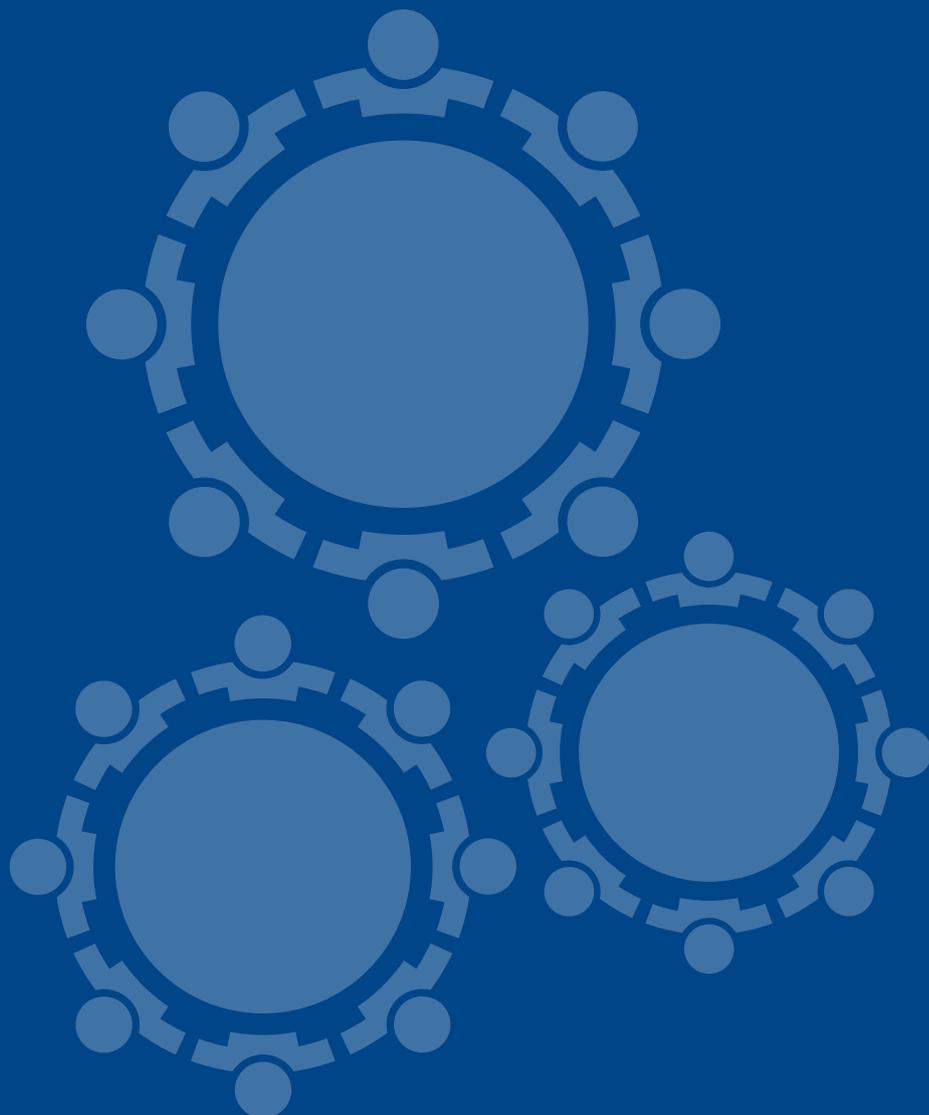


Academy trusts: the role of members

Third edition
May 2021

The expert organisation for school
governors, trustees, clerks and
other governance professionals



