Department for Education

Governance handbook

Academy trusts and maintained schools

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Contents

Foreword **4**

About the Governance handbook **6**

Aim 6
Review date 6
Coronavirus (COVID-19) outbreak and the Governance handbook 6
Terminology 7
Who is this publication for? 8
What has changed in this edition? 8

1. Effective Governance **13**

1.2 The key features of effective governance 13

2. Strategic leadership **18**

2.1 Setting direction 18
2.2 Culture, values and ethos 18
2.3 Decision making 19
2.4 Parental and community engagement 21

3. Accountability **23**

3.1 Boards' relationship with executive leaders 23
3.2 Robust oversight of a school or academy trust 24
3.3 Accountability for educational performance 25
3.4 Rigorous analysis of data 27
3.5 Accountability for financial performance 32
3.6 Sources of financial data and tools 33

4. People **36**

4.1 Building an effective team 36
4.2 Training and development 43
4.3 The chair 44
4.4 The clerk (governance professional) 46
4.5 Liability 47
4.6 Time-off work 47
4.7 Payments to governors and academy trustees 48
4.8 Publishing information about individuals 51

5. Structures **53**

5.1. Governing a group of schools 53
5.2 The governance structure of academies 55
5.3 The governance structure of maintained schools 63
5.4 Collaboration 67
5.5 Publishing information about governance structures 70

6. Compliance **72**

6.1 Governance procedures 72
6.2 Charity and company law duties 72
6.3 Health & Safety 73
6.4 Equality 74
6.5 Education 75
6.6 Staffing and performance management 88
6.7 Finance 101
6.8 Safeguarding and pupil welfare 110
6.9 Pupil well-being 113
6.10 Admissions 122
6.11 School premises 126
6.12 Control and community use of school premises 130
6.13 Conversion to academy status 136
6.14 School organisational changes 138
6.15 Information sharing 140
6.16 Complaints 148
6.17 Whistleblowing 149

7. Evaluation **151**

7.1 Developing the board's effectiveness 151
7.2 External reviews of governance 152
7.3 Inspections 153
7.4 Schools causing concern 155
7.5 Support to be effective 157

Foreword

Governance has never been more critical to the education of our nation's young people. As Minister for the School System I see at first hand the impact of governors and governance professionals. The governance duty is, above all, to drive relentless ambition for the young people served by our schools system, whatever the circumstances.

The coronavirus outbreak brought out the best in the leaders and teaching staff of schools and academy trusts. The response to the pandemic has been exceptional in ensuring that, as far as possible, all children have continued to have access to education, whether at home or, for the vast majority, now back in the classroom.

I have been impressed to see the governance sector adapt so quickly to virtual meetings, while continuing to discharge your core functions. Despite the challenges, you have continued to play a vital role in supporting school leaders to ensure that the needs of all learners, including vulnerable children and young people, have been met. We have seen that schools and academy trusts who formed strong partnerships with other schools and trusts have been most resilient through the pandemic. So, thank you. I recognise it has neither been easy nor straightforward.

We have taken the decision not to include every COVID-19 guidance update in the **Governance Handbook 2020**, given that the department has a dedicated area on gov.uk and because many of those changes are temporary. However, some critical changes are included, for example information on the resumption of Ofsted inspections from January 2021. The Handbook focuses on key governance and educational policy updates to support you for the year ahead. We will also continue to update you on the latest announcements via the Governance Update, which now reaches more than 70,000 of you directly.

Alongside the Handbook we are also publishing new **governance role descriptors.** These are in response to the sector asking for clear information relating to roles in school and trust governance, and how these different layers of governance interact. I encourage you to use these documents when inducting new volunteers and those new to clerking, or as refresher material for more experienced governors, trustees and Members.

This academic year, the department's vision of robust and effective governance in every school and trust, and tackling areas of governance weakness, continues to be my priority.

There is significant work to be done to get all pupils back on track, which means your role in monitoring how core school budgets, catch-up funding and Pupil Premium are

being spent has never been more vital. In academy trusts, keeping Members informed of trust business, including its financial circumstances, is also important so they can be assured the board is governing effectively. The updated Members sections in the Handbook, and the new role descriptors, give clarity to full extent of Members' roles in the accountability of trustees.

I recognise that all this can only happen when we have people with the necessary skills and knowledge on each governing board and where those boards are accessing support and independent advice from a professional and effective clerk. More than ever we also need diverse boards, and the Handbook has been updated to emphasise the expectation that recruitment processes should encourage volunteers from a wide range of backgrounds, cultures and perspectives, that better reflect the communities they serve.

Finally, as you prepare for your board and committee meetings for the coming year, I encourage you to continue to work collaboratively and share best practice with other schools and trusts. The leadership and check-and-balance you provide is essential in monitoring and reviewing risks and plans, as well as in supporting your school leaders to implement plans that support staff and pupils, and ensure that all children receive the education they deserve whatever the circumstance.

I thank you for your continued dedication to upholding the integrity of our system.

Baroness Elizabeth Berridge
Parliamentary Under Secretary of State for Schools

About the Governance handbook

Aim

The Governance handbook is guidance from the Department for Education ('the department'). It sets out the government's vision and priorities for effective school and trust governance by:

- outlining the core role and functions of the governing board;
- summarising and providing a first point of reference on all the legal duties on boards,[1] signposting to more detailed information, guidance and resources; and
- providing information on the support available to boards to be effective.

It should be read alongside the department's '*Competency Framework for Governance'* and the '*Clerking Competency Framework'*, which describe the knowledge, skills and behaviours needed for effective governance and professional clerking. This guidance is also aligned to the *Academies Financial Handbook (AFH)*, which academy trusts must comply with as a condition of their funding agreement.

There may be specific additional governance expectations or arrangements put in place for specific groups of schools for example by diocesan authorities, academy sponsors or multi-academy trusts (MATs). This handbook does not aim to summarise these.

Review date

The Governance handbook is kept under review and updated to reflect changes to the law affecting governing boards and changes to education policy – usually on an annual basis.

Coronavirus (COVID-19) outbreak and the Governance handbook

Careful consideration has been given to how this version of the Governance handbook should reflect the current coronavirus (COVID-19) outbreak and its impact on school and academy trust governance guidance. Given that the situation continues to evolve, boards should consult specific coronavirus-related guidance published on the dedicated section of GOV.UK. The department will also endeavour to keep governors and academy trustees informed of any new coronavirus guidance

[1] For academy trusts, these are given with reference to the latest model articles of association and funding agreement. Individual trusts should refer to their own documentation.

or announcement via the School Governance Update gov.uk page. The Governance handbook is guidance to reflect the government's requirements for effective school and trust governance, therefore temporary changes to policies or legislation have not been reflected. However, in the *'what has changed in this edition?'* section, links are included to the GOV.UK pages which have the relevant guidance and legislative changes in relation to coronavirus.

Terminology

Throughout the handbook, references to:

- *the board* should be taken to mean the accountable body for the school or group of schools: in local authority (LA) maintained schools, this will be the governing body and in an academy trust this will be the trust board. (Committees to whom the board has delegated functions should take account of guidance to *the board*, in so far as the relevant function has been delegated to them);
- *the organisation* means the school or group of schools being governed;
- *executive leaders* should be taken to mean those held to account by the board for the performance of the organisation. This may be the CEO, executive headteacher, headteacher or principal, as well as other senior employees/staff, depending on the structure of the organisation;
- *academy trusts or trusts* should be taken to include free schools, university technical colleges (UTCs), studio schools and trusts with multiple academies (MATs);
- *Trusts with multiple academies (MATs),* usually known as multi-academy trusts, a single legal entity, a charitable company with a trust board that is accountable for all of the academies within the trust.
- *Academy trustees* means those that sit on the board of an academy trust (who in some academy trusts, most commonly academies with a religious character, are referred to as directors or company directors);
- *Members* refers to the current Members of an academy trust company; both those who are the founder Members and those who subsequently became Members;
- *local governing body* (LGB) means a committee of a MAT board that is established as such under the trust's articles of association; may also be known as academy committees at local level;
- *maintained school governors or governors* means those that sit on the governing body of a maintained school – references to specific categories of

maintained school governor, as defined in regulations,[2] are all capitalised e.g. *Foundation Governor,* or *Parent Governor.*

Who is this publication for?

This Governance handbook is for:

- LA maintained schools and academy trusts, academy trustees, governors, senior leaders, local governors, clerks (governance professionals) and Academy Members;
- foundations, sponsors and others such as diocesan authorities with an interest in the governance of schools; and
- organisations supporting boards to develop more effective governance, including training providers developing learning and development programmes for governance.

The handbook does not apply directly to pupil referral units, sixth-form colleges and general further education colleges, though they may find its principles helpful.

What has changed in this edition?

Coronavirus (COVID-19) latest information

Below is a link to a key GOV.UK page with the most up to date guidance and legislative changes in relation to coronavirus and school settings. Please note that this is not the only page that is updated regularly and there are also pages created for specific changes such as changes to the exclusion process. Should you wish, you can sign up to receive email notifications when any pages are updated or created that may be relevant to your role – sign-up here. The School Governance Update page will also be used to inform boards, in a timely way, of any significant changes that they should be made aware of in relation to their role in governance.

Actions for schools during the coronavirus outbreak - guidance

The most significant updates and changes to the content within the handbook sections include:

Section 2: Strategic Leadership

- Updated section at 2.1.7 to place stronger emphasis on the board's role in safeguarding.

[2] The School Governance (Constitution) (England) Regulations 2012

- Additional text at 2.3.15 to place greater emphasis on the importance of risk assessments.

Section 3: Accountability

- Updated text within 3.1 on the Headteachers Standards and role and responsibilities of head teachers to their board.
- Additional text at 3.2 about alternative arrangements for board meetings and that Members must be kept informed of the trust's business.
- Updated 3.4 to reinforce workload messaging and highlight the principles in the Making Data Work report, removing references to 'floor standards' and 'coasting', link to guidance about school and college accountability for 2019/20 and the removal of a sub-section on other sources of education data as paragraph consolidated with earlier text within the section.
- Additional text in 3.4.2 about the impact of coronavirus on visits to schools by governors and academy trustees.
- Updated section 3.6 to reflect the availability of the View My Financial Insights (VMFI) tool and the Schools Financial Value Standard (SFVS) tool.

Section 4: People

- New text in 4.1.1 on the importance of boards being supported by a skilled and knowledgeable clerk/governance professional.
- Updated text at section 4.1.2 on criminal records checks and s128 prohibition.
- New text in 4.1.3 on the importance of the board reflecting the diversity of their community and promoting inclusivity, and new text on the appointment and removal of academy trustees and those on Local Governing Bodies.
- 4.2 text removed to reflect the new Ofsted framework, which will not include governor/academy trustee development in its judgement.
- Updated text at section 4.4 to reflect the new requirement within the AFH that trusts must have a clerk or governance professional to support a governing body.
- New paragraphs in 4.5 to highlight Risk Protection Assurance (RPA).
- Updated and new text in section 4.7 to clarify the need for trusts to maintain a register of interests for LGB members in accordance with the AFH.
- New paragraphs in 4.7.1 sub section to reflect AFH and related party transactions reporting to ESFA.

Section 5: Structures

- New text within 5.2.1 on academy trustees' responsibilities for keeping Members informed and new information on forthcoming requirement that Members must not be employees of the trust.
- Updated section 5.4.4 on Teaching School Hubs and their future links to the Early Career Framework and the National Professional Qualifications.
- Additional sub sections within 5.3.1 to describe Foundation and Partnership Governors.
- Additional text in 5.3.2 to clarify the focus and structure of a federated board.

Section 6: Compliance

- New section on Health and Safety at 6.3, which has impacted on the sub-section numbering of the rest of the Section 6.
- Updated section at 6.5.4 to highlight the introduction of Relationship, Sex and Health Education (RSHE).
- Updated guidance at 6.5.9 highlighting the requirement on schools to publish information on their careers programme.
- Updated section at 6.5.14 about the assessment standards at KS1 and KS2, additional assessments and the Reception Baseline Assessment.
- Change of section heading and updated advice at 6.6.3 on information the board must have regard to pertaining safer recruitment practices.
- Amended heading and additional text added to 6.6.6 to clarify the importance of appraisal and the board's responsibility for undertaking Executive Leaders appraisal.
- Section 6.6.7, sub section on executive pay updated to reflect AFH wording.
- Updated guidance at 6.6.9 to reflect Secretary of State's responsibility to regulate teachers' professional conduct and the legal requirements regarding referrals to the Disclosure and Barring Service (DBS).
- Updated guidance at 6.6.12 highlighting the boards responsibility to ensuring access to the Teachers' Pension Scheme (TPS) is applied correctly.
- Additional paragraph in 6.7.1 to explain how the ESFA may refer trusts to the Charity Commission where there are concerns about non-compliance within the trust.
- Updated text at 6.7.3 and within sub-headings to provide clarification on various aspects of school funding, including dedicated school grants, academies general annual grant, the pupil premium and the removal of the

year 7 literacy and numeracy premium, which is no longer available and new subheading on funding access to period products**.**

- Updated guidance at 6.8 and its corresponding sections to provide further clarity on the board's responsibilities under safeguarding.
- Section **6.8.3** on safer recruitment merged with section **6.6.3.**
- New paragraph in 6.9.5 to give a definition of the term 'off-rolling'.
- Section **6.9.11** pupil health and safety has now been merged under the new section **6.3**: Health and Safety.
- Updated advice at 6.9.12 to alert the board to their legal responsibilities
- Clarification at 6.9.14 on school security in relation to biometric and GDPR implications and new paragraph on cyber security.
- Inclusion of additional paragraph at 6.10.2 on the responsibility of schools to ensure that any provision of childcare on site must have appropriate polices in place in relation to supporting pupils in school with medical conditions.
- Updated text at 6.11 and its corresponding sections to provide further clarity on understanding land ownership, updated information on funding for capital investment, changes to how the devolved formula capital is calculated and clarifying the role of the governing body and LA in funding premises-related work at voluntary-aided schools.
- Updated text at 6.12 and its corresponding sections have been re-arranged to assist with flow and additional information and guidance included on the use of school premises for the community and out of school activities, and the use of Transfer of Control Agreements.
- Updated section at 6.15.1 to provide further clarity on Get information about schools (GIAS) and data to be provided by organisations.
- Clarification of language in sections 6.15.2- 6.15.4 on information for the LA and for parents from the school.

Section 7: Evaluation

- Updated 7.2 to remove Ofsted "myths" documentation reference, which is no longer available.
- Updated section 7.3.1 and 7.32 to reflect the new Ofsted Inspection Framework.
- At section 7.4 updated content on schools causing concern and removal of section 7.4.1 on coasting schools.

- Section 7.5.2 has been updated to include additional links which may be of use to boards.

1. Effective Governance

- **Ensuring clarity of vision, ethos and strategic direction;**
- **Holding executive leaders to account for the educational performance of the organisation and its pupils, and the effective and efficient performance management of staff; and**
- **Overseeing the financial performance of the organisation and making sure its money is well spent.**

1.2 The key features of effective governance

1. Boards must be ambitious for all children and young people and infused with a passion for education and a commitment to continuous school improvement that enables the best possible outcomes. Governance must be grounded in reality as defined by both high-quality objective data and a full understanding of the views and needs of pupils/students, staff, parents, carers and local communities. It should be driven by inquisitive, independent minds and through conversations focussed on the key strategic issues which are conducted with humility, good judgement, resilience and determination.

2. In our rapidly developing education system, the range of organisations being governed is more diverse than ever – ranging from single small primary schools to large MATs governing numerous academies. Regardless of the scale or nature of the organisation being governed, the features of what makes for effective governance remain the same. They are common across the education sector and share their fundamental principles with governance in the charity and business sectors.

3. Effective governance is based on six key features:

   Strategic leadership that sets and champions vision, ethos and strategy.

   Accountability that drives up educational standards and financial performance.

   People with the right skills, experience, qualities and capacity.

   Structures that reinforce clearly defined roles and responsibilities.

   Compliance with statutory and contractual requirements.

   Evaluation to monitor and improve the quality and impact of governance.

4. The first two features are the core pillars of the board's role and purpose. The second two are about the way in which governance is organised, and the last two are about ensuring and improving the quality of governance.

1. Strategic leadership *that sets and champions vision, ethos and strategy through*:

- a clear and explicit vision for the future set by the board, in collaboration with executive leaders, which has pupil progress and achievement at its heart and is communicated to the whole organisation;
- strong and clear values and ethos which are defined and modelled by the board, embedded across the organisation and adhered to by all that work in it, or on behalf of it;
- strategic planning that defines medium to long-term strategic goals, and development and improvement priorities which are understood by all in the organisation;
- processes to monitor and review progress against agreed strategic goals and to refresh the vision and goals periodically and as necessary including at key growth stages or if performance of the organisation drops;
- mechanisms for enabling the board to listen, understand and respond to the voices of parents/carers, pupils, staff, local communities and employers;
- determination to initiate and lead strategic change when this is in the best interests of children, young people and the organisation, and to champion the reasons for, and benefits of, change to all stakeholders;
- procedures for the board to set and manage risk appetite and tolerance; ensuring that risks are aligned with strategic priorities and improvement plans and that appropriate intervention strategies are in place and risk management is embedded at every level of governance; and
- an informed decision on whether to form, join or grow a group of schools which is underpinned by robust due diligence and an awareness of the need to review the effectiveness of governance structures and processes if and when the size, scale and complexity of the organisation changes.

2. Accountability *that drives up educational standards and financial health through*:

- rigorous analysis of pupil progress, attainment and financial information with comparison against local and national benchmarks and over time;

- clear processes for overseeing and monitoring school improvement and financial health, providing constructive challenge to executive leaders;
- a transparent system for performance managing executive leaders, which is understood by all in the organisation, linked to defined strategic priorities;
- effective oversight of the performance of all other employees and the framework for their pay and conditions of service;
- a regular cycle of meetings and appropriate processes to support business and financial planning; and
- effective controls for managing within available resources and ensuring regularity, propriety and value for money.

3. People *with the right skills, experience, qualities and capacity who*:

- understand the purpose of governance and the role of non-executive leadership and have all the necessary skills, as outlined in the department's *Competency frameworks: for governance and professional clerking*, to deliver it well;
- include an effective chair and vice-chair with the ability to provide visionary strategic non-executive leadership;
- provide sufficient diversity of perspectives to enable robust decision making;
- are recruited through robust and transparent processes against a clear articulation of required skills, which are set out in a role specification;
- use active succession planning to ensure the board, and the whole organisation, continues to have the people and leadership it needs to remain effective; and
- employ a professional clerk, and as necessary a company secretary, to provide expert advice and guidance and to ensure the efficient and compliant operation of the board.

4. Structures *that reinforce clearly defined roles and responsibilities through*:

- appropriate board and committee structures that reflect the scale and structure of the organisation and ensure sufficient and robust oversight of key priorities;
- clear separation between strategic non-executive oversight and operational executive leadership, which is supported by positive relationships that encourage a professional culture and ethos across the organisation;

- processes for ensuring appropriate communication between all levels and structures of governance and to pupils/students, parents/carers, staff and communities – particularly to ensure transparency of decision-making;
- in academy trusts, significant separation between Members and academy trustees to enable Members to exercise their powers objectively;
- published details of governance arrangements including the structure and remit of the board and any committees, which are understood at all levels of governance and leadership and are reviewed regularly; and
- in MATs, complementary and non-duplicative roles for the board, any committees or local governing bodies (LGBs), and MAT executives in holding school-level leaders to account.

5. Compliance *with statutory and contractual requirements,*[3] *through*:

- awareness of, and adherence to, responsibilities under education and employment legislation and where applicable, charity and company law and all other legal duties including Church of England Measures and Catholic Canon law where applicable;
- regard to Keeping Children Safe in Education (statutory guidance) to ensure that key safeguarding and safer recruitment duties are undertaken effectively;
- plans to ensure that other key duties such as inclusion, special education needs and disability (SEND) are undertaken effectively across the organisation, and monitoring and oversight of the impact of pupil premium and other targeted funding streams;
- for academies, adherence to the requirements of the Education and Skills Funding Agency's (ESFA) *Academies Financial Handbook* (AFH) and the academy trust's funding agreement and articles of association; and
- understanding of, and adherence to, responsibilities under the Equalities Act, promoting equality and diversity throughout the organisation including in relation to its own operation.

