Board of Trustees determine to be a Reserved Matter from time to time |