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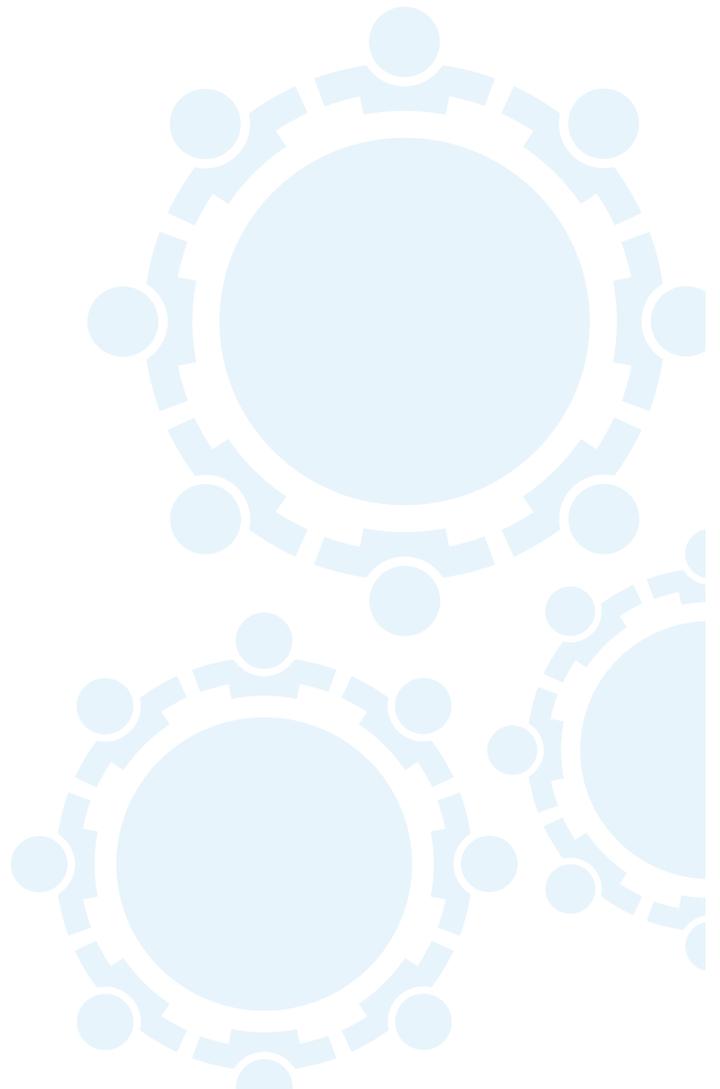
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Introduction

The members of an academy trust are the guardians of the governance of the trust. They have a limited and distinct role, but one which is often misunderstood. Many trusts have struggled to define the role, continuing to interpret it incorrectly. Although the role has not changed since we released the first edition of this guidance in 2018, new myths can develop which need to be busted.

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



1 Members – What are members?

Members are not exclusive to academy trusts – most charitable companies have members as a result of the requirements of the Companies Act 2006. All academy trusts are set up as charitable companies so they too must have members. The first members sign to say they wish to form a company and are signatories to the memorandum of association drawn up when the trust formed. These members will also have agreed the trust's first articles of association, which include the trust's charitable objects – ie the purpose of the organisation. The members will also be the final stage in the process of changing the articles (see NGA's guidance on the [process for changing articles](#)). The articles describe how the trust will be governed including how many members can be appointed, by whom, and voting rights.