6. Evaluation to monitor and improve the quality and impact of governance through:

- regular skills audits, aligned to the organisation's strategic plan, to identify skill and knowledge gaps and which both define recruitment needs and inform a planned cycle of continuous professional development (CPD)

[3] Statutory policies for schools and academy trusts, September 2019

activity including appropriate induction for those new to governance or to the board;

- processes for regular self-evaluation and review of individuals' contribution to the board as well of the board's overall operation and effectiveness;
- commissioning external reviews of board effectiveness, particularly at key growth or transition points, to gain an independent expert assessment of strengths and areas for development; and
- documentation which accurately captures evidence of the board's discussions and decisions as well as the evaluation of its impact and which complies with legal requirements for document retention.

5. The remaining sections of this handbook address each of these six key features of effective governance in turn.

2. Strategic leadership

1. The board's first core function is about strategic leadership. This involves setting the organisation's overall strategic framework, including its vision and strategic priorities. It also includes responsibility for setting and modelling its culture, values and ethos. Where a school has a religious character, this should be done in conjunction with the diocesan authority, and with the local parish.

2. In setting the school's vision, it is vital that boards are connected with, and responsive to the communities they serve – particularly pupils, parents and carers – through effective engagement.

2.1 Setting direction

3. The board should ensure that the organisation has a clear vision, which is articulated in a specific written statement. This should include ambitions for current and future pupils, as well as for the organisation's relationship with other schools. For MATs, the vision should set out the level of ambition they have for the future of the organisation, including growth.

4. The board should ensure there is a strategy in place for achieving this vision. The strategy should provide a robust and costed framework for setting priorities, creating accountability and monitoring progress in realising the organisation's vision. The focus should be on significant strategic challenges. The detail of all the actions that will drive school improvement should be contained in a separate school or trust improvement plan (SIP/TIP). Avoiding unnecessary detail and peripheral issues will prevent the board's attention being spread too thinly and help create a practical and powerful tool for facilitating its core business. The department has published Understanding your data, which is a resource intended to support boards' existing processes.

2.2 Culture, values and ethos

5. The board should set and safeguard an ethos of high expectations of everyone in the school community. This includes high expectations for the behaviour, progress and attainment of all pupils and for the conduct and professionalism of both staff and the board themselves. The board should foster a common culture, set of values and ethos across the whole organisation, ensuring it is reflected consistently in both its policies and its practices.

6. Where applicable, the board must govern in line with its charitable object and in accordance with any governing documents, including any trust deed relating to

the school(s) – which are likely to have a strong if not defining impact on the culture, values and ethos of the organisation, particularly in schools designated with a religious character. Regulations specify that Foundation Governors in maintained schools are appointed by the relevant appointing body specifically as people that they believe have the ability to preserve and develop the character of the organisation, including any religious character. This principle also applies to the Members and academy trustees that such bodies appoint to the academy trusts.

7. Every effort should be made to ensure the organisation's ethos promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance for those with different faiths and beliefs; and encourage students to respect other people, with particular regard to the protected characteristics set out in the Equality Act 2010 and accompanying guidance. The board should ensure that this ethos is reflected and implemented effectively in school policy and practice and that there are effective risk assessments in place to safeguard and promote students' welfare. Guidance for maintained schools and academies on the spiritual, moral, social and cultural development of pupils includes references to promoting British values.

8. The board should ensure they facilitate a whole school or trust approach to safeguarding, ensuring safeguarding and child protection are at the forefront and underpin all relevant aspects of process and policy.

2.3 Decision making

9. As the accountable body, the board is the key decision maker. It may delegate operational matters to executive leaders and governance functions to committees (including local governing boards (LGBs) in MATs) or in some cases to individuals, but the board as a corporate entity remains accountable and responsible for all decisions made and executive leaders operate within the autonomy, powers and functions delegated to them by the board.

10. In most cases it is for the board to decide whether to task individuals to take a particular lead interest to support decision making in certain areas. However, all boards should have an individual to take leadership responsibility for the organisation's safeguarding arrangements, which include the Prevent duty. There should also be a member of the board or a committee with specific oversight of the school's arrangements for SEND.

11. The board must operate and make decisions in the best interest of pupils and in line with their charitable object, where applicable, not in their own interests or

as a collection of individuals lobbying for the interests of the constituency from which they were elected or appointed.

12. Boards should welcome and thrive on having a sufficiently diverse range of individuals, viewpoints and/or experiences, since open debate leads to good decisions in the interests of the whole school/trust community. While noting the role of Foundation Governors in schools designated with a religious character, boards should be alert to the risk of becoming dominated by one particular mind-set or strand of opinion, whether related to faith or otherwise. Boards must ensure they understand the full diversity of the cultural and religious context of the school and the community it serves. Having some people on the board who have no close ties with the school, or who come from outside the faith or ethnic group of the majority of pupils, can help ensure that the board has sufficient internal challenge to the decisions it makes and how it carries out its strategic functions.

13. Good decision making is well informed by both available evidence of what works or is likely to be effective, and by the views and needs of key stakeholders, particularly parents. The board as a whole should take steps to understand what parents think, while acknowledging that anyone on the board who is a parent themselves has valuable knowledge and perspectives about the school(s) to bring to bear in discussions and decisions and helps to guarantee that there is always a link between governance and the parent community.

14. In order to make credible decisions that are in the best interest of pupils it is essential that the board has an effective approach to conflicts of interest. All boards should prevent conflicts of interest from affecting their decisions by removing them or managing them as appropriate. For example, it is unlikely that the conflict of interest that would arise from a close family relationship existing between someone on the board and a senior executive leader could be managed fully, and hence in most circumstances this situation would be best avoided altogether. The Charity Commission offers guidance on managing potential conflicts of interest.

15. Robust decision making also takes account of risk and it is the board that retains ultimate oversight of the risk register. Effective boards have a framework for identifying, managing and recording risks, explicitly setting and managing their risk appetite and tolerance. In particular, they consider and regularly interrogate the risks and mitigations associated with their strategic priorities and improvement plans to ensure they are accurate and appropriate.

16. The coronavirus outbreak has shown the importance of risk assessments, and that the board should be assured by the headteacher that adequate risk assessments are conducted and that protective measures are in place to reduce risks to children and staff. Risk assessments and plans should be reviewed, as necessary. The National Governance Association (NGA) and the Confederation of School Trusts (CST) have produced further information which boards may find helpful for this process. In practice, the department expects executive leaders and boards to work collaboratively when there is a need e.g. in deciding how and when schools can extend their provision to additional pupils.

2.4 Parental and community engagement

17. Parental engagement can have a large and positive impact on children's learning. It should not be confused with parental representation on a board and neither should it be seen as a one-off exercise for organisations. Boards should ensure that their organisation is regularly communicating with parents and carers and that parental engagement is used by the board to inform their strategic decision-making. Communications with parents and carers should be clear in supporting them to understand the structure of the school, how it operates, and how they can support their child's education.

18. All boards should assure themselves that mechanisms are in place for their organisation to engage meaningfully with all parents and carers. Parents and carers should be able to use these mechanisms to put forward their views at key points in their child's education. Boards should aim to build productive relationships, not only with parents and carers but also with the local community to create a sense of trust and shared ownership of the organisation's strategy, vision and operational performance.

19. Boards should be able to demonstrate the methods used to communicate with and seek the views of parents, carers and the local community, including disadvantaged families or those families where English is not the first language. They should also be able to show how those views have influenced their decision making[4] and how they have fed back to parents, carers and the local community. It will be important for a school with a religious character to maintain a close link with its local parish.

[4] For maintained schools, this is a statutory duty as set out in s21(7) of the Education Act 2002 (as inserted by s38 of the Education and Inspections Act 2006).

2.4.1 Parent councils

20. Certain LA maintained foundation schools must establish a parent council as a body of parents that represents parents and allows them to put forward their views to executive leaders, and ultimately to the board, of their children's school.[5] The board must consult the parent council about its conduct and carrying out its powers.[6] The arrangements for the composition, role and support of the parent council are set out in regulations.

21. Academy trusts and other types of maintained school are free to choose whether to establish a parent council and to determine its membership.

[5] Foundation or foundation special schools in England that acquired their foundation status under the Education and Inspections Act 2006, and which have a majority of foundation governors: Education Act 2002, s23A (as inserted by Education and Inspections Act 2006, s34).

[6] Education and Inspections Act 2006, s38.

3. Accountability

1. In addition to strategic leadership, the board's other two core functions are about creating robust accountability for executive leaders. This means holding them to account for both educational performance and for financial and organisational performance, and ensuring money is well spent.

3.1 Boards' relationship with executive leaders

2. Executive leaders are responsible for the internal organisation, management and control of schools. Every board must have a single executive leader at the head of the line management chain of the whole organisation. It is their job to implement the strategic framework established by the board. Boards should work to support and strengthen the leadership of their executive and hold them to account for the day-to-day running of their school(s), including the performance management of staff.

3. Boards should play a strategic role and avoid routine involvement in operational matters. They should focus strongly on holding their executive leader to account for exercising their professional judgement in these matters and all of their other duties.

4. However, since the board is responsible in law for the school(s), it may need to intervene in operational matters if a circumstance arises where, because of the actions or inactions of executive leaders, the school may be in breach of a duty. Having advised the board, executive leaders must comply with any reasonable direction given by it.

5. One of the key characteristics expected within the Headteachers' Standards, is that they should know, understand and welcome the role of effective governance. Executive leaders should uphold the obligation to give account, accept responsibility and work proactively with those responsible for governance to establish an effective cycle of reporting, robust challenge and accountability.

6. The relationship between the board and its executive leadership is discussed further in guidance on The School Governance (Roles, Procedures and Allowances) Regulations 2013. The National College for Teaching and Leadership (NCTL) report 'Headteacher Performance: Effective Management' describes how boards can appraise and performance manage executive leaders effectively. The National Association of Headteachers (NAHT), the Association for College and School Leaders (ASCL) and the NGA, together with the Institute for School Business Leaders (ISBL) and the Local

Governance Association (LGA), have published joint guidance on what governing boards and school leaders should expect from each other. The guide sets out best practice in building productive relationships between school leaders, governors and academy trustees and is intended to give a clear understanding of roles and responsibilities, including how to strike the right balance between strategic and operational. Further information on headteacher appraisal is available in Section 6.6.6.

7. The School Teachers' Pay and Conditions Document 2020 (STPCD) requires boards and headteachers of maintained schools to have regard to the need for the headteacher and teachers to be able to achieve a satisfactory balance between the time required to discharge their professional duties and the time required to pursue their personal interests outside work. The school staffing regulations (reg 5(2)) set out the duty on governing bodies to have regard to headteachers' work-life balance.

8. All boards and executive leaders should ensure that they adhere to the working limits set out in in The Working Time Regulations 1998.

Workload considerations

9. Boards and executive leaders should have regard to the principles and recommendations in the Making Data Work report and the School workload reduction toolkit, which provides support for schools and boards to review and streamline policies and processes to reduce unnecessary workload. Boards and their organisations are encouraged to use these materials to review current policies and practices. It is important that activities are always driven by what has most impact on pupils, while being time efficient, proportionate and sustainable for teachers and school leaders.

10. Ofsted's Education Inspection Framework has an active focus on reducing teacher workload, with inspectors considering staff workload as part of the leadership and management judgement.

3.2 Robust oversight of a school or academy trust

11. The board and its committees must meet regularly enough to discharge their responsibilities. Board meetings must take place at least three times a year (and business conducted only when quorate).[7]

[7] Regulation 13, the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

12. Following the coronavirus outbreak, boards may wish to continue with some form of alternative arrangements for meetings, for example meeting virtually using video or teleconferencing applications. The chair should continue to consult board members on their views, and the clerk should ensure adequate alternative arrangements are in place, so that all board members may participate fully. If any board members do decide to meet in person, then they would need to comply with social distancing and any local health and safety measures.

13. It is important that governance arrangements are regularly reviewed, to ensure that they are sufficiently flexible and robust to deal with future challenges or changes in circumstances, while allowing for the board to continue to discharge its responsibilities effectively.

14. As set out in the AFH, academy trusts boards should consider meeting more frequently.[8] If the board of trustees meet less than six times a year it must describe in its governance statement, accompanying its annual accounts, how it has maintained effective oversight of funds with fewer meetings.

15. In academy trusts, it is important for Members to be kept informed about trust business so they can assure themselves that the board is exercising effective governance. For example, this must include providing the Members with the trust's audited annual report and accounts as stated in the AFH and compliance with the Companies Act 2006 and any other requirements of the academy trust's articles.

3.3 Accountability for educational performance

16. Effective boards hold their executive leaders to account for improving pupil and staff performance by asking the right questions. It is essential that boards use, and are familiar with, specific data about their school(s) to help inform these questions. This might include asking the following relevant questions:

    - Which groups of pupils are the highest and lowest performing, and why? Do school leaders have credible plans for addressing underperformance or less than expected progress? How will we know that things are improving?
    - How is the school going to raise standards for all children, including the most and least able, those with special educational needs, those receiving free school meals and those who are more broadly disadvantaged, boys

[8] Academies Financial Handbook s2.1 para 2.1.2

and girls, those of a particular ethnicity, and any who are currently underachieving?

- Which year groups or subjects get the best and worst results and why? How does this relate to the quality of teaching across the school? What is the strategy for improving the areas of weakest performance?
- Have decisions relating to catch-up for students been made with reference to the best external evidence, for example, has the Education Endowment Foundation's support guide for schools and school planning guide: 2020 to 2021 been used to determine catch-up premium spending decisions? How will the board know if current approaches are working and how will the impact of decisions and interventions be monitored?
- Is the school adequately engaged with the world of work and preparing their pupils for adult life, including knowing where pupils go when they leave?
- How is the school ensuring that it keeps pupils safe from, and building their resilience to, the risks of extremism and radicalisation? What arrangements are in place to ensure that staff understand and are implementing the Prevent duty?
- Are senior leaders including (where appropriate) the CEO and finance director getting appropriate CPD?
- Does the school have the right staff and the right development and reward arrangements? What is the school's approach to implementation of pay reform and performance-related pay? If appropriate, is it compliant with the most up to date version of the School Teachers' Pay and Conditions Document? Is the school planning to ensure it continues to have the right staff?
- Have decisions been made with reference to external evidence, for example, has the Education Endowment Foundation (EEF) Toolkit been used to determine pupil premium spending decisions? How will the board know if current approaches are working and how will the impact of decisions and interventions be monitored using appropriate tools such as the EEF DIY evaluation guide?
- Are teachers and support staff being used as effectively and efficiently as possible and in line with evidence and guidance?
- To what extent is this a happy school with a positive learning culture? What is the school's record on attendance, behaviour and bullying? Are safeguarding procedures securely in place? What is being done to address any current issues, and how will it know if it is working?

- How good is the school's wider offer to pupils? Is the school offering a good range of sports, arts and voluntary activities? Is school food healthy and popular and compliant with the School Food Standards?
- Is the school encouraging the development of healthy, active lifestyles by using the PE and sport premium for primary schools to fund additional and sustainable improvements to the provision of PE and sport?
- Is the school promoting high-quality provision across its curriculum?
- How effectively does the school listen to the views of pupils and parents?
- How effectively does the organisation listen to the views of staff, and ensure work/life balance for their workforce, and how does the organisation review and streamline unnecessary workload whilst maintaining high standards?

17. The NGA has published 'Knowing your School – Questions for the Board to ask' (content available for NGA members only). The Wellcome Trust's 'Questions for Governors', is a framework to help boards identify areas to celebrate or challenge in their schools, enabling them to work with executive leaders to drive improvement.

18. In line with their third core function, boards should also ask questions about finance and spending – further information on this is available in Section 3.5.

3.4 Rigorous analysis of data

19. The board must have access to objective, high quality and timely data if it is to ensure and embed robust accountability and know the questions that need to be asked of the executive leaders.

20. Boards and executive leaders should have regard to the principles and recommendations in the Making Data Work report to reduce data burdens in schools.

21. It is essential that every board has at least one person with the skills to understand and interpret the full detail of the educational performance and the financial data available. These individuals should make sure that the board has a correct understanding of the school's performance and finances as presented and explained by executive leaders. They should understand the limitations of the performance data, including being clear about what can be inferred from it and identify from the data the issues that need to be discussed and addressed as a priority. Others on the board should learn from them and undertake

training where this is needed to improve their confidence and skills in looking at and discussing issues arising from data.

22. While boards may decide to establish a committee to look in detail at performance data, everyone on the board should be able to engage fully with discussions about data in relation to the educational and financial performance of their school. If they cannot, they should undertake appropriate training or development to enable them to do so. This includes MAT boards, who should not leave this function solely to LGBs, where they are in place, but should themselves be familiar with and interrogate key performance data, while avoiding undue duplication of roles and functions.

23. The department has published '*Understanding your data: a guide for school governors and academy trustees*' to encourage use of educational and financial data in reviewing school or academy trust performance. This resource aims to support governors and academy trustees to challenge the executive teams in their organisation.

3.4.1 Sources of education data

24. It is executive leaders' job to provide their board with the information it needs to do its job well. This means they should help the board to access the data published by the department and Ofsted. They should also provide whatever management information the board requires to monitor different aspects of life in the school throughout the year, but being mindful of the impact on workload. In particular, a board will need to see information relating to the priorities it has identified for improvement. This might include data on:

- pupil learning and progress;
- pupil literacy and numeracy;
- pupil applications, admissions, attendance and exclusions;
- staff deployment, absence, recruitment, retention, morale and performance; and
- the quality of teaching.

25. Whilst government data sources, such as School Performance Tables and Analyse Schools Performance can help to meet boards' data needs, it is up to schools to decide how best to manage their data. It is important that the scope and format of data received by the board are agreed with executive leaders. This will mean that the board receives the information it needs in a format that enables it to stay focused on its core strategic functions and not get distracted or overwhelmed by information of secondary importance.

26. MATs, due to their scale, have greater opportunity to employ a central executive team to help them discharge their oversight responsibilities, including by compiling and analysing pupil progress and financial performance data and using a standard template to present data from each school in the MAT.

27. Ofsted has made clear it does not expect performance and pupil tracking data in any particular format. They will only look at data in the inspection data summary report and will not look at, examine, or verify non-statutory internal progress and attainment data.

28. Boards should ensure that they review and monitor the data requests they make of executive leaders and staff to avoid creating unnecessarily burdensome procedures. It is important that data is collected in a manner consistent with the principles in the Eliminating unnecessary workload associated with data management report.

29. Executive leaders should not be the only source of information for the board. That would make it hard to hold them to account properly. Boards need to make sure that at least once a year they see objective national data so that they are empowered to ask pertinent and searching questions. A board can obtain annual performance data direct from a number of sources.

School and college performance data

30. The department collects data about schools and publishes it in performance tables for everyone to see. This helps to ensure that there is sufficient transparency and public accountability for school performance.

31. The performance tables provide information on pupil attainment and progress, school finances, pupil absence and school workforce. They also contain the most recent overall Ofsted judgement on each school and a link to inspection reports.

32. Due to coronavirus outbreak, the government has announced that it will not publish any school or college level educational performance data based on qualifications achieved in 2020. This guidance clarifies what this means for the way school and college accountability will operate for 2019/20.

33. Boards can use performance tables to compare their own school with other local or similar schools to see:

- how well their school is doing against a range of performance measures (using the latest performance data published on the compare school performance service);

- how well a primary school is doing at key stage 2 in reading, writing, grammar, punctuation and spelling; and mathematics;
- how well a secondary school is doing at key stage 4, on Progress 8, Attainment 8, Attainment in English and Maths (9-1), English Baccalaureate (EBacc) entry and achievement and destination measures;
- how well a sixth-form is doing to support progress in A levels and other level 3 qualifications and the destinations of those students;
- how students who have not achieved a good pass in English and maths at KS4 are supported to succeed in these subjects in the sixth form;
- how attainment and progress compares between different groups of pupils, including disadvantaged pupils, those with English as an Additional Language (EAL), and 'non-mobile' pupils (i.e. those who have been in the school throughout each of the last two years);
- how the school spends its money, shown as £ per pupil to allow comparison between schools of different size; and
- information about people who work at the school, including the number of teachers, teaching assistants, support workers; their average salaries; and the ratio of teachers to pupils.

Analyse School Performance (ASP)

34. Analyse School Performance (ASP) is a secure web-based system available to boards, executive leaders, academy trusts, maintained schools, local authorities and dioceses. Ofsted inspectors also use it to inform their inspections. The system uses the data collected for performance tables, but provides a more detailed analysis. ASP reports use tables, graphs and charts to show the attainment and progress of the school and a wide range of different pupil groups.

35. ASP includes data on pupil attainment, progress, absence, and exclusions. It provides an analysis of the characteristics of pupils, such as their ethnic mix and special educational needs. All data are compared to the relevant national average. There are no key stage 5 data presented in ASP. For those schools and colleges with 16-18 provision, the Ofsted inspection data summary report (IDSR), available via a link in ASP, does include key stage 5 data.