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

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

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

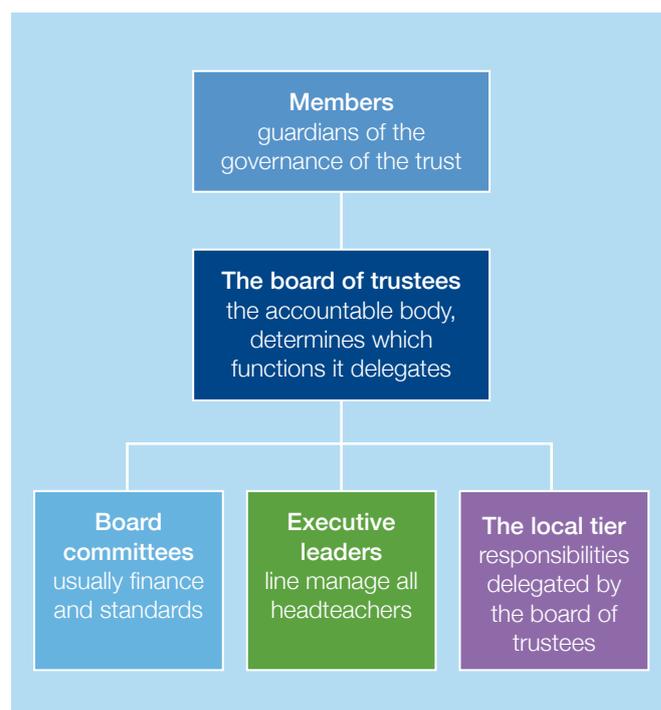
The DfE compares members to shareholders of a company limited by shares, but this comparison can be unhelpful due to shareholders being due a dividend, while academy trusts are not-for-profit organisations, where members volunteer with no

monetary reward. While members are focused on the success of the organisation, success should be measured against the achievement of the charitable object of the organisation.

While members have no day-to-day or week-to-week role in running the company, a key responsibility is the appointment/removal of trustees. If the trust is not achieving its purpose, the members must consider if this is because the trustees are failing to carry out their three core governance functions. If they conclude that they are not, members need to seriously consider if they need to remove trustees, or if other action is required, such as commissioning an external review of governance.

2 How do members contribute to academy trust governance?

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



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

External reviews of the governance of the trust will be primarily targeted at the trust board, but should also consider the role of members, specifically whether there is the right number, clarity of role, and whether there is sufficient separation from the trust board. If you are a member as well as a trustee, you should consider which role is most suited to you, and resign from the other.

“Knowing what good governance looks like is the most essential requirement to be able to fulfil the member role.”

3 How many members do we need?

The number of members will be laid out in the trust's articles of association. Academy trusts must have at least three members, and the DfE advises that its strong preference is that trusts have at least five. Having fewer than five can limit perspective, cause issues with AGMs being quorate, and pose difficulties when making decisions via special resolutions, which require 75% agreement of the members (There is more on this in the section on AGMs). However, there is no reason why there should not be more than five.

Article 15A of the DfE's model articles allows the members to appoint additional members as they see fit. The appointment of additional members requires a special resolution. Therefore, if there are only three members, they will all need to agree to the special resolution to appoint additional members. Once there are five members, to meet the 75% threshold, only four will need to agree.

While there is no official limit, where a trust is looking to extend membership significantly, the DfE via its Regional Schools Commissioners (RSCs) may take a view on a case-by-case basis.

An alternative model

The role of trust members continues to exercise thought across the sector with alternative models being suggested by some, including NGA. The concentration of power emerges when the members themselves are in effect appointed by an individual (eg a sponsor) or a body (eg a diocese) thus increasing the risk of a single voice holding sway, not only at member level, but, because the members appoint the majority of trustees, at board level too. NGA has long advocated that trusts should be allowed to pilot different membership models. You can read more about this in NGA's 2021 report, [MATs Moving Forward](#).

4 How are members appointed?

For trusts looking to appoint additional or replacement members, it is the role of the current members to appoint new ones. Not everyone can or should be a member.

The Academies Financial Handbook (AFH) is now very clear that employees cannot be members of academy trusts: “Members must not be employees of the trust, nor occupy staff establishment roles on an unpaid voluntary basis.” This requirement became effective from 1 March 2021 and so some trusts may still find themselves breaching the most recent guidance. If you have members who are also employees, you should take immediate action to ensure they now fully comply with the conditions set out in the AFH.

During the process of either a single academy trust or maintained school forming a new academy trust, or restructuring an existing one, the DfE may ask a series of questions in relation to the appointment of members, such as their current responsibilities in terms of employment and other volunteering roles, and how these ‘demonstrate expertise/skills required for role as member’. By this, the DfE is specifically referring to skills and expertise that would cover the following areas: leadership, educational improvement, finance, business, HR. However, this can be misguided as it might lead to members essentially becoming shadow trustees. Governance experience and knowledge is of more value given the actual role of members.

The focus on other skills is best avoided and if pursued should not lead trusts to lose sight of the limits of what the role entails. The most important thing is to have members who possess a good knowledge of governance, a good understanding of the

charitable aims of the organisation, and who are willing to take action if the need arises. Members do not need to go through an annual skills audit as is recommended for the trust board itself.

Clear separation

Clear separation between the layers of governance means that the individuals making up one tier of the governance structure of the organisation are not the same as another tier; in other words, members should not also be trustees. Given members are the guardians of the governance of the trust, it is logical that they are different people to the trustees, for the simple reason that it is difficult to hold oneself to account. Therefore, this additional layer adds to the system's checks and balances. The requirement for significant separation, particularly within MATs, is made explicit in both the Academies Financial Handbook (AFH) and the Governance Handbook:

“The Department’s view is that the most robust governance structures will have a significant degree of separation between the individuals who are members and those who are trustees. If members also sit on the board of trustees this reduces the objectivity with which the members can exercise their powers and increases the risk of unchecked ‘group think’ by the board. The Department’s strong preference is for at least a majority of members to be independent of the board of trustees.”

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

If the trust also has a sponsor, the sponsor will be a member. It is the sponsor as a corporate body, rather than as an individual, who is the member so the actual person representing the sponsor may well change over time. The sponsor may have the power to appoint both some members and some trustees and this will be detailed in the trust's articles of association.

In the past, some trusts' articles have also dictated that the chair of trustees will, by default, be a member; the current models do not include such a prescription and NGA suggests this is best avoided due to an in-built conflict of interest.

All member appointments must be formalised, with the details registered with the Education and Skills Funding Agency, as well as being recorded in the statutory book of the trust. In addition, the members' names, dates of appointment, and any relevant interests must be published on the trust's website. All members are required to have an enhanced Disclosure and Barring Service (DBS) check, a section 128 direction check and a right to work/identity check.

Member recruitment

Research commissioned by the DfE and conducted by the National Foundation for Educational Research in 2020 reported that 25% of trust boards described members as a 'difficult' position to fill, with 22% reporting members vacancies. The most obvious pool of potential members is retiring trustees or academy committee members. Another option is asking trustees of another academy trust or charity as they bring that important governance knowledge and experience. Some trusts find that people they have tried to recruit as trustees simply do not have enough time to fulfil that time-consuming role. However, as being a member takes much less time, trusts may want to consider these individuals for that position instead.

The important thing is to remember that knowing what good governance looks like is the most essential requirement to be able to fulfil the member role. Members do not need access to the full range of training and development that trustees need. A short training session outlining the role, alongside an induction with the trust governance professional, CEO and chair of trustees will be more than sufficient.

5 Schools/trusts with a religious character

The requirements placed on members, both in terms of how they are appointed and the official duties they carry out may differ slightly if the trust itself, or the schools forming the trust, have a religious character. For some trusts, it may be written into their articles of association that a certain number of members must be appointed from an organisation and accountable to that organisation. The foundation or sponsor body will by and large appoint a certain number of the members of the trust. It is the foundation, or sponsor body, not the individual appointed on behalf of them, who is the member. The foundation or sponsor body, be it a diocese or other religious body, will usually identify an individual to represent the body as a member. The DfE has produced memorandums of understanding for both the Catholic Church and the Church of England (CofE).

Catholic Academy Companies

The Catholic Education Service prescribes that the members of a Catholic multi academy trust company are accountable to the Bishop. In this particular example, the members are then charged with having the oversight of ‘the preservation and development of the religious and educational character, mission and ethos of the company’. This requirement reflects the wider role of members, but also the need for them to be able to reflect and be committed to upholding and maintaining the ethos and values of the trust. In a Catholic multi academy trust company, the Bishop may also be a member themselves. The model articles of association state that the membership shall include (where applicable) any person appointed by: the Diocesan Bishop/Religious superior; the Diocesan Trustee; the Vicar General; the Episcopal Vicar for Education; the Diocesan Schools Commissioner; and the Financial Secretary to the Diocese.