36. The ASP school performance summary report presents the data that boards may want to focus on as their starting point for understanding school performance.

37. Legislation[9] ensures that boards are entitled to access the ASP system for their school(s). The school's DfE Sign-in approver can provide boards with a 'governor' account which allows access to the ASP. The governor account does not allow access to any named pupil data.

38. The people on the board who lead on understanding and scrutinising attainment data should see and analyse the full ASP school performance summary report. For others on the board, less detail may suffice but it is important that everyone sees some form of summary of key ASP data for their school and are able to identify the strengths and weaknesses of the school. Everyone on the board must be able to engage in a discussion about ASP or equivalent data and if not should familiarise themselves with the website.

39. Boards can use ASP to look into their school's performance. They can look at the high-level figures. They can also drill down for example into the performance of different pupil groups. In particular, it can be used to identify priorities for improvement in the light of:

- the attainment of different groups of pupils and in different subjects, and how this compares to national standards for key stage 2 and key stage 4 and 16-18; and
- the progress made by pupils compared to all pupils nationally and pupils with similar prior attainment.

3.4.2 School visits

40. Due to coronavirus, if governors or academy trustees wish to visit a school, they should speak with the school leader and work out a pragmatic solution that takes into consideration the school's risk assessment, and how the health and safety of any visitors, alongside staff and pupils, will be protected.

41. Boards need to know their school if accountability is going to be robust and their vision for the school is to be achieved. Many boards find that visiting their school(s), particularly during the day, is a helpful way to find out more about the school, its staff and students. Through pre-arranged visits that have a clear focus, the board can see for themselves whether the school is implementing their policies and improvement plans and how they are working in practice. Visits also provide an opportunity to talk with pupils, staff and parents to gather their views, though are unlikely to be sufficient for these purposes.

42. Boards are not inspectors and it is not their role to assess the quality or method of teaching or extent of learning. They are also not school managers and

[9] The Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009.

should make sure they do not interfere in the day-to-day running of the school. Both are the role of executive leaders. If boards wish to spend time within a classroom, they need to be very clear why they are doing so.

3.5 Accountability for financial performance

43. The board's third core function is to oversee financial performance and make sure public money is well spent. It should do this by ensuring it has at least one individual with specific, relevant skills and experience of financial matters. This individual should also build a relationship with the school business professional (SBP)[10] acting as the link between the SBP and the board. However, everyone on the board should have a basic understanding of the financial cycle and the legal requirements of the school on accountability and spend.

44. This is important in all organisations, but particularly important in MATs or large schools or federations. Their larger budgets and greater complexity make it even more critical that the board not only oversees delivery of the best possible education for pupils, but also that it provides robust and effective governance to ensure the viability and efficiency of the organisation through effective business and financial planning. In an academy trust, the academy trustees must also take ownership of the trust's financial sustainability and its ability to operate as a going concern.

45. Academy trusts in particular have a significant level of autonomy which makes it all the more important for the board to consider the regularity, propriety and value for money of all aspects of trust business. Academy trusts must comply with the AFH as a condition of their funding agreement, which provides an overarching framework for implementation of effective financial management and control. Boards should establish and monitor policies, particularly on related party transactions and executive salaries and expenses that they would be confident to expose to public scrutiny.

Asking the right questions

46. Asking the right questions is equally important in relation to money as it is to educational performance. Appropriate questions might include:

    - Are resources allocated in line with the organisation's strategic priorities?

[10] The term school business professional (SBP) covers the range of professionals from office administrators or business managers in small schools, up to chief finance officer or chief operating officer of a large multi-academy trust.

- Does the organisation have a clear budget forecast, ideally for the next three years, which identifies spending opportunities and risks and sets how these will be mitigated?
- Does the organisation have sufficient reserves to cover major changes such as re-structuring, and any risks identified in the budget forecast?
- Is the organisation making best use of its budget (e.g. by integrating its curriculum planning with its financial planning and using efficiency data to inform decision making)?
- Does the organisation plan its budgets on a bottom up basis driven by curriculum planning (i.e. is the school spending its money in accordance with its priorities) or is the budget set by simply making minor adjustments to last year's budget to ensure there is a surplus?
- What sources of financial data and tools are used to ensure the assets and financial resources are being used efficiently?
- How can better value for money be achieved from the budget?
- Is the organisation complying with basic procurement rules and ensuring it gets the best deal available when buying goods and services in order to reinvest savings into teaching and learning priorities?
- Is the organisation taking advantage of opportunities to collaborate with other schools to generate efficiencies through pooling funding where permitted, purchasing services jointly and sharing staff, functions, facilities and technology across sites?

3.6 Sources of financial data and tools

47. There is a wide range of tools available to support boards to achieve value for money from their resources. This means achieving the best educational outcomes for children in relation to the budget spent on the school.

48. The Schools financial benchmarking website enables maintained schools and academies to compare their spending in detail with other schools, consider their comparative performance and think about how to improve their efficiency.

49. In addition, academies have access to the View my Financial Insights (VMFI) tool. This is a new benchmarking tool for academies, accessed through an IDAMS account, which all academies hold in order to submit their accounts return and budget forecast returns to the department.[11]

[11] Trustees will be able to access VMFI from late October 2020.

50. Benchmarking financial information using these tools helps the board to question whether resources could be used more efficiently. For example:

- are other schools buying things cheaper or getting better results with less spending per pupil?
- if the cost of energy seems high compared to similar schools, are there opportunities for investment in energy-saving devices to reduce the cost?
- if spend on learning resources seems high compared to similar schools, are there opportunities for collaborating with other local schools to bring costs down?
- if your spending on staffing is higher than other similar schools, are these schools achieving more in terms of attainment? If so, what might be learnt from them about how they deploy their workforce?
- if the spend on teaching assistants is higher than other schools, is the board sure that they are being used effectively and efficiently to support pupil outcomes?

51. The department and ESFA have published guidance on schools financial health and efficiency which provides information and tools, as well as training to help schools improve their financial management and efficiency. The ESFA has also published Top 10 planning checks to help boards understand effective financial management. Boards can use this information to make sure their school is managing its resources productively to secure the best outcomes for its pupils. Boards should use these checks early in the annual budget planning cycle and when looking ahead at the three to five-year position. Senior staff in schools and MATs, including finance directors and business managers, will also find this guide useful.

52. The Schools Financial Value Standard (SFVS) tool helps assure LA maintained school governing bodies that they are meeting the right standards to achieve a good level of financial health and resource management. The academy equivalent is the School Resource Management Self-Assessment Tool.

53. These tools can be used to identify areas for change to make sure resources are used to support high-quality teaching and the best educational outcomes for pupils. The tools consist of a checklist and a dashboard. The checklist asks questions of governing boards in six areas of resource management. The dashboard shows how a school's data compares to thresholds on a range of statistics that have been identified by the DfE as indicators of good resource management and outcomes.

54. Further guidance on school and college funding and finance is available on GOV.UK.

55. The financial responsibilities of boards, and additional information on the dedicated schools grant and pupil premium can be found in Section 6.7.

4. People

1. The effectiveness of a board in delivering its strategic objectives depends on the quality of its people and how they work together with executive leaders and the clerk/governance professional. This section looks at how boards can build a diverse and effective team.

2. The department has recently published two publications, on the structures and role descriptors for academy trusts and maintained schools, which provides further information about the roles and responsibilities each structure and person holds in governance. These may be a useful resource for inducting new people onto boards.

4.1 Building an effective team

3. All boards should be tightly focused and no larger than they need to be to have all the necessary skills to carry out their functions effectively, with everyone actively contributing relevant skills and experience. In general, the department believes that smaller boards are more likely to be cohesive and dynamic, and able to act more decisively.

4. The need for boards to establish committees, or panels, for exclusions or disciplinary matters, does not necessitate in itself a large board. Committees or panels can be established specifically for these purposes, to which people who are not on the board may be appointed, and/or a committee may be established as a joint committee with another organisation.

5. For maintained schools, the Constitution Regulations 2012 require anyone appointed to the board to have the skills required to contribute to effective governance and the success of the school. The AFH requires all academy trusts to identify and fill any skills gaps through recruitment or training. The Competency framework for governance outlines the skills required for effective governance.

6. The membership of the board should focus on the skills required; therefore, the primary consideration in appointment decisions should be acquiring the skills, experience and diversity the board needs to be effective. A board composed of governors and academy trustees who bring a diverse range of skills, experiences, qualifications, characteristics and perspectives and who are from different backgrounds and settings will have a positive impact on setting the strategic direction for the organisation.

7. Boards should keep their constitution and its impact on their effectiveness under review as discussed further in section 7. Where a vacancy needs filling, boards and other appointing bodies should move to fill the vacancy as soon as possible to prevent it impacting on the board's effectiveness. In filling vacancies, boards and others responsible for nominating or appointing to the board should make use of all available channels to identify suitable people. The department funds free support to help boards recruit skilled people:

   - Academy Ambassadors recruits senior business leaders to serve on the boards of MATs; and
   - Inspiring Governance enables schools and colleges to search and identify online people from the world of work with relevant skills and experience who are willing to offer support in a variety of ways, including joining a board.

4.1.1 The skills governing boards need

8. Boards must have a keen understanding of the skills they need to deliver effective governance. The specific skills that a board needs to meet its particular challenges will vary. It is therefore for the board and other appointing persons to determine in their own opinion what these skills are and be satisfied that the people they appoint possess them. Relevant skills may include important personal attributes, qualities and capabilities, such as the ability and willingness to learn and develop new skills. Skills may also be taken to include the knowledge and perspectives that will contribute to good decision-making.

9. Boards should identify the skills they need having regard to the department's Competency framework for governance that sets out the knowledge, skills and behaviours required for effective governance. Having done so, they should inform any other parties that have a role in appointing to the board, such as academy trust Members or those that appoint maintained school Foundation Governors, so that they can take these skills into account in making their appointments. This information can also be used to inform ongoing self-evaluation and training requirements.

10. As well as ensuring that governors and academy trustees have specific skills to enable them to carry out the strategic business of the board, it is equally important that the board's clerk (governance professional) has the skills and knowledge to provide advice, guidance and effective administrative support. The clerking competency framework can be used to identify the skills required in the recruitment of the clerk/ governance professional.

11. In summary, everyone on the board needs a strong commitment to the role and to improving outcomes for children; the inquisitiveness to question and analyse; and the willingness to learn. They need good inter-personal skills, appropriate levels of literacy in English (unless a board is prepared to make special arrangements), and sufficient numeracy skills to understand basic data. Foundation Governors are selected for their skills as well as their ability to preserve and develop the religious character and ethos of the school.

12. Effective boards seek to secure or develop within their membership as a whole expertise and experience in analysing performance data, in budgeting and driving financial efficiency, and in performance management and employment issues, including grievances. They seek to recruit and/or develop people with the skills to work constructively in committees, chair meetings and to lead the board.

4.1.2 Conduct

13. Effective boards set out clearly what they expect of individuals, particularly when they first join. A code of conduct should be maintained and communicated to all prospective appointees to set clear expectations of their role and behaviour. Explicit agreement to the code of conduct will mean there is a common reference point should any difficulties arise in the future. The NGA model code of conduct, among other models, aims to help boards draft a code of conduct which sets out the purpose of the board and describes the appropriate relationship between individuals, the whole board and the leadership team of the school.

14. Boards should be mindful that in exercising all their functions, they must act with integrity, objectivity and honesty and in the best interests of the school; and be open about the decisions they make and the actions they take and be prepared to explain their decisions and actions to interested parties. This is required in maintained schools by legislation[12] and in academies by the AFH.

15. Similarly, everyone involved in governance should be aware of and accept 'The 7 principles of public life', as set out by Lord Nolan and applying to anyone, locally and nationally, who is elected or appointed as a public office-holder. The principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

16. All maintained school governors and all academy Members, academy trustees and individuals on any MAT LGBs are required to have an enhanced criminal

[12] Regulation 6, the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

records certificate from the Disclosure and Barring Service (DBS), which does not include a barred list check (unless in addition to their governance duties they also engage in regulated activity). Further details on DBS checks and regulated activity in schools are within the statutory guidance Keeping Children Safe in Education (KCSIE).

17. Before, or as soon as practicable after their appointment, academy trust chairs of trustees must complete suitability checks with the ESFA. This applies to chairs on their first appointment, and to reappointed existing chairs. Where a maintained school converts to become an academy trust and the local authority (LA) has carried out enhanced DBS check (in relation to the same appointment), this aspect of the requirement is disapplied and more information is within the guidance.[13]

18. The suitability checks include an enhanced DBS check carried out on behalf of the Secretary of State by an appointed registered person. This is to comply with legislation and KCSIE guidance. Guidance on how to progress suitability checks is available on GOV.UK.

19. The Secretary of State can make a direction under section 128 of the Education and Skills Act 2008 prohibiting or restricting individuals from taking part in the management of an independent school, including academies and free schools. A person who is prohibited is unable to participate in any management of an independent school such as:

- a manager employed by the school;
- an academy trustee; or
- a governor on any governing body in an independent school, or a local governor on the local governing body in any academy or free school that retains or has been delegated any management responsibilities.

20. There is a requirement to undertake an additional check for those in management roles at independent schools, academies and free schools, to ensure they are not prohibited under Section 128.

21. A section 128 direction also disqualifies a person from holding or continuing to hold office as governor of a maintained school.[14] The department, therefore, strongly recommends that maintained schools check if a person they propose

[13] Keeping Children Safe In Education para 192-195.

[14] The School Governance (Constitution) (England) Regulations 2012 as amended by the School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014

to recruit as a governor is disqualified from office as a result of being subject to a section 128 direction.

22. A section 128 direction will be disclosed where an enhanced DBS check with children's barred list information is requested, provided that 'child workforce independent schools' is specified on the application form as the position applied for. Where a person is not eligible for a children's barred list check (because they are not going to be working in regulated activity) but will be working in a management position in an academy (including the governance roles set out in paragraph 19 above) or as a governor in a maintained school, a section 128 check should be carried out using the Teaching Regulation Agency's (TRA) Teacher Services' webpage.

23. The circumstances for the issuing of a direction under section 128 are prescribed in regulations, but can include where the individual is subject to a caution or conviction or has engaged in 'relevant conduct', and the Secretary of State considers that because of that caution, conviction or conduct that individual is unsuitable to take part in the management of a school.

24. Maintained schools are able to suspend someone from the board for a fixed period of time, up to six months at a time, for example for acting in a way that is inconsistent with the school's ethos or religious character and for bringing or being likely to bring the organisation, the board or their role into disrepute.[15] Academy trusts do not have the power to suspend, but may remove someone from the board in these circumstances, in accordance with their articles of association. Academy trusts may consider informing the removed academy trustee of any basis on which they may be considered for re-appointment.

25. Swift action should be taken to suspend from a maintained school's governing body anyone that acts to undermine fundamental British values or the board's commitment or ability to deliver on its Prevent duty.

26. If you are concerned that someone who is or may become involved in governance may have links to extremism, or that a child might be at risk of extremism, or if you have any other concern about extremism in a school please contact our helpline at counter.extremism@education.gov.uk or on 020 7340 7264.

[15] For maintained schools, see regulation 17 of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

4.1.3 Appointments

27. As highlighted in statutory guidance for maintained schools on the constitution of the board (the principles of which will also be of interest to academies), it is for whoever is appointing the individual to be confident that they have the necessary skills, including the willingness and ability to learn and develop. To make an informed decision on the matter, an interview or detailed discussion will need to take place with each prospective candidate, with references (oral or written) taken as necessary, together with other recruitment tools.

28. It is important that boards reflect the diversity of the school/trust communities that they serve. Consideration should be given to all the protected characteristics.[16] Diverse boards promote inclusive school environments and provide diverse role models for staff and young people. The National Governance Association has provided further support on how to recruit diverse governors as part of their Everyone on Board campaign, which aims to increase the participation of people from ethnic minorities and young people in school and trust governance.

29. The department recognises that there are people who have the skills and the time to serve effectively on a number of boards and does not want to restrict their ability to do so. However, where a prospective appointee is already governing at another school or MAT, the chair of the board should speak to the chair of the other board to discuss both the skills of the individual and, where appropriate, their capacity to serve effectively on an additional board. For transparency, the prospective appointee should be told that this is happening. It is likely that only in exceptional circumstances will an individual have the capacity to serve effectively on more than two boards – but this is rightly a matter for the board or other appointing body to decide.

30. It is essential that boards recruit and develop people with the skills to deliver their core functions effectively. However, it is equally important to emphasise that the skills required are those to oversee the success of the school, not to do the school's job for it. For example, a person with financial expertise should use their skills to scrutinise the organisation's accounts, not to help prepare them. If someone on the board does possess skills that the school wishes to utilise on a pro bono basis, then it is important that this is considered separately from their role in governance, and steps should be taken to minimise conflicts of interest and ensure that this does not blur lines of accountability.

[16] The protected characteristics as set out in the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

31. For academy trusts, the process for the appointment and removal of academy trustees will be set out in the articles. The Members of the academy trust have the power to remove all academy trustees under the provisions of the Companies Act. Local Governing Bodies (LGBs), as committees of the trust board, have their members appointed and removed by the trust board.

32. Academy trusts may also choose to have their parent governor representation via the LGB, and in the first instance, the parents would be elected and only appointed if there were not enough parent candidates to enable an election to take place.

4.1.4 Elections

33. Some positions on the board may be filled through election rather than appointment. In the case of elected parents, this helps to ensure that boards stay accessible and connected to the community they serve and that there is always a diverse range of perspectives around the table to support robust decision making. With the right election process and subsequent support and training there is no reason that those elected to the board need be any less effective than those chosen specifically for their skills.

34. Since 1 September 2017, maintained school governing bodies have had the power to remove elected parent and staff governors in the same way as they can remove co-opted governors – that is, by majority decision of the governing body.[17]

35. Boards (and local authorities where applicable) should make every effort to conduct informed Parent and Staff Governor elections in which the expectations and credentials of prospective candidates are made clear. They should set out clearly in published recruitment literature:

    - the core functions and role of the board, and the induction and other training and development that will be available to new recruits to help them fulfil it;
    - the expectations they have of people appointed to the board for example in relation to the term of office, the frequency of meetings, membership of committees and the willingness to undertake appropriate training and development; and
    - with reference to the department's Competency framework for governance, the specific skills or experience that would be desirable, including the

[17] The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2017 (regulation 2(3) and (4) amends the Constitution Regulations 2012 to include a power and procedure for governing bodies to remove elected governors, so this power is now available in relation to elected governors as it is for appointed governors.

willingness to learn skills that would help the board improve its effectiveness and address any specific challenges it may be facing.

36. Well run elections use secure and reliable voting systems and offer candidates the opportunity to publish a statement of sufficient length to set out:

    - evidence of the extent to which they possess the skills and experience the board desires;
    - their commitment to undertake training and development to acquire or develop the skills to make an effective contribution to governance;
    - if seeking re-election, details of their contribution to the work of the board during their previous term of office; and
    - how they plan to contribute to the future work of the board.

37. The purpose of boards providing and publishing information about the role and the skills they ideally require is not to create additional eligibility criteria for potential candidates – which they do not have the power to do. It is for the electorate to elect their choice of candidate(s).[18] The purpose of publishing the information is to simply inform the electorate of the board's expectations, circumstances and ideal requirements.

4.2 Training and development

38. All boards are responsible for identifying the induction and other ongoing training and development they need – including for those with specific responsibilities such as the lead on safeguarding, including Prevent. They should set aside a budget for this purpose. Maintained schools should liaise with LAs where appropriate.[19] The AFH requires academy trusts to identify and fill any skills gaps on the board through recruitment or training.

39. As part of induction and continuous development, effective boards encourage everyone involved in governance, especially those new to their role, to make the most of the resources, guidance and training available to develop their knowledge and skills.

40. The board's code of conduct should set an ethos of professionalism and high expectations of everyone involved in governance, including an expectation that

[18] Notwithstanding the power contained in the model articles for Catholic academy trusts to appoint the elected candidate at their discretion.

[19] Section 22(b) of the Education Act 2002 provides that the local authority in England shall secure that there is made available to every maintained school governor, free of charge, such training as they consider necessary for the effective discharge of their functions.

they undertake whatever training or development activity is needed to fill any gaps in the skills they have to contribute to effective governance. Importantly, this includes their ability to understand and interpret educational and financial performance data. Everyone on the board should be able to engage fully with discussions on these matters and if they cannot, they should undertake appropriate training or development to enable them to do so.