Church of England (CofE)

There are over 4,600 CofE schools in the country, supported by their local Diocesan Board of Education. There are various membership models within CofE-based MATs, especially if it is a mixed MAT, consisting of both CofE schools and community schools. It is common for the Church to appoint the majority of members. Trusts are advised to look at the guidance on which model memorandum and articles to use, but legal professionals may be employed to work on various models of trust membership, although it is usually the expectation that there will be minimal changes to the model articles. The DfE

states in its memorandum of understanding with the CofE that it expects “no dilution of the level of church governance and involvement as it was immediately prior to conversion” – this includes at both member and director (trustee) level. The model articles of association state that the members shall include the Diocesan Board of Education acting corporately by the hand of its director and two nominated individual members of the Diocesan Board of Education.

Mixed MATs

Mixed MATs run a diverse network of schools falling under different corporate bodies. It is likely that a mixed MAT will have provisions in the articles dictating a specific number of members appointed by the foundation or religious body. For example, one particular mixed MAT prescribes that the members shall include a majority appointed by the foundation body including the signatories to the memorandum, the foundation body itself and up to three persons appointed by the foundation body.

6 What do members do?

Members do very little unless the board of trustees is under-performing. Members need to pay attention to the limitations of their role, and avoid undermining the board. The Academies Financial Handbook states that members need to “avoid overstepping their role”. The trustee board, not the members, is responsible for the core governance functions and conducting the business of the trust. As the guardians of the governance of the trust, while members don’t make the actual governance decisions, they need to ensure they are satisfied that the standard of governance across the trust is high.

In 2020 the DfE produced a series of role descriptors including one for academy trust members. This prescribes that members must safeguard the governance of the trust, and therefore need to seek assurance that governance is effective. The role descriptor specifically states that members must not assume the powers of trustees, but also must be aware of the powers afforded to them.

a) The members ensure the success of the trust

As confirmed in a 2018 court case, as the guardians of the governance of the trust, members have responsibility for ensuring that the academy trust’s charitable objective – which for most trusts can be summarised as ‘advancing education for the public benefit’ – is being met. If it is a trust with religious character, the charitable purpose is also likely to include

upholding or advancing the faith. Essentially, this means focusing on the following questions:

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

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

b) The members sign the memorandum and articles of association

The very first thing that the original members will do when forming a new trust is sign the memorandum of association and agree the trust's first articles of association. From then on, members retain responsibility for the existence and constitution of the trust, as well as some very specific and integral tasks.

Just as members agreed the first iteration of the trust's articles of association, they retain responsibility for these going forwards. Visit the NGA Knowledge Centre for more information on the process.

c) The members determine the name of the trust

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

d) The members appoint members and trustees

The articles will also describe how members are recruited and replaced, another role reserved for the members themselves, as discussed in section 2. As well as appointing other members, members will also appoint some trustees and have the power to remove all trustees as discussed in sections 1 and 12.

e) The members appoint and remove the auditors

Members appoint independent auditors who will certify whether the accounts present a true and fair view of the trust's financial performance and position. A contract between the trust and the auditors must be set out in writing but will include the right for the members to remove an auditor. The decision to remove an auditor will require a majority vote from the members, who will then need to give their reasons for their removal, and present these to the trust board. The trust board will then have to notify the EFSA.

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

It is the trustees who sign off the annual report and accounts, but a common misconception remains that this is the role of members. The annual report and accounts should be presented to members at the AGM. If an AGM is not held (because the articles do not require it) then the report and accounts must be sent to members.

The annual report will include a governance statement, which the members should pay particularly close attention to, especially in those trusts, which are producing audited accounts for the first time. This must include details of the trust board's composition, and what trustees have done to review and develop their governance structure. If they are an established trust, they should also include an assessment of the trust's governance, incorporating a review of the composition of the board in terms of skills, effectiveness, leadership and impact. NGA considers it good practice for all trustee boards to also present a report on the quality of their governance but this is not yet common practice. By including a self-review of the trust board, members are provided with an overview of how well the trust board thinks they are meeting the trust's charitable objective and the members will be able to use this to help confirm that the trust board is carrying out its role effectively

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

Members will need to check their specific articles of association for the requirements about meetings. The current model articles (updated December 2017) contain an optional clause for an AGM. Where there is no requirement for an AGM in the articles there will be provision for members or trustees to call a general meeting. However, both the DfE and NGA recommend that members do meet annually. See section 8.

h) The members dissolve the trust

If the trust is failing, it is the responsibility of the members (in conjunction with the DfE) to dissolve the trust. Academy trusts are charitable companies limited by guarantee. In the event that the trust becomes insolvent, the members of the trust could be liable to the amount detailed in the trust's articles of association. Each member will therefore undertake to contribute such amount, as may be required (not exceeding £10) to the academy trust's assets and for up to one year after s/he ceases to be a member.

Members DO NOT:

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

Keeping members in the picture

Trustees should think carefully about how they inform members about the work of the trustee board. Members need to remain confident that trustees are governing well, and should not be put in the position of needing to find out for themselves what is happening in their trust.

Keeping members informed may include the sharing of minutes, inviting members to a one-off meeting to discuss the progress of governance, or sending termly updates to members via email. Members should be provided at the AGM with a report on the quality of governance, but this is still not common practice. NGA strongly advise against the practice of having members present at all trustees meetings in order to keep them in the loop, as this removes the "significant separation" needed between these two entirely separate tiers of the governance structure.

Trustees should, however, inform members between meetings of any issue that may cause the trust to fail to meet its charitable object, or might jeopardise the sustainability of the trust, or could risk reputational damage to the trust.

7 Holding the trust board to account

Holding the trustee board to account is the most important role that members play. The members will do this in a hands-off manner, through monitoring the work of the trust board. This is done by hearing directly from the board of trustees with a report on the quality of governance once a year at the AGM, as well as any additional updates/information on progress made and plans going forward.

Before hearing from the chair of the trust board at the AGM or general meeting, members should consider the questions they will ask in order to ascertain how the trust board is performing. The following questions provide a starting point:

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

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

Addressing trustee board under-performance

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

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

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

8 How often do members meet, and what happens at the meetings?

Members do not need regular business meetings or committees, and to introduce these would bring about a real danger of the members falling into the trap of simply replicating the work of the trustee board. Trusts should include the responsibilities of members in their scheme of delegation, so it is clear to all that they are part of the governance structure and what governance functions they perform (eg appointing trustees).

The articles of association for each trust usually specify how often members must meet. The minimum requirement is for an AGM. Trusts should consider how best to conduct their AGM. With some articles of association not even requiring an AGM, the role of members can be rendered invisible in some trusts and unwarranted by others. Even if there is no specified minimum in the articles, members should meet once a year.

Although most articles contain no obligation to meet more frequently than this, some trusts are looking at different ways to increase members' engagement. However unless there is a problem, this is not necessary. This can be done by accepting invitations to school events, rather than by formal meetings. Some trusts have considered or opted for additional meetings of the members, but this should be approached with caution and it must be made clear that these meetings should not be viewed in the same light as trust board meetings. It should simply be for the chair, possibly with other trustees, to update the members on the work of the board and the impact of their strategy.

The accountability for decisions relating to areas such as school improvement, local governance and financial performance rests with the trustees, not members. Members should not therefore be meeting to make strategic decisions and plans about these areas. We suggest no more than a second meeting of members during the year unless there is a problem or there are identified weaknesses within the board of trustees.