41. Boards should consider giving the vice-chair or another individual on the board a specific responsibility for enabling every person to develop the skills they need to be effective. Rather than simply track attendance at training and development courses, with administrative and advisory support from the professional clerk, this person would be responsible for ensuring that everyone on the board develops their skills to make an active and valuable contribution board. Any persistent skill gaps across the board or for individuals should be brought to the attention of the chair.

42. If, in the view of the board, an individual fails persistently to undertake the training or development they need to contribute effectively to the board, then they are likely to be in breach of the board's code of conduct.

43. Where they have powers to do so, maintained school boards should consider suspending them on the grounds that they have acted in a way that is contrary to the school's ethos and has brought or is likely to bring the organisation, the board or their role into disrepute. Suspensions are for a fixed period of up to six months at a time. Academy trusts in these circumstances should consider removing the academy trustee in accordance with their articles. Trusts may consider informing the removed academy trustee of any basis on which they may be considered for re-appointment.

4.3 The chair

44. The chair, with support from the vice chair and the clerk/governance professional, is responsible for ensuring the effective functioning of the board and has a vital role in setting the highest of expectations for professional standards of governance. It is the chair's role to give the board clear leadership and direction, keeping it focused on its core strategic functions. A chair should encourage the board to work together as an effective team, building their skills, knowledge and experience. They need to ensure that everyone is actively contributing relevant skills and experience, participating constructively in meetings, and actively involved in the work of any committees. It is their role to make sure everyone understands what is expected of them and receives appropriate induction, training and development. It is for the chair to have

honest conversations, as necessary, if anyone appears not to be committed or is ineffective in their role.

45. The chair must not exercise as an individual any of the functions of the board except where this has been sanctioned by the board, or in the case of maintained schools in the specific circumstances permitted in regulations. In all maintained schools, and where an academy trust board decides, the chair is permitted to act in cases of urgency where a delay in exercising the function would be likely to be seriously detrimental to the interests of the school, a pupil, parent or member of staff.

46. Typically, it will fall to the chair to be responsible for the line management of the senior executive leader within the organisation.

4.3.1 Development and succession

47. The focus of the procedure for appointing a chair and vice-chair from among the existing members of the board, should be on appointing someone with the skills for the role, not just the willingness to serve. It is possible to appoint more than one person to share the role of chair, or similarly the role of vice-chair, if the board believes this is necessary and in the best interests of the school. The board would need to ensure that any role-sharing arrangement does not lead to a loss of clarity in its leadership.

48. Succession planning arrangements should be in place so that any change in the chair does not impede the board's effectiveness. Although the regulations do not place any restrictions on this, boards should consider carefully how many times they re-elect their chair to a new term of office. In some circumstances, a change of chair may be necessary for the board to remain invigorated and forward looking.

49. The law does not prevent a board from advertising for a highly-skilled chair from outside the existing board where current governors or academy trustees do not wish to be appointed to the position. The successful candidate would need to be appointed to a vacant position on the board in accordance with the governing document (articles of association or instrument of governance) and regulations before they could be elected as chair in accordance with the regulations. Where required, boards should discuss with Members or other appointing bodies the reasons why advertising for a chair from outside the existing board will be in the best interests of the organisation.

50. With effective succession planning in place, it can be beneficial for strong chairs to move on to another school or academy trust after a reasonable time

(e.g. two terms of office). This can help to share expertise across the system and prevent boards stagnating or individuals gaining too much power and influence solely through their length of service.

4.4 The clerk (governance professional)

51. All boards must have a clerk, who should be the board's 'governance professional'.[20] The AFH has recently been updated to require all academy trust boards to have a clerk (governance professional).[21] In a maintained school, the clerk must not be a governor or the headteacher and in an academy trust, the clerk must not be an academy trustee, the chief executive of the academy trust or a principal of one of the trust's academies. However, if the clerk is absent from a meeting, a governor or academy trustee can be appointed as clerk for the purpose of that meeting. Clerks receive direction from, and are accountable to, the board and this will normally be through the chair.

52. High quality professional clerking is crucial to the effective functioning of the board. Their role is not only about good and effective organisation and administration, but also, and more importantly, about helping the board understand its role, functions and legal duties and supporting the chair to enable and facilitate strategic debate and decision making. This is crucial in helping the board exercise its functions expediently and confidently, so that it can stay focused on its core functions.

53. Boards should set demanding standards for the service they expect from their clerk and assure themselves that they are employing a clerk with the skills, training and knowledge required for their board. Boards may wish to use the clerking competency framework to understand the breadth and depth of knowledge, skills and behaviours needed to deliver professional clerking.

54. Boards should expect to pay an appropriate salary, commensurate to the service they expect their clerk to deliver.[22] A number of organisations have produced model job descriptions to assist boards and support them in this process, including the NGA who have developed a model job description and person specification and the Chartered Institute of Governance (CGI) who have produced a specimen job description for the academy company secretary role.

[20] Regulation 6 of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 – applies to maintained schools
[21] The AFH (2020) Section 1.40
[22] In academy trusts, a trust's articles will address clerk's terms and conditions.

55. The department provides funding for clerking development. All school, academy or trust board clerks, including new clerks, who are currently supporting one or more boards can attend one of the programmes.

4.5 Liability

56. The board bears legal responsibility for the school(s)' actions. However, individuals are generally protected from personal liability when acting in the course of their duties. Provided they act honestly, reasonably and in good faith, any liability will fall on the board even if it exceeds its powers, rather than on individuals.

57. Schools and academy trusts must have adequate commercial insurance cover to comply with their legal obligations or have the option to join the risk protection arrangement (RPA), the department's alternative to commercial insurance.

58. Details of the RPA full cover and provision can be found in the membership rules for specific establishments:

- Academy trusts
- Church academies
- Local authority-maintained schools
- Voluntary-aided, foundation and foundation special schools
- Voluntary-controlled schools

4.6 Time-off work

59. Boards can benefit significantly from transferable skills that people have developed in the workplace. Serving in governance also helps people develop board-level skills and wider experience that they can take back into the workplace that they may not otherwise develop until much later in their careers. The learning and development benefits are therefore significant and more than compensate for the flexibility and time-off that staff may need to fulfil their governance duties.

60. By law, employers must give employees who serve on maintained school boards 'reasonable time off' to carry out their duties.[23] The employee and employer must agree on what is 'reasonable time off'. Employers may give time

[23] Employment Rights Act 1996, s50

off with pay but do not have to do so. This is for discussion between the employee and the employer. Guidance on time off for public duties is available.

61. If the employee and employer cannot agree on any of these questions, either of them can ask for help from the Advisory Conciliation and Arbitration Service (ACAS), which will try to settle any differences informally. An employee who is still not satisfied may complain to an Employment Tribunal.

4.7 Payments to governors and academy trustees

62. The governance of schools in England is rooted firmly in the principle of voluntary service. The government is committed to maintaining and promoting this principle for boards of both academies and maintained schools. This is in line with charity law and corporate governance practice in other parts of the public sector.

63. Paying people to be involved in governance is subject to very specific legal restrictions. This is true in both maintained schools and academies.

Maintained schools

64. There is no legal power for schools, LAs or the government to pay individuals on maintained school boards for their governance duties.

65. Schools that are performing very poorly may be 'eligible for intervention'. In these schools, the Secretary of State, or the LA with the consent of the Secretary of State, has the power to replace a board with an Interim Executive Board (IEB). They have the power to pay members of an IEB they impose, if they chose to do so. Payment to IEB members should only be offered when this is in the best interests of the school and only until a full board is appointed.

66. The legal power also exists for the Secretary of State or the LA to appoint any additional people to a maintained school board if the school is 'eligible for intervention'. The Secretary of State has the power to pay anyone they appoint. However, they have not used this power to date, preferring instead to seek an academy solution for the under-performing school.

Academy trusts

67. Academy trusts are exempt charities[24] and must have charitable purposes and apply these for public benefit. Academy trustees are, therefore, charity trustees

[24] Exempt charities are not registered or directly regulated by the Charity Commission, instead they are regulated by the Secretary of State for Education as Principal Regulator under Schedule 3, Charities Act 2011

of an exempt charity and have the same general duties and responsibilities as trustees of other charities and must comply with charity law. This means that they can only receive payment for carrying out academy trustee duties if this payment is specifically allowed by the academy's governing document or has express authorisation from the Charity Commission. This power is not in the department's model articles of association and any change to allow payment to academy trustees would need Charity Commission authorisation. Academy trusts must also comply with the restrictions on transactions with related parties in the AFH, which apply to both academy trustees and Members and those connected with them.

68. The Charity Commission will only authorise amendments to allow payment to academy trustees where it has been clearly shown to be in the charity's interests. They will consider issues like the reasons for payment, whether conflicts of interests are managed appropriately, whether the Principal Regulator (for academies this is the Secretary of State for Education) is agreeable and whether payment of any academy trustees is in the longer-term interests of the charity.

69. Individuals who sit on committees, including any LGBs in a MAT, are not charity trustees, unless they also sit on the MAT board. The government expects voluntary service to remain normal practice for them. Academy trusts are reminded that they must maintain a register of interests for LGB members (as well as for academy trustees and Members) in accordance with the AFH.

70. The legality of paying people that sit on them does not remove academy trusts' duty under charity law to act only in the interests of their charitable objectives. Any academy trust considering paying people to sit on their LGBs or other committees should review very carefully whether this is in the best interest of the academy trust and whether this would be an appropriate use of public funds. Our expectation is that any payment would most likely be for a time limited period, for example in relation to bringing in highly skilled individuals to oversee the turnaround of an underperforming academy. MATs must also ensure that they manage any conflicts of interest in accordance with their trust's articles of association.

71. The duties of charity trustees are described in the Charity Commission's guidance CC3: the essential trustee: what you need to know, what you need to do. Academy trustees may also find the Charity Commission's welcome pack useful in understanding their role.

4.7.1 Other types of payments

72. There are other limited, specific, circumstances in which individuals serving on boards can receive payments from their school. However, this should only take place where it is clearly in the best interests of the school or academy.

Board allowances and expenses

73. The law allows governing bodies in maintained schools with a delegated budget to choose whether to pay allowances or expenses to governing bodies and associate members appointed by the governing body.[25] These allowances or expenses could cover any costs, such as travel or childcare, which they have incurred because of serving on a board. Where they choose to do so, it must be in accordance with a policy or scheme. Payments can only be paid for expenditure necessarily incurred to enable the person to perform any governance duty. This does not include payments to cover loss of earnings for attending meetings. Travel expenses must not exceed the HM Revenue and Customs (HMRC) approved mileage rates, which are changed annually and are on HMRC website. Other expenses should be paid on provision of a receipt (at a rate set out in the scheme) and be limited to the amount shown on the receipt.

74. Where a board does not have a delegated budget, the LA may pay allowances expenses at a rate determined by them.

75. Boards in academies are free to determine their own policy on the payment of allowances and expenses, in line with their articles.

Payment for services

76. In both maintained schools and academies, boards may pay for goods and/or services, including those provided by an individual who is also serving on a board, although the individual must not put themselves in a position where their personal interests conflict with their duty unless they are authorised to do so.[26] If a conflict does exist, the board should first assure themselves that this in the best interests of the organisation and will better help it achieve its purposes. The board must manage, and be seen to manage, any conflicts of interest that may arise, and be open and accountable to those with an interest; there would

[25] The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.
[26] For academy trusts the requirements and restrictions are set out in detail in articles 6.6 to 6.8A of the model articles. Article 6.8 imposes requirements on the trust to document any such decision in the minutes.

be no advantage of using the services provided by the individual if disadvantage of managing the conflict of interest outweighed the benefit.

77. The department places very clear expectations on academy trust boards in how they should manage any conflicts of interest or related party transactions. It is essential that all contracts and arrangements for payments for goods and/or services follow proper procurement processes.

78. Trusts must report all contracts and other agreements with related parties to ESFA in advance of the contract or agreement commencing.

79. Trusts must obtain ESFA's prior approval, for contracts and other agreements for the supply of goods or services to the trust by a related party where any of the following limits arise:

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

80. Full details of the requirements placed on academies can be found in the AFH.

81. In relation to dioceses, the AFH provides that contributions made by an academy trust to its diocese for services it receives associated with securing the academy trust's religious character and ethos, which only the diocese can provide, are regarded as meeting the 'at cost' requirement.

82. Guidance for academy trusts declaring or seeking approval for related party transactions is available on GOV.UK

83. Further information about payments to academy trustees is available in the Charity Commission guide (CC11), Trustee expenses and payments.

4.8 Publishing information about individuals

84. People that govern schools and trusts hold an important public office and their identity should be known to their school(s) and wider communities. As expected under statutory guidance for maintained schools and required by the AFH and funding agreements for academy trusts, boards must publish details on their website about each person (including all governors and associate members in maintained schools and all Members, academy trustees, individuals on any

LGBs and the Accounting Officer[27] in academy trusts).[28] This information must include any relevant material business or pecuniary interests, including any governance roles in other educational institutions. It must also include any material interests arising from close family relationships between those involved in governance or between them and senior employees because such interests may increase the risk of:

- an inappropriate concentration of control of a publicly funded service among a small number of related individuals;
- a lack of safeguards against financial irregularity and the trust not being governed solely in its best interests; and
- potential negative external perceptions and damage to the reputation of the organisation or schools in general.

85. Under s.538 of the Education Act 1996 and the AFH, the Secretary of State requires boards to provide certain details they hold about people involved in governance, as volunteered by individuals, via Get Information About Schools (GIAS) and keep the information up to date. The information to be provided is set out in a message to all schools, published on 1 July 2016. Not all of the information collected via GIAS will be published, but all will be held encrypted securely by the department.

86. Boards should make it clear in their code of conduct that information about each person will be published on their website and via GIAS. Anyone failing to provide information to enable the board to fulfil their responsibilities may be in breach of the code of conduct and as a result be bringing the board into disrepute. Maintained school boards should consider suspending governors, while academy trust boards, Members or other appointing bodies should consider removing such individuals.

[27] Academies Financial Handbook, para 2.50, if the AO is not a trustee, their relevant business and pecuniary interests must be published

[28] Academies Financial Handbook, para 2.50, sets out the specific information which must be published

5. Structures

1. This section explains the specific structures of governance for academies and maintained schools and how they must be constituted, contextualised by further discussion on the benefits of the board governing a group of schools.

5.1. Governing a group of schools

2. Governance structures that span more than one school create an opportunity for more effective governance.

3. When a board governs a group of schools it gains a more strategic perspective and the ability to create more robust accountability through the opportunity to compare and contrast between schools. It enables more schools and pupils to benefit from the strategic leadership of the most talented non-executive and executive leaders. Conversely, people who transition from sitting on the board of a standalone school to operating under the leadership of say a MAT board, may be relieved to have the burden of ultimate accountability and the responsibility for financial and other corporate functions held centrally, leaving them freer to focus on the needs of their school and the progress and attainment of its pupils.

4. Governing a group of schools through a single board also creates the conditions for fully realising the sustained benefits of school-to-school collaboration, which include:

    - Sharing safeguarding and safer recruitment best practice along with opportunities;
    - a richer and wider curriculum – including through the ability to recruit and deploy more specialist staff, such as subject specialists or faculty heads;
    - better professional development and career progression opportunities for staff, and better retention of key staff as a result;
    - bigger leadership opportunities for middle and senior leaders, while also easing the overall leadership challenge through more supported leadership roles;
    - financial efficiency – through shared procurement;
    - economies of scale that make employing specialist finance directors and business managers with vital skills more feasible;
    - improved relationship with local services – developing a better relationship with for example Children and Adolescent Mental Health Services

(CAMHS) as a cluster of schools (for example, to request mental health awareness training), which can also promote effective referral and cooperation, provide quick response services and long term planning for the school population; and

- ultimately, better prospects for pupils through greater professional accountability and the roll out of consistent proven pedagogies.

5. Many boards, like executive leaders and parents can be passionate and committed to their school. However, governing is about putting the interests of pupils before adults and boards should set aside issues of control and school identity to consider objectively the governance structures that would most benefit current and future pupils. Every board should consider whether for them this means forming or joining a group of schools under the leadership of a single board. When such a group comes to include schools both with and without a religious character, the policies of the relevant religious authority will also be a significant factor and should be adhered to (where appropriate).

6. When the number of schools the board governs grows, it might try to develop its existing governance model to form a small MAT or federation of two or three schools, but growth beyond three schools usually represents the first real need to overhaul governance arrangements. Likewise, the governance structures of a small MAT will start to become stretched at around six to seven schools and by 10 a further overhaul will be needed.

7. In order to transition to academy status or grow successfully, the board should commission a robust independent review of its effectiveness and readiness for growth. The All Party Parliamentary Group for Governance and Leadership's Twenty questions for boards and Twenty-one questions for MAT boards to ask themselves provide a helpful framework for doing this. The board should also consider the department's Multi-academy trust – good practice guidance and growth expectations, which includes a summary of the key characteristics of governance in successful MATs.

8. As the organisation the board is governing becomes larger and more complex organisationally and financially, governance can, and in some cases must, change in a number of ways:

    - **Culture:** it is important to generate a professional ethos across the entire governance structure and a culture of one organisation and away from any sense of 'my school/your school'.
    - **Skills:** an increasing number of pupils and schools are impacted by the quality of the individuals on the board, and there is hence an increasing

imperative for the board to act professionally and actively recruit, develop and retain high calibre board members and an effective chair with the necessary skills to govern and lead the increasingly complex organisation and oversee its growth.

- **Executive oversight:** there is increasing opportunity, and possibly need, for the board to discharge some of its functions of governance and oversight through a central professional executive team – starting with an executive headteacher and finance director, and with further growth extending to a chief executive officer (CEO) who no longer has sole direct responsibility for any individual school.
- **Structures:** there is a range of options for how to design governance structures and levels of delegation. As the need for additional tiers within non-executive and executive governance structures grows to avoid unwieldy spans of control, there is a need for absolute clarity on the role and remit of each part of the structure and the relationship and reporting arrangements between them – including, for example in a MAT, between the role of a LGB and an executive principal in holding a school-level principal to account.
- **Processes:** there is an increasing need for the board to be professional in the way it conducts its business. It needs more standardised and robust systems and processes for governance and oversight, including systems for reporting and analysing school performance data; financial planning, management and control; and for human resources (HR) and other business processes. It also needs to ensure more standardised teaching and school improvement methodologies are in place across its schools based on proven pedagogies.
- **Risk:** increasingly, boards need a more sophisticated understanding of financial, organisational and educational risk; its assessment and its minimisation – and this in turn highlights that increasingly the board must be strategic, that it must focus on priorities and that it must manage by exception.[29]

5.2 The governance structure of academies

9. An academy trust is a charitable company limited by guarantee. It is an independent legal entity with whom the Secretary of State has decided to enter

[29] manage by exception" is a tool where a school or trust benchmarks its activities, costs and results against similar organisations, and the board concentrates its efforts and interrogation on those areas where the school or trust appears to deviate significantly from usual practice or results.

into a funding agreement on the basis of agreeing their articles of association with the department.

10. Some academy trusts (known as single academy trusts or SATs) run one academy and so have a single funding agreement with the Secretary of State. Some academy trusts (known as multi-academy trusts or MATs) run multiple academies and so have both a master funding agreement with the Secretary of State as well as a supplemental funding agreement for each academy.

11. The ESFA has published 10 top tips for maintained schools governing bodies consider before converting to academy status. They should also refer to published guidance.

5.2.1 Members and academy trustees

12. All academy trusts, as charitable companies, have both academy trustees and Members.

13. The department has published an Academy Trust Governance – Structures and Role Descriptors document, which set out the roles and responsibilities each structure and person holds in academy trust governance.

Academy trustees

14. Academy trustees are both charity trustees and company directors of the academy trust. This handbook and the AFH refer to them as academy trustees, in recognition of the charitable, non-profit making status of trusts. However, in some academy trusts those on the board of the academy trust are known instead as ‘directors’: notably in church academy trusts where the term ‘trustee’ is reserved for those on the board of the separate trust that owns the land and assets.

15. The board of trustees manages the business of the academy trust and may exercise all the powers of the academy trust. The board should focus strongly on the three core functions of governance set out in this handbook. The academy trustees must apply the highest standards of governance and take full ownership of their duties. They must ensure compliance with the academy trust’s charitable objects and with company and charity law, and with their funding agreement and provide Members with sufficient information to enable them to assure themselves that the board is exercising effective governance.

16. The board of trustees signs off the annual accounts and is responsible for adherence to the academy trust’s funding agreement with the Secretary of State, who is the principal regulator for academy trusts as charitable

organisations. Academy trustees must appoint, in writing, a named individual as its accounting officer (AO). This should be the senior executive leader. The AO role includes a personal responsibility for the trust's accountability to Parliament, and to the ESFA's accounting officer, for the financial resources under the trust's control.

17. The constitution of the board of trustees, including the numbers of academy trustees that may be appointed by different bodies including any sponsor or foundation as well as the board itself, is set out in each trust's own articles of association.

18. The department sets very few requirements relating to the constitution of the board of trustees of trusts into which it is prepared to enter a funding agreement. Except where an academy is designated with a religious character, the department's model articles of association give academy trusts almost complete flexibility to design the constitution of their board of trustees as they see fit in order to ensure it has the necessary skills and capacity to carry out its functions effectively:

    - the board must include at least two elected parent trustees – a MAT may, alternatively, include two elected parents on each LGB;
    - no more than one third of the board can be employees of the academy trust;
    - no more than 19.9 per cent of the board can be LA associated, i.e. employees, members or officers of an LA (including teachers and headteachers of LA maintained schools) or people who are or have been within the last four years an employee, member or officer of an LA, where that LA has a responsibility for education or is a district or parish council where there is a land or other commercial relationship with the trust; and
    - for UTCs there is a requirement that nominees of the employer and university sponsors must together form the majority on the board of trustees.

19. Particular versions of model articles exist for use where academies are designated with a religious character. These provide for the appointment of Members and academy trustees who have the skills and ability to safeguard and develop the religious character of the academy.

20. The principal or any other employee who is appointed as an academy trustee is appointed on the basis that their role as academy trustees is dependent on their employment by the academy trust and that if they leave the academy trust, they cease to be an academy trustee. Our model articles give Members the

decision on whether to appoint the principal/ CEO as an academy trustee, if they are willing to be. Our strong preference is for no other employees to serve as academy trustees nor for academy trustees to occupy staff establishment roles on an unpaid voluntary basis, in order to retain clear lines of accountability through the academy trust's single senior executive leader.

21. The board may delegate functions to committees. Each committee of the board (other than those in a MAT, constituted under the articles as an LGB) must contain a majority of academy trustees, but may also include other people the board choses to appoint.

22. The board is able to remove from office any academy trustee that they have appointed. In addition, Members have the power to remove any academy trustee irrespective of whether the individual was appointed or elected to the board.[30]

Members

23. As charitable companies limited by guarantee every academy trust has Members who have a similar role to the shareholders in a company limited by shares. Most notably they:

- are signatories to the articles of association which includes definition of the academy trust's charitable object and governance structure (where they are Founding Members);
- may, by special resolution,[31] amend the articles of association, subject to any restrictions created by the academy trust's funding agreement or charity law;
- may, by special resolution,[32] appoint new Members or remove existing Members other than, where there is one, the foundation/ sponsor body and any Members it has appointed;
- have powers to appoint academy trustees as set out in the trust's articles of association, and have power under the Companies Act to remove any or all serving academy trustees;
- may, by special resolution,[33] issue direction to the academy trustees to take a specific action. The Roles and Responsibilities document has further information;

[30] Companies Act 2006, s168
[31] A special resolution requires 75 per cent rather than a simple majority of Members to agree.
[32] IBID
[33] IBID

- appoint the academy trust's auditors and receive (but do not sign) the academy trust's annual audited accounts (subject to the Companies Act); and
- have power to change the name of the charitable company and ultimately, wind up the academy trust.

24. No more than 19.9 per cent of Members can be LA associated people (LAAPs), i.e. employees, members or officers of an LA[34] or those who are or have been, within the last four years, an employee, member or officer of an LA, where that LA has a responsibility for education or is a district or parish council where there is a land or other commercial relationship with the academy trust.

25. Any obligation on Members to meet (e.g. for an Annual General Meeting (AGM)) will be set out in the academy trust's articles of association. However, under the current model articles of association, Members may instruct the academy trustees to convene a general meeting at any point, at which academy trustees may speak but not vote.

26. AGMs are not mandatory in the mainstream or Catholic Church model articles, although they are mandatory in the Church of England's model articles of association.

27. Whether or not the academy trust holds an AGM, the Members should ensure they are sufficiently informed about the academy trust to be able to exercise their powers effectively. For example, Members may want to use an AGM to review the academy trust's annual audited accounts and broader issues of trust governance with the board.

28. The department's minimum requirement before entering into a funding agreement is that academy trusts have at least three Members, although the department's strong preference, wherever possible, is for academy trusts to have at least five Members, as this:

- provides for a more diverse range of perspectives to enable robust decision making and reduces the risks of concentrating power
- ensures Members can take decisions via special resolution without requiring unanimity.

29. Where an academy trust has a sponsor, the relationship between the sponsor and academy trust is vested in the sponsor's right to appoint Members as set out in the academy trust's articles of association. Likewise, the minority or

[34] This includes teachers and headteachers of LA maintained schools.

majority control of the church in a voluntary-controlled (VC) or voluntary-aided (VA) school respectively is retained on conversion to academy status through minority or majority control over the appointment of Members of the academy trust.

30. Employees of the academy trust must not be appointed as Members under the current model articles. In addition, the latest version of the AFH will require all academy trusts, irrespective of the content of their articles, to ensure that from 1 March 2021, no Members of the academy trust may also be employees of the academy trust, nor occupy staff establishment roles on an unpaid voluntary basis. Academy trusts should also look to update their articles to reflect this change.

31. As set out above, it is the academy trustees who have the duty and responsibility in law to conduct the business of the academy trust subject to company and charity law, the articles of association and any direction from the Members. Although they can choose to delegate certain powers, they cannot give up these duties to a third party – even to the Members. Therefore, Members should avoid overstepping their powers or undermining the boards' discretion in exercising its responsibilities. In general, Members would not be expected to attend board meetings, sit on executive leaders' performance review panels, or even contribute to specific decisions in relation to the academy trusts' business.

32. Members play a limited but crucial role in safeguarding academy trust governance. While they must ensure they do not stray into undertaking the academy trustees' role, they should assure themselves that the governance of the academy trust is effective, that academy trustees are acting in accordance with the trust's charitable object(s) and that they, the Members, use their powers to step in if governance is failing. Members should not be involved in the day-to-day business of the academy trust. Members have a general duty to exercise their powers to further the academy trust's charitable object, which in the majority of trusts is 'to advance for the public benefit education in the United Kingdom'.[35]

33. It is for each academy trust to determine how best to keep Members informed so they can be assured that the board is exercising effective governance and leadership of their academy trust. Members will want to be well informed of the skills the board needs to be effective and to have confidence in the board at all

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[35] Article 4 in Academy Articles of Association: Model One

times, with sufficient arrangements in place for them to know when they may need to exercise their powers – particularly to appoint or remove one or more academy trustees. If the governance of the trust by the board of academy trustees becomes dysfunctional the Members have a strong interest in ensuring the board has sufficient plans to use their powers to address the issues. It should be clear to academy trustees or others involved in governance of the trust (e.g. those appointed to committees including any LGBs) how they can escalate concerns to Members, where these are not satisfactorily addressed by the board.

34. 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 academy 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 for effective governance is for at least the majority of Members to be independent of the board of trustees.

35. If a Member is operating as an academy trustee, any such Member shall have no greater power than other academy trustees and should remain conscious of the corporate nature of the board's identify and decision making and not seek to dominate the board because they are also a Member.

5.2.2 Multi-Academy Trusts

36. As an academy trust a MAT is a single legal entity, a charitable company, with a board that is accountable for all the academies within the trust. There is no lead school within a MAT. The MAT board is equally responsible and accountable for the performance of all the academies within the trust. Even where the trust was originally established by one stronger school 'taking on' weaker schools, once the MAT is formed it becomes one organisation and the board must not favour or show allegiance preferentially to one school, but rather govern in the interests of all pupils and foster a common ethos and vision across the whole MAT.

37. The MAT board can choose to delegate governance functions to LGBs or other committees which may relate to one academy or more than one academy. Particularly in a large MAT, the board may decide to appoint a committee to oversee a group of LGBs, for example as a regional cluster. Both committees and LGBs are made up of people that the MAT board appoints – this may include MAT academy trustees but can be anyone that the board selects for their skills. People appointed to committees or LGBs are not academy trustees of the MAT unless they also sit on the MAT board itself.

38. It is the decision of the academy trustees about which, if any, governance functions they delegate to LGBs or other committees. LGBs with no delegated governance functions are wholly advisory. MATs may delegate responsibilities in proportion to the strength of individual academies and the skills and expertise of the people on their LGBs – for example by increasing levels of delegation as initially weak schools improve. Boards of single schools considering joining an existing MAT should ensure they understand the range of governance functions, if any, that would be delegated to them as an LGB by the MAT board; and understand that the board will have full control over the membership and delegated authority of the LGB that they become.

39. A MAT may use wholly advisory bodies at local level to engage meaningfully with parents and local communities to understand their views, needs and listen to their feedback. It is reasonable for MATs to conclude that most parents' interest is in their child's school and therefore that meaningful engagement with the parent body will be most effective at the school level.

40. Even where LGBs are advisory in nature, they are a full and formal part of the governance structure, as determined by the trust's articles of association. We would, therefore, expect the board (or any committee established by the board to exercise the governance functions on its behalf) to have very close links with the advisory LGB and actively take into account and respond to the issues and risks it identifies and escalates.

41. All individuals involved in the governance of a MAT should know who the academy trustees are and understand clearly what functions have been delegated by the board to LGBs or other committees.

42. As they grow, MAT boards have the opportunity to expand their central executive team as means of exercising their responsibilities of oversight. However, if individual school principals are line managed by, for example, the MAT's chief executive, there is a risk of duplication or confusion between the role of the chief executive and the LGB in holding the school principal to account. MATs need to consider carefully and be clear about how they will exercise their governance and oversight through both executive and non-executive channels and how the two fit together.

43. MATs can also use their executive team to oversee finances. Many MAT boards tell us that in hindsight they would have appointed a finance director earlier in their growth. A dedicated finance director helps the MAT to oversee the efficient and effective use of the MAT's resources for the benefit of pupils and ensure that systems for financial planning and control are appropriate and sufficient.

44. The department's Multi-academy trust – good practice guidance and growth expectations sets out what we know about the characteristics of successful MATs and the barriers that they will need to overcome in order to secure their ongoing success.

5.3 The governance structure of maintained schools

45. All maintained school boards must be constituted under the Constitution Regulations 2012 or the Federation Regulations 2012. Statutory guidance is available on the Constitution of governing bodies of maintained schools.

46. The department has published a Maintained School Governance – Structures and Role Descriptors document, which sets out the roles and responsibilities each structure and person holds in maintained school governance.

5.3.1 Single maintained schools

47. The Constitution Regulations 2012 provide that the total membership of the board must be no fewer than seven governors and the board must include:

- at least two Parent Governors – elected where possible, otherwise appointed;
- the headteacher, unless they resign the office of governor;
- only one elected Staff Governor;
- only one LA Governor; nominated by the LA, appointed by the board, and
- where appropriate, Foundation Governors[36] or Partnership Governors.

Foundation Governors

48. Where applicable, Foundation Governors are appointed to secure compliance with the school's trust deed and to preserve and develop the religious character of the school, if it has a religious character. Where the school has a foundation, the Foundation Governors ensure that the school is managed in accordance with the foundation's governing documents. The number of Foundation Governors and the identity of the body or bodies appointing them will be set out in the instrument of government.

[36] Regulation 9 of The School Governance (Constitution)(England) Regulations 2012 provides further details.

Partnership Governors

49. Partnership Governors are only required in foundation and foundation special schools that, in either case, do not have a foundation. Where a foundation school with a religious character does not have a foundation, Partnership Governors act in the best interests of the foundation school and the wider community (and in the case of a school with a religious character have a role in relation to preserving and developing such religious character).

Co-opted Governors

50. The board may appoint as many additional Co-opted Governors as are permitted by the instrument of government and as it considers necessary. The number of Co-opted Governors who are eligible to be elected or appointed as Staff Governors must not (when added to the one Staff Governor and the headteacher) exceed one-third of the total membership of the board.[37]

Local authority nominated Governors

51. For LA Governor appointments, a board should make clear its eligibility criteria including its expectations of the credentials and skills prospective candidates should possess. LAs must then make every effort to understand the board's requirements in order to identify and nominate suitable candidates. It is for the board to decide whether the LA nominee meets any stated eligibility criteria and, if it chooses to reject the candidate on that basis, to explain their decision to the LA.

52. Once appointed, LA Governors must govern in the interests of the school and not represent or advocate for the political or other interests of the LA; it is unacceptable practice to link the right to nominate LA governors to the local balance of political power.

Associate members

53. The governing body of a maintained school can appoint associate members to serve on one or more committees of the board. Associate members can attend full board meetings but do not vote and may be excluded from any part of a meeting where the business being considered concerns a member of school staff or an individual pupil. They are appointed for a period of between one and four years and can be reappointed at the end of their term of office. Associate members are not governors and they are not recorded in the instrument of government.

[37] Regulation 13 of the School Governance (Constitution)(England) Regulations 2012

54. The definition of associate member is wide. Pupils, school staff and people who want to contribute specifically on issues related to their area of expertise (for instance, finance) can be appointed as associate members.

Term of office

55. The term of office for each category of governor is decided by the board and set out in the instrument of government. Additionally, boards may decide to adopt the flexibility for those appointing governors to decide the term of office of each individual governor to be between one and four years. This will only apply to newly appointed governors and would not affect the terms of office of existing governors.

Instrument of government

56. The constitution of all boards is set out in their instrument of government.[38] The board drafts the instrument and submits it to the LA. Before the board submits the draft instrument to the LA, it must be approved by any Foundation Governors and, where relevant, any trustees and/or the appropriate religious body. The LA must check if the draft instrument complies with the legal requirements, including the relevant guiding principles for the constitution of boards. If the instrument complies with the legal requirements, the LA will 'make' the instrument. The instrument can be reviewed and changed at any time, subject to the consent of the bodies set out above.

57. A school may have more governors in a particular category than is provided for in its instrument of government. This situation could arise if a board has decided to reconstitute and reduce in size, but sufficient resignations are not forthcoming for the remaining members to fit within the new structure. Further guidance on managing this process is available in statutory guidance.[39]

58. The board, and where applicable other appointing bodies, are able to remove any individual that they have appointed. The board may also, in certain exceptional circumstances (as set out in legislation), remove an elected parent or staff governor. Further detail on the procedure for removing individuals from office is available in statutory guidance.

[38] This includes community, community special, foundation (including qualifying foundation schools, foundation schools with and foundation schools without a foundation), foundation special, voluntary-aided (VA), voluntary-controlled (VC) and maintained nursery schools.
[39] The Constitution of governing bodies of maintained school: Section B3

5.3.2 Maintained school federations

59. Federation creates a single board to govern more than one maintained school. The federated board should be tightly focused on the strategic objectives of all the schools in the federation and should be no larger than it needs to be to undertake their role.

60. Schools in federations continue to be individual schools, keeping their existing category, character and legal identity, but have their governance provided by the same board. Admission to each school continues to be determined by the appropriate admissions authority. The board of the federation will receive individual budgets for each of the federated schools and can pool these budgets to use across the schools in the federation as it sees fit. Staff may also be employed at the federation level to enable flexible deployment between schools.

61. A board's decision to federate must follow a prescribed process, which is detailed in the School Governance (Federations) Regulations 2012. A prescribed process must also be followed when an individual school wishes to leave a federation or where the federation board decides to dissolve the federation; these processes are also detailed in the federation regulations. The department's guidance, which accompanies the above regulations, provides further details.

62. The regulations require the board of all federations to have at least seven members, including:

    - only two Parent Governors;
    - the headteacher of each federated school unless they resign as a governor;
    - one elected Staff Governor; and
    - one LA Governor – nominated by the LA and appointed by the board.

63. In addition, federations including foundation and voluntary schools are required to have Foundation or Partnership Governors as applicable.

64. It is possible that each school within a federation will have its own headteacher. In these circumstances, each headteacher will be entitled to a place on the board. Alternatively, the federation may have headteacher(s) acting across two or more schools each of whom sits on the board. To be a headteacher, the person must be being paid on the appropriate headteacher group of the headteacher pay range and be performing the duties in the school, which the board has conferred upon the headteacher through the School Teachers' Pay and Conditions Document.

65. The board may also appoint as many Co-opted Governors as they consider necessary to undertake their strategic objectives, ensuring the board has the skills and capacity to carry out its functions effectively. In doing so, it must also take into account the additional requirement for federations comprising foundation and voluntary schools where there may be a requirement to have a majority of Foundation Governors. The total number of Co-opted Governors who are also eligible to be elected or appointed as Staff Governors (when counted with the Staff Governor and the headteacher/s) must not exceed one third of the total membership of the board of the federation.

5.4 Collaboration

66. Collaboration is when schools work together without a single over-arching governance structure.

5.4.1 Academy collaboration

67. Forming or joining a MAT is the best way for academies to work together within robust governance structures to support weaker schools to improve. Where an academy is a standalone trust, our conversion guidance makes clear that it is still expected to support one or more other schools, whether maintained schools or academies. Such academies can choose what they do to support another school or schools and how they do it, but it must be intended to raise standards. This is a key aspect of the creation of a self-improving school-led system. The board of an academy has a role in making sure that it delivers its commitment to other schools, however it is done.

Umbrella trusts

68. An ‘umbrella trust’ is an arrangement that some academy trusts use to aid collaboration. The term can be used to refer to arrangements in which a separate trust is used by academy trusts to help them work together for example to procure services, but may also be used describe the idea of a trust sitting above a number of academy trusts.

69. The department does not have a formal relationship with umbrella trusts and has no powers of oversight or intervention in them. The department’s contractual relationship is with academy trusts via their funding agreement. It is essential that the board of the academy trust is fully empowered to deliver its charitable object with a single clear line of accountability for its performance to the department. If an umbrella trust had governance or intervention powers over an academy trust this would blur these lines of accountability.

70. The department will, therefore, not approve the conversion to academy status of schools planning to join an umbrella trusts that has governance or intervention powers over the constituent academy trusts. We will also not approve existing academy trusts wishing to join such an umbrella trust.

71. Academy trusts wishing to form or join an umbrella trust to facilitate joint procurement or partnership working may continue to do so as long as there is no impact on governance, financial transparency, intervention or the accountability relationship between the academy trust and the department. The arrangements must also be compatible with the Charity Commission's advice (CC3) about Trustee responsibilities. Academy trusts with an umbrella arrangement must still ensure that they follow the provisions of the AFH and follow appropriate procurement procedures.

72. The department's strong preference is for academy trusts to collaborate within a MAT in which there is robust shared governance arrangements and clear lines of accountability. MATs are the most effective and accountable governance model for enabling formal collaboration between academies; they drive school improvement, enable schools to be run more efficiently through economies of scale and provide development and progression opportunities for their teachers. The department has a number of MAT model articles of association for different kinds of schools that are flexible and allow a range of approaches to collaboration and a high degree or delegation of functions where appropriate. Regional Schools Commissioners (RSCs) can advise on how to develop arrangements that best suit different situations.

73. In Church of England academies, Diocesan Boards of Education may have established what they also call an umbrella trust to be the corporate member of an academy trust on behalf of the Diocesan Board of Education. This reflects the agreed governance arrangements as set out in the academy trusts' articles of association. They do not have additional decision-making powers or intervention powers and do not encroach on the department's accountability relationship with the academy trust.

5.4.2 Maintained school collaboration

74. Maintained schools may collaborate formally with other maintained schools, hold joint board meetings and form joint committees. The School Governance (Collaboration) (England) Regulations 2003[40] leave much of the detailed arrangements to the schools concerned. They allow two or more governing

[40] As amended by The School Governance (Miscellaneous Amendments) (England) Regulations (2015) SI 2015/883

bodies to arrange for any of their functions to be carried out jointly, as well as allowing those functions to be delegated to a joint committee. The specific procedures (on clerking and membership of committees, for example) generally mirror those for individual schools. Individual boards retain legal responsibility and corporate liability for all decisions made on their behalf. Boards must therefore make sure that they receive regular reports, including signed minutes, from any joint committees they agree to establish.

75. Maintained schools may also enter into collaborative arrangements with further education (FE) colleges using joint committees.

5.4.3 Collaboration between academies and maintained schools

76. While the Collaboration Regulations do not permit maintained schools to share governance arrangements and form formal joint committees with academies, they may collaborate informally. For example, a joint working group may be established which is purely advisory in nature, making recommendations to the boards of both schools who retain decision making powers. Alternatively, a committee may be established with parallel dual identities – complying with both the requirements of maintained school regulations and the legal framework for academies.

5.4.4 Teaching school hubs and teaching schools

77. In January 2021, the department will designate teaching school hubs (TSH). They will have a concentrated focus on teacher training and development, which will see a return to the original vision behind teaching schools, recognising teacher and leader development as the most important form of school improvement.