Some trusts do gather together members as frequently as once a term but it should be stressed that additional meetings should serve an appropriate and specific purpose, in line with the members' role. This may be something a trust would consider only in times of concern or if the trust had undergone a major restructure of governance on the back of previous under-performance of the trust board.

9 Annual general meetings (AGMs)

The use of an AGM is the key way in which the members receive information and discharge their responsibility. The model articles make it clear that article 19 (which sets the requirement for an AGM) is an optional article – this means that, technically speaking, an AGM is not necessarily required under the current model articles. However, a footnote recommends that article 19 is adopted, as an AGM presents an 'appropriate vehicle' for regularly reviewing the appointments to the trust board, although NGA's view is that the most compelling reason for holding an AGM is to secure public accountability. Assuming article 19 is adopted, an AGM should then be held once every financial year, and must take place within 15 calendar months of the previous AGM.

As well as receiving the annual accounts, members should be provided at the AGM with a report on the quality of governance, but this is still not common practice. We would expect this report to include consideration of diversity within the board; this strengthens governance.

a. Who organises the AGM?

It is the trustees, not the members, who determine the time and place of the AGM. The trust's governance professional should organise the AGM ensuring compliance with what is stipulated in the articles of association. An AGM may take different forms in different trusts, often attached to a trustee meeting or another event such as a trust's annual governance conference.

b. Who can attend an AGM?

All members are entitled to attend and, in NGA's view, attendance at the AGM should be an expectation placed upon all members. In order for an AGM to go ahead, at least two members will need to attend. Trustees (who are not members) cannot count toward quorum but are entitled to attend and speak at the AGM, for example to put a case forward to demonstrate how the trustees are fulfilling their governance functions on behalf of the trust as a whole. The senior executive leader and finance director should also attend.

The AGM can also present an opportunity to invite academy committee/local governing body members and other stakeholders (principally parents) to attend part of the meeting and ask questions.

A note on chairing of the AGM – The articles are slightly confusing in regards to this. The trustees call the AGM if they have that clause – all other meetings that are called by the members are classed as general meetings, which just means a formal meeting of the members. At general meetings, the articles specify that the members should elect one of their number to act as chair, and NGA advise this should apply for AGMs too. NGA also advises that the chair of the trustee board, even where they are also a member, should not chair AGMs or other general meetings called by the members.

c. The purpose of the AGM

The audited accounts and annual report are formally received at the AGM. The AGM is the opportunity for members to hear from the trustee board and the CEO about progress made during the last year as well as plans for the future. The members can – and should – question both the progress and future plans at these meetings, as this will inform their own assessment of the governance of the trust and the ability of the trust board to achieve the trust's charitable object.

Example of an AGM agenda

1	Welcome and confirmation of the chair, quorum and voting process	To confirm
2	Minutes of the previous AGM	To agree
3	Audited annual accounts to include the annual report on performance over the last year in terms of meeting the charitable objective of the trust and the vision, financial and educational performance of the trust	To receive
4	Governance review report	To discuss
5	Major plans/outlook for the year ahead including plans for growth	Presentation from the chair and CEO
6	Q&A: to include those from parents and other stakeholders	To discuss
7	Appointment/re-appointment of auditors	To agree
Where required		
	Members – resignations and appointments	To note/pass
	Trustee – appointments and removals	To note/pass
	Resolution to change the articles of association	To pass
	Any other members' resolutions	To pass

d. Voting at AGMs

Members can vote on resolutions in a number of ways.

- By a show of hands, unless a poll is called for.
- A poll can be called for either by the chair, two members with voting rights or by member(s) representing at least 10% of those with voting rights.