78. TSH will be expected to play a significant role in delivering the Early Career Framework when it is available nationally from September 2021, and to seek to be involved in the delivery of new Specialist National Professional Qualifications (NPQ) and Leadership NPQs. They will also deliver school-based initial teacher training. Their clearly defined role in professional development will make it easier for schools and teachers to identify what opportunities and support are available to them.

79. Further information on teaching school hubs is available on GOV.UK.

80. The current system of teaching schools work to identify, develop and co-ordinate expertise for the benefit of pupils across a network of schools. From

August 2021, the department will no longer be funding teaching schools and the teaching school designation will be removed.

5.5 Publishing information about governance structures

81. While boards in some schools have more flexibility than in others, all boards have a choice about how they are constituted and organised. Effective boards think carefully about this and in particular about whether and how to use their powers to delegate functions and decisions to committees or individuals.

82. In the interests of transparency, the board must publish on its website up-to-date details of the overall governance arrangements they have put in place. This must be in a readily accessible form.[41] This scheme of delegation must set out the structure and remit of the board and any committees (including any LGBs in a MAT), as well as the full names of the chair of each.

83. An effective scheme of delegation, particularly in MATs, will:

- include details of all the committees in place beneath the board, including LGBs in a MAT (whether decision making or advisory), and explain in headline terms the role and remit of each;
- provide full clarity on which governance functions are retained at board level and which are delegated making clear, particularly where the board governs a number of schools, where all key governance functions are exercised in respect of each school – including vision and budget setting and executive leader oversight and performance management;
- explain clearly how the role of governance structures relates to that of key executive leaders (such as the CEO, any executive principals or regional directors, and finance and HR directors), avoiding duplication for example in a MAT between the role of MAT executives and LGBs in holding individual academy leaders to account;
- explain the board's parental and community engagement arrangements and how these feed into and inform governance both at board level and at the level of individual schools, as applicable;
- be drafted clearly so that everyone in the organisation can understand it, in order to be clear about their role and that of others; and
- explain the circumstances in which the arrangements set out may vary: including both the timeframes for the overall scheme being reviewed and

[41] Readily accessible means that the information should be on a webpage without the need to download or open a separate document.

updated, and any triggers that might lead the board to review or change levels of delegations.

6. Compliance

1. This section summarises the board's key duties and responsibilities, signposting to more detailed information, guidance and resources to help the board understand these duties in more detail.

6.1 Governance procedures

2. Boards are generally best placed to decide how they can work most effectively in the light of their own local circumstances.

3. Any rules on how boards of academies must operate will be set out in their articles of association, the funding agreement and within the AFH.

4. For maintained schools, the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 cover board procedures, terms of reference and board allowances. Guidance on the regulations is available on GOV.UK.

6.2 Charity and company law duties

5. Academy trustees are charity trustees. As such, they must comply with the following duties under charity law:

    - ensure the charity is carrying out its purposes for the public benefit;
    - comply with the charity's governing document and the law;
    - act in the charity's best interests;
    - manage the charity's resources responsibly;
    - act with reasonable care and skill;
    - ensure the charity is accountable.

6. These requirements are reflected in the funding agreement and the AFH. More information on the role of a charity trustee is available on the Charity Commission's website (CC3).

7. Academy trustees must also comply with their statutory duties as company directors, which are set out in the Companies Act 2006, s170-177. In practical terms, all academy trustees need to be familiar with their academy's articles of association as well as their statutory duties under the Companies Act, which comprise the duties to:

- act within their powers;
- promote the success of the company;
- exercise independent judgment;
- exercise reasonable care, skill and diligence;
- avoid conflicts of interest;
- not to accept benefits from third parties; and
- declare any interest in proposed transactions or arrangements.

6.3 Health & Safety

8. The main legislation covering this area is the Health and Safety at Work etc. Act 1974 (HSWA) and regulations made under that Act, and the regulator is the Health and Safety Executive (HSE). The HSWA places overall responsibility for the health and safety of employees, pupils and visitors in workplaces with the employer.

9. The employer varies depending upon the type of school:

   - **The local authority** is the employer in community and community special schools, voluntary-controlled schools, maintained nursery schools and pupil referral units.
   - **The governing body** is the employer in foundation and foundation special schools and voluntary-aided schools.
   - **The school proprietor** (the academy trust, for academies and free schools) is the employer in academies, free schools and other independent schools.

10. The department has published information relating to health and safety. This guidance summarises health and safety law relevant to schools (academies and maintained schools) and sets out the roles and responsibilities and explains how it affects governing bodies and academy trusts, executive leaders and other school staff.

11. The HSE also provides more information on the role of headteachers and employers in the guidance: The role of school leaders – who does what and guidance on responsibilities in the education sector.

12. Employers have a duty of care to protect the health, safety and welfare of their employees under the Health and Safety legislation and to ensure that non-employees are not exposed to risks in their health and safety.

13. Organisations must comply with health and safety law and must have a health and safety policy in place. This should be an integral part of the school's or trust's culture, values and performance standards. The key elements of the policy should:

    - set out the roles and responsibilities within risk management processes;
    - the mechanisms to control risk; and
    - specific control measures that need to be implemented.

14. Boards should regularly monitor and review their health and safety policies to ensure risks are captured and eliminated or mitigated if elimination is not reasonably practicable. The risk assessment must cover the risks to the health and safety of employees and of persons (including pupils, volunteers, visitors, contractors etc.) who are not employees of the school. As part of this monitoring, boards should question executive leaders about whether appropriate corrective action is being taken, whether learning is being shared and improvements are being put in place.

15. For schools, the HSE, together with local authorities, enforces the Act. Health and safety law require employers to appoint someone competent to help them meet their health and safety duties. A competent person is someone with the necessary skills, knowledge and experience to give sensible advice about managing the health and safety risks at the school. In schools, most risks can be managed by the senior leadership team, with the help of other staff and the school employer.

16. The department has also published guidance on other health and safety matters including health and safety on educational visits and the safe storage and disposal of hazardous materials and chemicals.

6.4 Equality

17. The Equality Act 2010 applies to all schools, as providers of education to the pupils in their care, and those who have applied for admission as pupils. As providers of a service or public function and (where applicable) in their role as employers, the board is responsible for compliance with the public sector equality duties of the Act and the specific education sections (part 4) for school pupils.

18. The Equality Act 2010's general and specific public sector equality duties mean that schools must have due regard to the need to:

- eliminate discrimination, victimisation and any other conduct prohibited by or under the Equality Act 2010;
- advance equality of opportunity and foster good relations between people of all characteristics (those who share a protected characteristic,[42] and those who do not); and
- publish equality objectives and information demonstrating how they are doing this.

19. The Equality and Human Rights Commission (EHRC) can enforce this duty by issuing a compliance notice to order a school to meet the duty within a certain timescale. The guidance on the Equality Act 2010 gives detailed information for schools.

20. Boards should make sure that their school complies with all aspects of discrimination law. The best way to do this is to ensure that they apply the principles of fairness and equality in everything that the school does. Schools with a religious character have statutory exemptions.

6.5 Education

6.5.1 The curriculum

21. Education legislation[43] requires that the school curriculum be *balanced and broadly based*, and should:
    - promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and
    - prepare pupils at the school for the opportunities, responsibilities and experiences of later life.

22. Responsibility for the curriculum in schools is shared between the executive leader(s), the board and (where applicable and to a limited extent) LAs. The 'basic' curriculum for maintained schools must include the national curriculum and school and trust sixth forms must follow the 16-19 study programmes guidance. The national curriculum sets out the subjects and associated programmes of study that must be taught at each key stage.

[42] Refers to the characteristics as defined in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
[43] Education Act 2002, s78

23. Academies do not have to follow the national curriculum, but they are bound by their funding agreement to teach a *broad and balanced curriculum* to the age of 16. This must include English, mathematics and science and (subject to providing the right to withdraw) religious education in mainstream academies. Alternative provision academies are not required to teach religious education.

24. Boards in maintained schools should reassure themselves that:

    - enough teaching time is provided for pupils to cover the national curriculum and other statutory requirements;
    - the relevant assessment arrangements are implemented; and
    - all courses provided for all pupils below the age of 19 that lead to qualifications such as GCSEs and A levels, are approved by the Secretary of State.

25. Guidance on the statutory requirements for each subject within the national curriculum for primary and secondary schools is published on GOV.UK.

26. There is no longer a duty on maintained schools to prepare a school curriculum policy. If schools do choose to adopt such a policy, it should be broad and balanced; it does not need to be a detailed map of all secular curriculum activities. However, maintained schools must publish:

    - the content of the school curriculum in each academic year for every subject, including religious education, which some schools may be teaching as a part of another subject/subjects or refer to as other than religious education;
    - the names of any phonics or reading scheme used in KS1;
    - a list of the courses available to pupils at KS4, including GCSEs; and
    - how parents or other members of the public can find out more about the curriculum the school is following.

27. Academies and free schools should refer to their funding agreement concerning what information must be published online and consider the non-statutory guidance online.

28. In maintained schools, ‘disapplication’ is the decision not to apply elements of the national curriculum in certain circumstances. Where elements of the national curriculum are being disapplied for pupils in individual maintained schools, boards have a role to play in various ‘disapplication’ processes, depending on the circumstances. Further guidance is available on GOV.UK.

6.5.2 16 to 19 study programmes

29. All publicly funded education for 16 to 19-year olds, including A levels, should be delivered as a study programme.

30. Study programmes:

    - include one or more substantial academic, applied or technical qualifications that provide a recognised route into employment, further or higher education;
    - require students who have not achieved GCSE grade 4 in mathematics and/or English to work towards the achievement of these qualifications; and
    - provide work experience and other non-qualification activity, such as tutorials and enrichment activity, to develop students' personal skills and prepare them for employment or higher/further education.

31. Boards should note that only those technical and applied qualifications that have been approved by DfE will be reported in 16 to 19 performance tables.

32. Guidance for those involved in the planning or delivery of 16 to 19 study programmes is published annually.

6.5.3 Cultural education

33. It is a legal requirement for all schools to promote the cultural development of their pupils through the spiritual, moral, cultural, mental and physical development education requirements. Cultural education forms an important part of a broad and balanced curriculum, and children and young people should be provided with an engaging variety of cultural experiences throughout their time at school.

34. The policy paper 'Cultural Education' provides an overview of some of the programmes and opportunities open to schools and teachers to give all children access to a high-quality cultural education. Appendix A outlines the minimum levels of cultural activities that pupils should have experienced through school by age that, while voluntary, would provide a benchmark for a board to reflect on its school cultural provision.

35. There is also a legal requirement placed on maintained schools to provide music and art and design as part of their curriculum for all pupils for all pupils aged five to 14; drama is also present within the national curriculum, and dance is a statutory element of the PE programmes of study.

6.5.4 Relationships, Sex and Health Education

36. From September 2020, Relationships education will be compulsory for all primary pupils, Relationships and Sex Education (RSE) will be compulsory for all secondary pupils, and Health Education will be compulsory for all pupils in primary and secondary state-funded schools.[44] However, due to the impact of coronavirus, schools have flexibility to decide how they discharge their duties effectively. If a school is unable to begin teaching until summer term 2021 they will need to decide how much of the content they will be able to cover and should still be able to demonstrate how they will cover the entirety of the curriculum in the future. Furthermore, as the subjects are compulsory from 1 September 2020, the new parental right to withdraw provision will apply.

37. Relationships Education or RSE must be taught in all maintained schools, academies and independent schools. This includes pupil referral units, maintained special schools, special academies, and non-maintained special schools. All schools, except non-academy independent schools, must make provision for Health Education. PSHE is already compulsory in non-academy independent schools so in effect Health Education will be compulsory in all schools.

38. All organisations must have regard to the statutory guidance issued under the respective legislation that applies to them. The Department has also provided guides for parents and advice for schools on engaging parents about primary Relationships Education, which includes information on the important role governors and academy trustees can play in this process.

39. FAQs are available on GOV.UK and provide a summary of the content that these subjects are expected to cover, including how they are designed to foster respect for others and for difference, and educate pupils about healthy relationships.

40. Governors and academy trustees must ensure that their school or trust has in place a written policy for Relationships Education and RSE, which should be published on the school website. Schools must consult parents in developing and reviewing their policy and ensure that it meets the needs of pupils and parents and reflects the community they serve.

[44] The Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019, made under Children and Social Work Act 2017 (s34 & s25) made amendments to legislation to make these subjects compulsory as per paragraph 26.

41. Parents will have the right to request their child be withdrawn from sex education, delivered as part of RSE (but not from sex education within the national curriculum). Further details are contained in the guidance.

42. Sex education is not compulsory in primary schools and the content set out in the statutory guidance therefore focuses on Relationships Education.

43. The Department continues to recommend that all primary schools should have a sex education programme tailored to the age and the physical and emotional maturity of the pupils.

44. Where a primary school chooses to teach aspects of sex education (which goes beyond the national curriculum for science), the school should set this out in their policy and should consult with parents on what is to be covered. Primary schools that choose to teach sex education must allow parents a right to withdraw their children. Unlike sex education in RSE at secondary, in primary schools, head teachers must comply with a parent's wish to withdraw their child from sex education beyond the national curriculum for science.

6.5.5 Physical education and sport

45. A high-quality PE curriculum inspires all pupils to succeed and excel in competitive sport and other physically demanding activities. It should provide opportunities for pupils to become physically confident in a way which supports their health and fitness. Opportunities to compete in sport and other activities build character and help to embed values such as fairness and respect.

46. All primary schools boards should be aware of the PE and sport premium. The premium must be used to fund additional and sustainable improvements to the provision of PE and sport, for the benefit of primary-aged pupils, to encourage the development of healthy, active lifestyles. The department has published guidance on the PE and sport premium which sets out the reporting requirements that are attached to the funding. Therefore, as part of their role, governors and academy trustees should be monitoring for example, how the funding is being spent, how it fits into school improvement plans and the impact it is having on pupils.

6.5.6 Religious education

47. All schools must teach religious education (RE). Maintained schools without a religious character must follow their locally agreed syllabus.[45]

48. VA schools designated with a religious character must provide RE in accordance with the trust deed or religious designation of the school, unless parents request the locally agreed syllabus.[46]

49. Foundation schools and VC schools designated with a religious character must follow the locally agreed syllabus, unless parents request RE in accordance with the trust deed or religious designation of the school.[47]

50. RE is compulsory in both academies designated with a religious character and those without (except for Alternative Provision academies), as set out in their funding agreement.

51. Parents have the right to withdraw their children from all or any part of RE. They do not have to give a reason to the school and the school must comply with their request. Schools should ensure that parents who want to withdraw their children from RE are aware of the RE syllabus and that it is relevant to all pupils and respects their own personal beliefs. They should be given the opportunity to discuss this, if they wish. The school may also wish to review such a request each year, in discussion with the parents. The right of withdrawal does not extend to other areas of the curriculum when, as may happen on occasion, spontaneous questions on religious matters are raised by pupils or there are issues related to religion that arise in other subjects such as history or citizenship.

6.5.7 Collective worship

52. All maintained schools must provide a daily act of collective worship for their pupils, except where there are permitted withdrawals. All academies (except for alternative provision academies) have a similar requirement under the terms of their funding agreement.

53. All schools without a designated religious character must provide a daily act of worship, normally wholly or mainly of a broadly Christian (that is non-

[45] The locally agreed syllabus is a statutory syllabus of RE prepared under Schedule 31 to the Education Act 1996 and adopted by the LA under that schedule. It must be followed in maintained schools without a designated denomination.
[46] Schedule 19(2), School Standards and Framework Act 1998
[47] Schedule 19(3), School Standards and Framework Act 1998

denomination) character and the executive leader is normally responsible for arranging this after consulting the board.

54. In voluntary-aided schools, VC schools and foundation schools designated with a religious character, the board is responsible for arranging collective worship in accordance with the trust deed or religious designation of the school after consulting the executive leader and this is a requirement also of relevant academies under their funding agreement.

55. In some maintained schools without a designated religious character, the family religious backgrounds of a majority of pupils may lead the executive leader and board to conclude that broadly Christian collective worship is not appropriate. The executive leader can apply to the local Standing Advisory Council on Religious Education (SACRE) to have the broadly Christian requirement disapplied and replaced by collective worship distinctive of another faith and should consult the board before doing so.

56. An academy board wishing to make a similar change should apply to the Secretary of State via the ESFA.[48]

6.5.8 Political bias

57. All boards, headteachers and LAs (where applicable) must not allow the promotion of one-sided political views. This applies both to the teaching of any subject and to extra-curricular activities at the school.[49] Where political issues are covered, opposing views must be presented in a balanced way. The board, executive leader and LA must also prevent pupils under 12 from taking part in political activities. This covers activities at school or elsewhere. This applies only where a member of staff or anyone acting on behalf of the school or a member of staff arranges the activity. All boards must be aware that staff have a responsibility to ensure that they act appropriately in terms of their behaviour, the views they express (in particular political views) and the use of school resources at all times. School resources should not be used for party political purposes.

[48] Alternative provision academies may not need to apply to the ESFA for an exemption. They should refer to their funding agreements.

[49] Education Act 1996, s406 - 407.

6.5.9 Careers guidance

58. All maintained schools must secure access to independent careers guidance for pupils in years 8-13.[50] Many academies are subject to the same duty through their funding agreements.

59. All maintained schools and academies are required to ensure there is an opportunity for a range of education and training providers to access all pupils in years 8-13 for the purpose of informing them about approved technical education qualifications and apprenticeships. Organisations must publish a policy statement setting out the circumstances in which providers will be given access to pupils.

60. Since September 2018, all maintained schools have been required to publish information about their careers programme on their website, including the name and contact details of the Careers Leader.

61. Boards subject to these duties must have regard to the careers statutory guidance to ensure that high-quality careers guidance is provided to pupils. Boards should provide clear advice to the head teacher on which they can base a strategy for careers education and guidance, is led and co-ordinated by the school's careers leader, meets the school's legal requirements and is informed by the requirements set out in the document.

62. The board should ensure that their school is using the Gatsby Charitable Foundation's Benchmarks to develop and improve their career provision. The benchmarks define all the elements of an excellent careers programme based on the best national and international research.

63. All boards have a crucial role to play in connecting their school with the wider community of business and other professional people in order to enhance the education and career aspirations of pupils. Boards are encouraged to have a nominated individual who takes a strategic interest in careers education and guidance and encourages employer engagement, which may in turn potentially lead to employers providing new, skilled individuals to serve on the board. Boards should engage with their Careers & Enterprise Company Enterprise Adviser (where appointed), who can help the school to develop its careers programme and to broker relationships between employers and the school.

[50] Education Act 1997, s42A

6.5.10 The early years foundation stage (EYFS) statutory framework

64. The EYFS sets out requirements for both learning and development and safeguarding and welfare provision for children from birth to five. It is mandatory for all schools with nursery and reception classes to deliver the EYFS.[51] This includes maintained schools, academies and all providers on the Early Years Register must also deliver it. The EYFS includes requirements for a number of policies and procedures that may be needed by schools, and boards of establishments delivering the EYFS should reassure themselves that where such policies and procedures are required, they are in place.

65. EYFS reforms will be nationally implemented from September 2021. Government has proceeded with offering schools the opportunity to adopt the final reforms from September 2020.

66. Further guidance and supporting materials are available on GOV.UK.

6.5.11 Children with special educational needs and disabilities (SEND)

67. All boards have legal duties in relation to pupils with SEND. Legal duties on SEND are set out in the Children and Families Act 2014[52] and statutory guidance on the SEND code of practice, jointly published by the department and the Department of Health.

68. Boards are also under a duty[53] to 'to take such steps as it is reasonable to have to take to avoid the substantial disadvantage' to a disabled person caused by a provision, criterion or practice applied by or on behalf of a school, or by the absence of an auxiliary aid or service. Boards providing auxiliary aids and services is part of the 'reasonable adjustments' duty. Detail of Equality Act duties that apply to schools is available in the Equality Act 2010: advice for schools, and Technical Guidance for Schools in England published by EHRC.

69. In practice, the functions these duties require of the board can be delegated to a committee, an individual or to the executive leader, although the responsibility is still with the board itself to ensure that the functions are carried out. It should decide, with the executive leader, the school's policy and approach to meeting children and young people's SEND requirements, including those with and

[51] The EYFS is given legal force through an Order and Regulations made under the Childcare Act 2006.
[52] Part 3 of the Children and Families Act 2014 replaces Part 4 of the Education Act 1996
[53] Equality Act 2010

without Education, Health and Care (EHC) plans.[54] EHC plans have replaced statements of SEN.

70. All boards have legal duties under the Children and Families Act 2014 and must have regard to the statutory guidance, 'the SEND Code of Practice: 0 to 25 years'. Academies must also meet these requirements by virtue of their funding agreement. They must (SEND Code of Practice references provided):

- co-operate with the LA in reviewing the provision that is available locally (Chapter 3) and developing the local offer (Chapter 4);
- use their best endeavours to make sure that a child with SEND gets the support they need – this means doing everything they can to meet children and young people's SEND (para 6.2);
- ensure that children and young people with SEND engage in the activities of the school alongside pupils who do not have SEND (para 6.2);
- inform parents when they are making special educational provision for a child (para 6.2);
- ensure that arrangements are in place in schools to support pupils at school with medical conditions (para 6.11);
- provide access to a broad and balanced curriculum (para 6.12);
- ensure that pupils from year 8 until year 13 are provided with independent careers advice (para 6.13);
- have a clear approach to identifying and responding to SEND (paras 6.14 – 6.63);
- provide an annual report for parents on their child's progress (paras 6.64 – 6.51);
- record accurately and keep up to date the provision made for pupils with SEND (paras 6.52 – 6.58);
- publish information on their websites about the implementation of the board's policy for pupils with SEND, the School SEN Information Report;[55] (paras 6.59 – 6.83);
- publish information about the arrangements for the admission of disabled children, the steps taken to prevent disabled children being treated less

[54] EHC plans are drawn up by LAs to set out a child or young person's SEN and the provision that must be made for the child or young person to meet those needs.

[55] Children and Families Act 2014, s69

favourably than others, the facilities provided to assist access of disabled children, and their accessibility plans;

- ensure that there is a qualified teacher designated as special educational needs co-ordinator (SENCO) for the school (paras 6.84 – 6.94);
- determine their approach to using their resources to support the progress of pupils with SEND (paras 6.95 – 6.99).

71. In addition:

- There should be an individual on the board or a committee with specific oversight of the school's arrangements for SEND. School leaders should review regularly how expertise and resources used to address SEND can be used to build the quality of whole-school provision as part of their approach to school improvement.
- When considering an appeal from a parent or young person, the First-tier Tribunal (Special Educational Needs and Disability) must have regard to the SEND Code of Practice 2015. The Tribunal will expect LAs, early education settings, schools and colleges to be able to explain any departure from the Code, where it is relevant to the case it is considering.

72. Boards providing extended services must also consider their duties under the Equality Act 2010: in particular, whether proposed extended services affect their functions and responsibilities towards their pupils, the users of these services or their employees. When services are provided by a third party on schools' premises, either independently of the school or on behalf of the school, boards should establish who would be regarded as the service provider with the responsibility to make 'reasonable adjustments' and/or access improvements for disabled users, pupils or employees.

73. The SEND Governance Review Guide, co-funded by the DfE and Driver Youth Trust, is available to download. The guide draws upon the six features of effective governance and sets out a framework for how to ensure that learners with SEND access high-quality provision. The guide will assist boards in supporting and promoting discussions with regards to outcomes for learners with SEND.

6.5.12 Special Educational Needs Coordination

74. Boards must ensure that there is a qualified teacher designated as a SENCO for the school.

75. The SENCO must be a qualified teacher working at the school.[56] A newly appointed SENCO must be a qualified teacher and, where they have not previously been the SENCO at that or any other relevant school for a total period of more than twelve months, they must achieve a National Award in Special Educational Needs Co-ordination within three years of appointment. A national award must be a postgraduate course accredited by a recognised higher education (HE) provider.

76. The board should reassure itself that the key responsibilities of the SENCO are drawn up and monitor the effectiveness of the way the responsibilities are carried out against a list of illustrative activities, as described in the SEND Code of Practice: 0 to 25 years (paras 6.84-6.94). The board should also reassure itself that the SENCO has sufficient time and resources to carry out their role effectively.

6.5.13 Looked-after and previously looked-after children

77. Boards are required to appoint a designated teacher to promote the educational achievement of looked-after and certain previously looked-after children[57] who are on the school roll.[58] Boards must have regard to statutory guidance on the roles and responsibilities of designated teachers for looked-after and previously looked-after children.

78. Boards must ensure, as a minimum, that:

- a designated teacher is appointed;
- the teacher undertakes appropriate training;
- it considers an annual report from the designated teacher; and
- it acts on any issues that the report raises.

79. For looked-after children, regulations specify that the role should be carried out by:

- a qualified teacher, within the meaning of section 132 of the Education Act 2002, who has completed the appropriate induction period (if required); or

[56] Children and Families Act 2014, s67

[57] For the purposes of this duty, a previously looked-after child is one who is no longer looked after in England and Wales because s/he is the subject of an adoption, special guardianship or child arrangements order (which includes arrangements relating to with whom the child is to live, or when the child is to live with any person), or has been adopted from 'state care' outside England and Wales.

[58] For maintained schools: Children and Young Persons Act 2008, and The Designated Teacher (Looked After Pupils etc.) (England) Regulations 2009. For academies: their Funding Agreement.

- the executive leader or acting executive leader at the school.

80. All looked-after children have a personal education plan (PEP) as part of the care plan that is drawn up by the LA that looks after them. The PEP forms part of the child's education record.[59]

81. Schools are supported in promoting the education of looked-after and previously looked-after children by LA Virtual School Heads.

82. Details on the admission arrangements for looked-after children are in section 6.10.

6.5.14 Assessing attainment and achievement

83. Schools should assess pupils' attainment throughout their compulsory education and, by law, must report annually to parents or carers on their child's achievements and general progress. In addition, there are statutory assessments at key points when pupils have completed the EYFS and the programmes of study for key stages 1 and 2, usually at the ages of 5, 7, and 11. KS1 and KS2 pupil outcomes from statutory assessments must be included in annual reports to parents if taken by the child that year.

84. The outcomes of KS2 statutory assessments are used to calculate school performance measures, with KS1 data being the current starting point for the KS2 progress measure.

85. Pupils working below the standard of the national curriculum assessments and engaged in subject-specific study at KS1 or KS2, must be assessed using the pre-key stage standards framework from the 2020/21 academic year onwards.

86. Pupils working below the standard of the national curriculum assessments and not engaged in subject-specific study at KS1 and KS2, can be assessed using the engagement model or P scales 1-4 in the 2020/21 academic year only, but neither model is statutory during 2020/21. The engagement model will become statutory from the 2021/22 academic year.

87. Schools that are prepared to adopt the engagement model in the 2020/21 academic year can assess and report using it; any schools that need more time to implement the engagement model have the option of reporting their teacher assessment outcomes against P scales 1-4, for one final year.

88. The Reception Baseline Assessment (RBA), a short teacher-mediated check of a pupil's skills in the first six weeks of primary school. RBA data will in the

[59] The Education (Pupil Information) (England) Regulations 2005.

future form the starting point for the KS2 progress measure (replacing the use of KS1 data currently). 2020/21 will be an early adopter year for the RBA, enabling schools to familiarise themselves with the assessment in advance of its statutory implementation from September 2021.

89. There are also statutory checks of phonics for pupils turning age 6 in that academic year (typically year 1) and multiplication tables (in year 4). In 2020/21 academic year only, there will be an additional statutory check of phonics for pupils at age 7 (typically year 2 pupils) in the autumn term 2020, as a result of the cancellation of the 2020 check when that cohort was in year 1.

90. Year 2 pupils who meet the expected standard in phonics in the autumn check will not be required to complete any further statutory assessments in phonics. Year 2 pupils who do not meet the expected standard in the autumn check will be expected to take the statutory check in June 2021, alongside year 1 pupils. The outcome of the phonics screening check and the multiplication tables check (MTC) are not assessments whose outcomes are used to judge school performance. Results of phonics, KS1 and MTC are published at local authority and national level, but not individual school level.

91. Results of the statutory check of phonics for year 2 pupils in the autumn term 2020 will not be published. However, headteachers must report the pupils' scores to parents by the end of the summer term. Headteachers can choose how to communicate results to parents, which should be provided in the context of their overall attainment and progress. Headteachers must provide reports for all pupils, including those who have left the school or were absent during the check.

92. While boards are not directly involved in these processes, they should be familiar with statutory assessment system as well as how the school's own system of non-statutory assessment captures the achievements and progress of all pupils. The Standards and Testing Agency provides information and guidance on the administration of statutory assessment, while the Commission on Assessment Without Levels and the Making Data Work report provide useful information and guidance on effective and proportionate non-statutory assessment practice.

6.6 Staffing and performance management

93. The main staffing functions of the board in a maintained school, including the appointment, conduct, suspension and dismissal of staff are set out in the

School Staffing (England) Regulations 2009[60] and supporting 'Staffing and employment advice for schools'.

94. The requirements on academy trusts are set out in their funding agreements and regulations[61] and in published supporting 'Staffing and employment advice for schools'.

95. In addition to their responsibilities under employment law, boards also have responsibilities under the Equality Act 2010. This sets out that employers must not discriminate against employees on any protected grounds (e.g. race or sex) in relation to pay, conditions, opportunities, promotion, training or dismissals. Advice for employers on their responsibilities is available on the ACAS website and further advice to help schools understand how the Equality Act affects them, and how to fulfil their duties under the Act, can be found in published guidance.

96. The board of a maintained school may delegate all its functions relating to staff employment in schools[62] with the exception of:

- establishing a selection panel to appoint a headteacher or deputy headteacher, and approving or appointing a selection panel's recommendation for the appointment of a headteacher or deputy headteacher;
- making sure that headteachers benefit from any statutory entitlements and comply with the duties imposed on them which are contained within the School Teachers' Pay and Conditions Document 2020 (STPCD);
- responding to any report from the LA that raises serious concerns about the performance of the headteacher;
- establishing procedures for the regulation of conduct and discipline of staff, staff grievance procedures and procedures for dealing with the capability of staff; and
- making sure that sufficient persons who interview job applicants have completed safer recruitment training.

97. The responsibility to ensure that delegated responsibilities are carried out remains with the board.

[60] The School Staffing (England) Regulations 2009 are amended by The School Staffing (England) (Amendment) Regulations 2012 and The School Staffing (England) (Amendment) Regulations 2014.

[61] The Education (Independent School Standards) Regulations 2014.

[62] The School Staffing (England) Regulations 2009, regulation 4.

98. Academy trusts are free to decide which functions they delegate and must record this within their scheme of delegation.

6.6.1 Appointing an executive leader

99. Appointing an executive leader is a pivotal decision in an organisation's life. It is crucial that a board has the skills it needs to carry out a thorough and effective selection process. Boards may need to seek help or training, for example, on good interviewing techniques or on how to secure meaningful and accurate references.

100. 'A guide to selecting and recruiting a new headteacher', developed jointly with the NGA, is available on GOV.UK. The Headteachers' Standards may also be used to support the recruitment and appointment of headteachers.

101. Every maintained school must have a headteacher.[63] The board must notify the LA in writing of any headteacher vacancy, advertise the post in a manner considered appropriate, and appoint a selection panel. The board must appoint a member of staff to carry out the functions of a headteacher pending the appointment of a headteacher or in the absence of a headteacher.

102. The Education (Independent School Standards) Regulations 2014 require an academy to publish the name of a headteacher.

103. As part of the appointment process the board of a maintained school or academy trust may ask for details about whether an executive leader or teacher at the school has been subject to capability procedures in the previous two years. A maintained school must provide this. The trust of any academy that opened after April 2013 must also provide this information.[64]

104. In maintained schools, where the LA is the employer, a representative of the authority may attend proceedings relating to the selection or dismissal of any teacher. [65] The board must consider any advice offered by the representative.

105. For Foundation and voluntary-aided schools, where the board is the employer[66] and where it has been agreed the LA has advisory rights, the board must consider any advice offered. Where these are schools designated with a religious character, including voluntary-controlled schools, it is recommended

[63] Education Act 2002, s35(3) and s36(3).

[64] Subject to the terms of its funding agreement an academy that opens earlier than April 2013 may also be required to provide information relating to a teacher's capability procedures.

[65] Community, voluntary-controlled, community special or maintained nursery schools (Education Act 2002, s35).

[66] Foundation, voluntary-aided and foundation special schools (Education Act 2002, s36)

they have an agreement, in writing, with the diocesan authority to give it the same advisory rights as the LA in relation to the selection or dismissal of teachers at the school. Any advice provided should therefore be considered.[67]

106. In academy trusts that contain schools that have been designated with a religious character and/or the articles of association in an academy trust require it, then any relevant religious authority may also have such rights to attend proceedings and provide advice, and its agreement to the appointment of a teacher.[68]

6.6.2 Discrimination in appointments and during service

107. Employers must be aware of their responsibilities in respect of discrimination within equalities legislation[69] when recruiting staff and throughout the employment relationship.

108. As set out in section 3.2 of the Recruiting a headteacher guide, it is good practice for all individuals on the selection panel to receive unconscious bias training before the selection process begins. Further information about unconscious bias is available from the Advisory, Conciliation and Arbitration Service (ACAS).

109. Employers are not allowed to ask about the health and disability of any candidate until after a job offer has been made, unless such an enquiry is to establish their capability to carry out a function intrinsic to the work concerned. Boards and academy trusts must make 'reasonable adjustments' to their employment arrangements, practices or premises if such changes would help alleviate any disadvantage suffered by a disabled employee compared to a non-disabled person.

110. Legislation sets out the circumstances in which maintained schools, designated by the Secretary of State as having a religious character, have some discretion to take into account certain religious or denominational considerations in making specified employment decisions relating to their staff (i.e. decisions on appointment, remuneration, promotion and dismissal). Guidance on staff at schools with a religious character is provided in chapter 9 of the department's Guidance on managing staff employment in schools.

111. As detailed in section 2.3.1 of the Recruiting a headteacher guide, pursuant to section 149 of the Equality Act 2010, employers of school staff and boards will

[67] Staffing and employment rights advice for schools, October 2018
[68] Staffing and employment rights advice for schools, October 2018
[69] Equality Act 2010.

be required to comply with the Public Sector Equality Duty (PSED) when recruiting a headteacher. Further information is available in what equality law means for you as an employer: when you recruit someone to work for you.

112. In relation to academies, academy converters follow the position of the school prior to conversion. New academies with a religious character are able to appoint all their teaching staff based on faith in line with their designation, and can appoint support staff by application of religious criteria, where they can demonstrate an occupational requirement for doing so.

6.6.3 Safer recruitment

113. A key aspect of safeguarding is the vetting of applicants and prospective volunteers working with children to ensure they are not unsuitable. Specific and detailed information about required safer recruitment practices can be found within part three of KCSIE. In relation to the appointment of staff, Boards must have regard to the requirements and important information set out in KCSIE which includes:

- the recruitment and selection process;
- pre-appointment and vetting checks, regulated activity and recording of information;
- other checks that may be necessary for staff, volunteers and others, including the responsibilities on schools and colleges for children in other settings; and
- how to ensure the ongoing safeguarding of children and the legal reporting duties on employers.

114. For the majority of work in schools, boards and academy trusts must obtain, for all new appointments, an enhanced DBS certificate before, or as soon as practicable after appointment. If the work is within the scope of 'regulated activity' relating to children,[70] the enhanced certificate will need to include information to confirm the person is not barred from working with children (barred list information). Where the person will begin work before the DBS certificate is available a separate barred list check must be obtained before work commences.

115. Boards will usually make the request for the DBS certificates/checks through their LA, which acts as an umbrella body for the DBS; academy trusts will have

[70] As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

their own umbrella body arrangements. Further guidance on these checks is available on the DBS website and within KCSIE.

116. Employers have a duty to check potential employees' documents before employing them, to ensure they have the right to work in the UK.[71] Further guidance on the checks needed to establish the right to work in the UK is available on GOV.UK.

117. The statutory guidance 'Disqualification under the Childcare Act 2006' provides information to help schools and local authorities to understand their responsibilities under the Childcare Act 2006 where staff are working in childcare provision in schools. The childcare disqualification arrangements apply to staff working with young children in childcare settings, including primary schools, nurseries and other registered settings, such as childcare provision on college sites.

118. The NSPCC run online safeguarding training to help organisations recruit staff or volunteers in schools, academies or colleges. Further details are available on the NSPCC website. There is a charge for this service.

119. The board must reassure itself that all appropriate suitability checks have been undertaken and that the school keeps a single central record, detailing the range of checks it has carried out on its staff.

120. When sharing information employers should make sure that they act in accordance with Data Protection legislation and data protection principles, making sure that the information is provided fairly and lawfully to prospective employers.

6.6.4 Statutory induction for newly qualified teachers (NQTs)

121. The board should be satisfied that the institution in which the statutory induction of NQTs is being served has the capacity to support the NQT so the headteacher can fulfil their responsibilities. In addition, charges by appropriate bodies for their services, in respect of statutory induction will be directed to the board. The current statutory guidance is published on GOV.UK.

[71] The School Staffing (England) Regulations 2009 and The Education (Independent School Standards) Regulations 2014.

6.6.5 Teacher qualifications

122. The board of a maintained school or non-maintained special school should be aware that teachers must hold qualified teacher status (QTS)[72] (unless the teacher satisfies one of the requirements or conditions specified in the schedule to the appropriate regulations). This also applies to academy trusts whose funding agreement states that any teachers that it employs must hold QTS.

123. Teachers who hold Qualified Teacher Learning and Skills (QTLS) status and membership of the Society for Education and Training (SET), will automatically be recognised as qualified teachers in schools in England, and do not need QTS. They will also be exempt from serving a statutory induction period in schools. This will allow them to be appointed to permanent posts in maintained schools in England and they will be paid on one of the pay ranges for qualified teachers. They will continue to be recognised as qualified teachers providing they remain a member of the SET.

124. The same statutory requirement to hold QTS is not in place for teachers employed by academies and free schools unless the academy's funding agreement retain a clause to that effect. An academy may be required through its funding agreement to employ teachers with QTS, but the department may agree to relax this requirement if requested by an academy. Even in academies, special educational needs coordinators and designated teachers for looked-after children must have QTS. All teachers in special academies must hold QTS.

125. The Education (Specified Work) (England) Regulations 2012 allow maintained schools to employ industry experts as instructors to teach, where specialist qualifications and/or experience are required, as a first choice and on a permanent basis. Instructors will continue to be classed as unqualified teachers and will be paid at the appropriate level of the unqualified teachers' pay range (in maintained schools).

6.6.6 Teacher and executive school leadership appraisal

126. Appraisal should be a supportive, developmental process designed to ensure that all teachers and executive school leaders have the skills and support that they need to carry out their role effectively. The appraisal process should help to ensure that teachers and executive school leaders continue to improve their professional practice throughout their careers. The board should ensure a robust appraisal policy is in place which minimises impact on workload.

[72] The Education (Specified Work) (England) Regulations 2012, regulation 3(1).

127. Boards are responsible for the appraisal of the executive leader.

128. Academy trusts are free to determine their own appraisal process and may adopt the requirements for maintained schools if they wish.

129. Boards in maintained schools have a statutory duty[73] to:

- appoint an external adviser for advice and support on the headteacher's appraisal and to consult that adviser on setting objectives for, and appraisal of, the headteacher;
- inform the headteacher of the standards against which their performance will be assessed;
- set objectives for the headteacher, whilst having regard to the work-life balance of the headteacher;[74]
- appraise the performance of the headteacher, assessing their performance of their role and responsibilities against the relevant standards and their objectives;
- assess the headteacher's professional development needs and action needed to address them;
- make a recommendation on headteacher's pay, where relevant;
- give the headteacher a written report of their appraisal which includes the assessments and recommendation above;
- determine the appraisal period that applies to teachers (including headteachers);[75]
- adopt a document that sets out the appraisal process for teachers (including headteachers) and make that document available to teachers; and
- make sure that headteachers carry out their duties in respect of appraising other teachers (including recommendations on pay).

130. In practice, boards will want, in relation to the appraisal of the headteacher, to:

- satisfy themselves that the external advisor has the skills, experience and objectivity to provide them with advice and support;
- consider whether to delegate the headteacher's appraisal to a sub-group;

[73] The Education (School Teachers' Appraisal) (England) Regulations 2012

[74] The School Staffing (England) Regulations 2009.

[75] The Education (School Teachers' Appraisal) (England) Regulations 2012, regulation 5.

- satisfy themselves that the headteacher's objectives are SMART;[76]
- decide which standards they will use to assess the headteacher's performance. They must assess headteachers' performance against the Teachers' Standards and may also wish to use the National Standards for Headteachers. They may also use the Headteachers' Standards to inform performance management;
- decide what arrangements to make for observing the headteacher's performance, including any arrangements for classroom observation where headteachers teach; and
- satisfy themselves that appraisal evidence informs other decisions, for example, on professional development and pay decisions.