There are two different types of resolution:

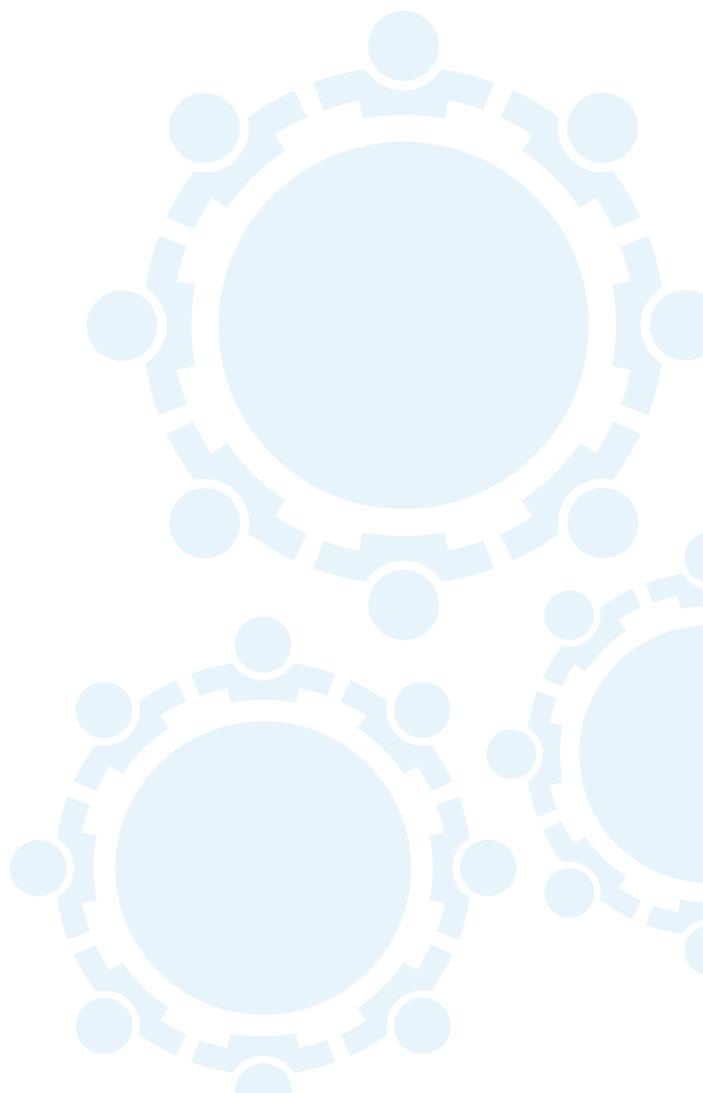
1. Special resolutions, which require approval by at least 75% of the members; with only three members, decisions that legally require a 75% majority actually need all members to vote in favour to reach the 75% limit. A resolution is not classed as a 'special resolution' unless the notice of the meeting specifically includes the text of the resolution with the intention to propose the resolution as a special resolution. Once the notice of the meeting has been specified as such, the resolution may only then be passed as a special resolution. Special resolutions are a change of name, changes to the articles of association, the appointment of members and any resolution required by the articles to be a special resolution.
2. Ordinary resolutions, which require a simple majority. Anything not classed as a special resolution.

10 How do members approach the appointment and removal of trustees?

In the interests of the members fulfilling their function of ensuring the trust's charitable object is carried out, it is common practice for members to appoint a certain number of trustees by ordinary resolution, ie 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.

In order to build a diverse trustee board with a range of views, backgrounds and knowledge, members should ensure that their own appointments to the trust board are carried out as part of a wider, rigorous recruitment process for new trustees, which includes a skills audit, role description and an interview. Members should engage with the trust governance professional to help facilitate this. The trust board themselves may have a role in putting forward candidates to the members for them to appoint. Once appointed, it is the responsibility of the chair of the trust board, working with the governance professional and the senior executive leader, to provide a suitable induction to the board and the trust.

The power to remove trustees extends to all trustees, regardless of whether they were appointed by the members or another body. For example, members can remove trustees elected by parents or staff in accordance with the procedure set out in the Companies Act 2006.



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