131. In relation to appraisal more widely, boards will want to:

- scrutinise the content of the school's draft appraisal policy carefully to make sure that it will support effective appraisal in the school, challenging the headteacher as appropriate. In particular, they will want to satisfy themselves with:
- the provision that is made for the appraisal of teacher performance against the Teachers' Standards and their objectives, and the method of collecting evidence (which should not add to teachers' workload);
- the arrangements being made for classroom observation, now that there is no annual limit on the amount of observation that can take place, and whether these are proportionate and sustainable;
- any arrangements for the headteacher to delegate the duty of managing the performance of teachers to others;
- satisfy themselves that the appraisal policy is being implemented effectively and fairly in the school, challenging the headteacher on how objectives and assessments are quality assured and moderated;
- satisfy themselves that appraisal evidence informs other decisions for example, on professional development and pay; and
- keep the policy under review and amend it as necessary.

[76] Specific, measurable, achievable, realistic, timed.

6.6.7 Pay and conditions of service

132. The department has published guidance to help maintained school governing boards to determine their approach to teachers' pay.

133. The relevant body (usually the board) must adopt and take full responsibility for maintaining, updating and implementing a robust and considered pay policy that:

- sets out clearly the basis on which all decisions that determine pay will be made and communicated to all teachers;
- sets out the extent to which specific functions relating to pay determination will be delegated to others, such as the headteacher;
- explains the role that the relevant body will play in determining decisions relating to individual teachers;
- fully complies with all relevant aspects of equalities legislation;
- sets the date by which it will determine teachers' annual pay review; and
- establishes procedures for addressing teachers' grievances, in relation to their pay, in accordance with the 'ACAS Code of Practice'.

134. Such a policy must conform to any statutory provisions that are set out within the STPCD. Boards must assure themselves that the arrangements proposed for linking appraisal to pay progression are robust and can be applied consistently.

135. All teachers in maintained schools are subject to statutory conditions relating to their professional duties and working time.[77] In addition to these statutory conditions, teachers are subject to other conditions of employment laid down in their contracts of employment, such as those that provide for sick pay and maternity leave. The terms of certain local agreements may also be incorporated into their contracts of employment.

136. In schools where the LA is the employer, the pay and conditions of service for school support staff must be on the scale of grades determined by the LA. In foundation and voluntary-aided schools, the board is free to determine the pay and conditions of support staff.

[77] School Teachers' Pay and Conditions Document (STPCD), part 7.

137. Academy trusts are free to set their own pay and conditions of service for any teachers and support staff.[78]

138. All boards should have regard to the work-life balance of teachers and the executive leadership of the organisations.

139. Boards should have due regard for the wellbeing and mental health of the school leadership team and teaching staff more broadly. Boards may wish to consider designating a governor or academy trustee as a wellbeing champion to provide strategic support to the school leadership team as appropriate.

Executive pay

140. The board of trustees must ensure its decisions about levels of executive pay follow a robust evidence-based process and are reflective of the individual's role and responsibilities. No individual can be involved in deciding his or her remuneration.

141. The board must discharge its responsibilities effectively, ensuring its approach to pay and benefits is transparent, proportionate and justifiable. Further advice and is available in the AFH and in the guidance on setting executive salaries.

142. Under the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 organisations which meet the criteria in the regulations are required to publish information on its website about the gender pay gap in their organisation.

6.6.8 Discipline, grievance and capability procedures

143. The board of maintained schools must approve disciplinary and grievance procedures for staff. Academy trusts may delegate this duty. Maintained school boards must also approve capability procedures for dealing with staff underperformance and provide a procedure to enable staff to appeal against a decision to dismiss them. Boards may adopt the department's Model capability policy for teachers.

144. Advice for boards about establishing these procedures is provided in Guidance on managing staff employment in schools. Boards should be mindful of their

[78] Where a maintained school converts to an academy, at the point of transfer the existing terms and conditions of teachers and support staff are protected under The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements. The STPCD will, therefore, remain relevant to any teachers whose contract has not been renegotiated.

obligations under employment law and take into account the ACAS Code of Practice.

145. Academy trusts are responsible for establishing their own staff procedures and need to take account of the relevant legislation and guidance.

6.6.9 Referring cases to the Teaching Regulation Agency (TRA) and DBS

146. Part 8 of the Education Act 2002 as amended by the Education Act 2011 provides for the Secretary of State to regulate teachers' professional conduct. The TRA operates these arrangements on behalf of the Secretary of State. Guidance is available on GOV.UK.

147. The regulatory arrangements cover teachers[79] in all schools in England and only deal with the most serious cases of misconduct. Less serious cases of misconduct, and all cases of incompetence, should be dealt with at a local level. Employers, including an employment or supply agency, can refer a teacher at any time, but must consider whether to refer a teacher who has been dismissed for serious misconduct, or would have been dismissed had they not resigned.

148. The police, the DBS, other regulators, members of the public, and other interested organisations may also refer cases of misconduct. The TRA holds a list of teachers who have been prohibited from teaching.

149. Schools and colleges have a legal duty[80] to make a referral to the DBS, anyone who is removed from working (paid or unpaid) in regulated activity (or would have been removed had they not left) and it is thought:

- the harm test is satisfied in respect of that individual;
- the individual has received a caution or conviction for a relevant offence; or
- the individual has engaged in relevant conduct.[81]

150. The DBS will consider whether to bar the person. Referrals should be made as soon as possible after the resignation or removal of the individual. Guidance on referrals, including the harm test and relevant conduct is provided by the DBS.

[79] "teachers" should be assumed to include "instructors" and interpreted as a person engaged to carry out teaching work, as defined by the Teachers' Disciplinary (England) Regulations 2012.
[80] KCSIE 2020 (para 179)
[81] The list of offences is set out in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009 No. 37) (amended).

6.6.10 Trade unions and disputes with staff

151. Employers must recognise those trade unions with which they have a voluntary recognition agreement or where statutory recognition has been recognised by the Central Arbitration Committee (CAC). In foundation and voluntary-aided schools, the board as employer will recognise such unions. For academy schools it will be the trust and for community and voluntary-controlled schools it will be the LA.

152. Trade union recognition and the continuation of consultation and bargaining rights are protected under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) (2006). This means that for staff transferring from an existing school to an academy trust, any trade union recognition agreements applying to transferring staff will also transfer, as will any collective agreements in force at the time of transfer. The process for trade union recognition is set out in the Trade Union and Labour Relations (Consolidation) Act 1992 . Further information about ACAS and the advice it provides on trade union recognition is on the ACAS website.

153. Guidance on handling strike action in schools has been published on GOV.UK.

6.6.11 Employment tribunals

154. Employment tribunals hear complaints lodged against employers on the grounds that they have discriminated against individuals breached their rights under employment law or breached the terms of their employment contracts. Tribunals can order an employee to be re-engaged or reinstated, and they can award compensation. Guidance on the role of employment tribunals is on the GOV.UK and ACAS websites.

6.6.12 Teachers' Pension Scheme (TPS)

155. The TPS is an occupational, public service pension scheme for teachers governed by regulations.[82] The department has overall responsibility for the TPS whilst the day-to-day administration is undertaken by Capita Teachers' Pensions.

156. Full information regarding the TPS and the level and range of benefits available, including advice on ill health retirement and retired teachers and re-employment, is on the TP website, which presents information from the perspective of both the member and the employer.

[82] The Teachers' Pensions Regulations 2010 and The Teachers' Pension Scheme Regulations 2014.

157. Employers have a crucial role in the successful administration of the TPS and must comply with the requirements of the scheme administrator to provide accurate and timely information and also to provide pension contributions. The board has responsibility for ensuring that only staff who predominantly carry out teaching work are enrolled in the TPS.[83] The board will need to give careful consideration as to whether or not executive leaders meet the TPS eligibility requirements. Details of the full range of employer duties are on the TP Employer Hub.

6.6.13 The Local Government Pension Scheme (LGPS)

158. The LGPS is one of the largest public sector pension schemes in the UK. It is a nationwide pension scheme for people working in local government or working for other types of employer participating in the scheme. The LGPS in England and Wales is administered locally through 90 local pension funds.

159. Maintained school staff will be members of either the TPS or the LGPS. The LA is the administrator in the case of the LGPS and collects and pays employer and employee contributions for both schemes. The LA also submits an annual return of service for the TPS. These are 'employer' responsibilities.

160. An academy trust that has entered into academy arrangements is a scheme employer in the LGPS and is listed in paragraph 20 of Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2013. This means that the non-teaching staff employed by academy trusts are automatically eligible for membership of the LGPS and existing members in a maintained school retain eligibility when a school becomes an academy. The change in legal status, when a former maintained school is replaced by an academy, means that the academy trust becomes an LGPS employing authority in its own right.

6.7 Finance

161. This section explains the financial responsibilities of boards:

- information about financial requirements for academies can be found in section 6.7.1;
- information on the financial accountability arrangements for maintained schools in section 6.7.2; and

[83] Teaching work is planning and preparing lessons and courses for pupils, delivery lessons to pupils; assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils

- sections 6.7.3 onwards cover topics that apply to both maintained schools and academies.

School business professionals

162. Skilled school business professionals (SBPs) have a big impact on the effective financial management of schools. They support executive leaders and teachers, helping to ensure that resources are deployed effectively and compliantly. Boards should engage formally with the person who provides the business and/or finance function in their organisation. The Institute of School Business Leadership (ISBL) has a range of information and resources available on its website. The ISBL's Professional Standards indicate the main disciplines that the Chief Financial Officer (CFO) role may cover.

6.7.1 Financial accountability for academies

163. It is a requirement of all academy trusts' funding agreements to follow the AFH, which sets out duties in relation to governance and financial oversight, alongside a structure of delegated authorities. academy trustees must understand the AFH in detail, and be aware of the Charity Commission's guidance 'The essential trustee: what you need to know, what you need to do (CC3)' and 'Internal financial controls for charities (CC8)'. Academies and their auditors must also read the Academies accounts direction when preparing and auditing annual reports and financial statements. The department has published a range of information to help open academies comply with their funding agreement and understand their funding and payments.

164. Academy trustees have responsibility to ensure their trust's assets and funds are used only in accordance with legislation, their articles of association and funding agreement and the AFH. Academy trustees have wide discretion over their use of funds and are responsible for the proper stewardship of those funds by exercising reasonable discretion and ensuring value for money, regularity and propriety on all transactions and in all decision-making. DfE and independent auditors will look at academies to gain assurance over the regularity and propriety of spending.

165. Where there is a concern about governance or financial oversight, ESFA may refer academy trusts to the Charity Commission, reflecting the Commission's interest in addressing non-compliance with legal or regulatory requirements or misconduct or mismanagement in the administration of any charity, and in ensuring individuals running the charity (in particular, but not limited to, the academy trustees) do so in compliance with their legal duties. The Commission

may use its regulatory powers as described in its Memorandum of Understanding with DfE.

166. An academy trust has contractual requirements through its funding agreement which distinguish its financial management arrangements from those of maintained schools, meaning that it:

- must appoint a senior executive leader (SEL) (who may be known as the principal in a single academy trust, or CEO in a MAT, or equivalent) as the accounting officer (AO) for the trust:
- the SEL must be the head of the line management executive chain and be held accountable by the board of trustees for the performance of the whole trust;
- the SEL role must not rotate and must not be misinterpreted as a requirement for a 'lead school';
- the appointment of SEL as AO does not remove the responsibility of the board of trustees for the proper conduct and financial operation of the trust;
- the AO will carry an overriding and personal responsibility for the proper stewardship of public funds and securing value for money (VFM), regularity and propriety, by carrying out the AO duties outlined in the AFH, including completing and signing a statement on regularity, propriety and compliance each year that must be included in the trust's annual report and submitted to ESFA at the same time as the annual accounts;
- must appoint a chief financial officer (CFO) to act as the academy trust's finance director, business professional or equivalent;
- is responsible, through their board of trustees and AO, for all financial transactions within delegated authority limits set out in the AFH;
- must establish a control framework and establish processes to provide assurance over the suitability of, and compliance with, its systems and internal controls; this includes the establishment of an audit and risk committee (as set out in the AFH) to provide assurance over the suitability of, and compliance with, systems and operational controls. Audit Committee guidance and guidance on internal scrutiny of academy trusts are available on GOV.UK;
- must, because academies are publicly funded bodies and part of central government, participate in annual accounts consolidation exercises as communicated by DFE;
- must approve a balanced budget each financial year;

- must refer potentially novel, contentious or repercussive transactions to ESFA for explicit prior authorisation;
- must maintain a register of interests, publishing as a minimum on their websites, the relevant business and pecuniary interests of Members, academy trustees, individuals on any LGBs and the AO;
- must appoint a registered statutory auditor and prepare annual financial statements in line with ESFA's Academies accounts direction;
- must ensure that they have adequate insurance cover in compliance with their legal obligations or have opted into the academies risk protection arrangement (RPA). Boards should inform their insurer or the RPA scheme promptly of any potential risk. The AFH provides further information on risk management and the associated requirements – maintained schools may also find these principles helpful; and
- can be subject to a published Financial Notice to Improve where weaknesses in governance or financial management are identified.

167. A letter outlining key responsibilities of financial management and governance may be sent by the Chief Executive and AO of ESFA to all AOs from time to time.

6.7.2 Financial accountability for maintained schools

168. LAs have to account for expenditure by maintained schools. They must publish these accounts and have them audited by external bodies. For this reason, each LA has to put in place a system of financial controls that apply to maintained schools in its locality. Boards of foundation schools, voluntary-aided (VA) and voluntary-controlled (VC) schools are also charity trustees and must comply with charity law, in addition to any requirements placed upon them by their LA. They may also have to work with a separate foundation that holds the land and buildings on trust for educational or religious purposes.

169. LA systems of financial accountability for schools are based on the principles of regularity, propriety and value for money. Guidance on managing public money is available on GOV.UK. Each LA has an officer appointed by law (the 'section 151' officer) to make sure that its financial affairs are properly managed. This includes making sure that schools act within the agreed local financial framework, and that the authority has proper oversight of the funds it distributes to schools. LAs must report on their use of education grants to the department.

6.7.3 School Funding

170. Funding is allocated at school level, based primarily on pupil numbers but including additional funding for pupil characteristics such as measures of deprivation and low prior attainment. Schools also receive some funding which does not change with pupil numbers, such as a lump sum for all schools to contribute to their fixed costs, and some schools' allocations are determined by protections which ensure a minimum level of funding.

Universal catch-up premium (2020 to 2021 academic year)

171. The £650m catch-up premium is a one-off grant given to all state-funded primary, secondary and special schools in the 2020 to 2021 academic year, to ensure they have the support they need to help all pupils make up for lost teaching time. To help schools make the best use of this funding, the Education Endowment Foundation (EEF) has published a support guide for schools with evidence-based approaches to catch-up for all students and a further school planning guide: 2020 to 2021. In line with their role in ensuring schools spend funding appropriately and in holding schools to account for educational performance, this guidance can help governors and academy trustees scrutinise schools' approaches to catch-up from September, including their plans for and use of catch-up funding.

The Dedicated Schools Grant (DSG)

172. Funding for maintained schools is provided to the LA through the schools block of the Dedicated Schools Grant (DSG). The amount of DSG that each LA receives is determined by the national funding formula. The formula is based on the individual characteristics and needs of every school in the country and ensures that funding is distributed consistently and fairly. In future, every school will be allocated funding directly based on the national formula. However, in order to provide stability during that transition, LAs continue to be responsible for designing a local formula to distribute school funding in their area, in consultation with local schools. LAs are required to pass on the vast majority of the money directly to schools and are only allowed to retain funding centrally or move it to other areas of their education budget under certain circumstances.

173. The DSG also includes a high needs block to fund provision for pupils with complex special educational needs, including to allocate funding to special schools, and to provide top-up funding to mainstream schools for their pupils with high needs.

Academies General Annual Grant

174. Academies receive their funding direct from the ESFA, based on what they would attract under the LA funding formulae. This ensures that maintained schools and academies are treated similarly in terms of their funding. Boards that govern more than one school are able to pool their funding, MATs must do so in accordance with the AFH.

16 to 19 funding

175. Funding for 16 to 19 year olds is allocated by the ESFA through separate arrangements. There is a national funding formula which applies to all institutions providing 16 to 19 education, which is based on the numbers of students enrolled in the previous academic year along with a number of formula factors. The base rate of funding is £4,000 per full time student and the funding formula includes additional uplifts to fund support for disadvantaged young people (including those with special educational needs and difficulties), to reflect more expensive programmes, and to reflect more expensive areas of the country.

The pupil premium

176. The pupil premium is a separate funding stream grant for schools to improve the academic and personal outcomes of all pupils facing educational disadvantage. These include not only those pupils who attracted the funding to the school (those registered for free school meals at any time during the last six years, looked-after by an English LA; who have ceased to be looked-after by an English or Welsh LA because of adoption, a special guardianship, child arrangements or residence order; and service children) but also any pupil whose circumstances mean they face extra challenges in realising their potential, examples include children who are, or have been, in touch with a social worker, and young carers.

177. Schools should have clear rationale for using the funding, making decisions based on a good understanding of pupil needs and the best effective practice evidence. The Education Endowment Foundation (EEF)'s Pupil Premium Guide (2019) recommends schools use the grant for just three priorities: developing high quality teaching and support staff; targeted academic programmes; and supporting readiness to learn. Boards should discuss with senior leaders the rationale for spending pupil premium and ensure that both pupil need, and effective practice are central to the strategy.

178. Schools will continue to receive £1,345 for each primary aged pupil on roll, £955 for each secondary aged pupil, and £2,300 per looked-after or previously-looked after pupil.

179. Service pupil premium payments of £310 are also made for the number of children whose parents are serving in the armed forces, who have left the armed forces or died in service. These pupils are not regarded as disadvantaged and the funding should be used to support their emotional and social well-being.

180. Pupil premium funding for looked-after children is granted to local authorities to support their educational achievement and is managed by the Virtual School Head of the LA responsible for their care. The designated teacher for looked-after children should work with the Virtual School Head responsible for each looked-after child to agree how this funding can most effectively support the child's Personal Education Plan.

181. Maintained schools must publish their strategy for their school's use of the pupil premium on their website. Details of the specific information maintained schools need to publish can be found in the department's guidance.

182. Academies should read their funding agreement to identify what they need to publish on their website. The department recommends that all academy trusts publish details of their pupil premium strategy, spending and its impact.

183. The department has worked with experts to produce templates that are optional to use, designed to make it easier for schools to publish and report on their pupil premium strategy.

Period products

184. The Government is funding access to free period products in state-funded primary schools, secondary schools and colleges in England. Further details are available in the Period Product scheme guidance.

The PE and sport premium

185. The PE and sport premium is designed to help primary schools improve the quality of the PE and sport activities they offer their pupils. The Ofsted inspection criteria specifically states that, in making their judgement on the effectiveness of leadership and management in schools, inspectors will consider '*how effectively leaders use the primary PE and sport premium and measure its impact on outcomes for pupils, and how effectively boards hold them to account for this*'. Schools are required to publish on their websites the amount of PE and sport premium received; a full breakdown of how it has been spent (or will be spent); what impact the school has seen on pupils' PE and sport participation and attainment and how the improvements will be

sustainable in the future. Schools should also consider how their use of the premium is giving pupils the opportunity to develop a healthy, active lifestyle.

6.7.4 Schools forums

186. Each LA must establish a schools forum.[84] It advises the LA on the operation of the local schools' budget. The forum also has limited powers to make decisions about central expenditure by the LA from the school's budget.

187. The schools forum[85] consists of members elected by the headteachers and boards of maintained schools, academies and pupil referral units (PRUs). In addition, there are non-schools members who represent other relevant interests such as private, voluntary and independent early education providers and the local 14-19 partnership. LAs must also consider whether Diocesan authorities should be represented. Whilst the membership of the forum is for local decisions, both boards and executive leaders can expect to be involved in electing members to the forum.

6.7.5 Charging for school activities

188. Boards and LAs cannot charge for admission to a state funded school or for the provision of education, subject to the limited exceptions referred to in the Charging for school activities guidance and supporting legislation.[86] Schools may also invite voluntary contributions for some activities, if they make clear that the contributions are voluntary and that the child's participation in the activity is not dependent on whether or not the parent contributes. No charge can be made unless the board or LA has drawn up a charging and remissions policy, which must be made available to parents on request.

189. Academies are required through their funding agreement to comply with the law on charging for school activities.

6.7.6 School minibuses

190. Schools may only charge for transport in their minibuses if they hold a permit issued under section 19 of the Transport Act 1985. In some cases, the permit exempts the school from Public Service Vehicle (PSV) operator and driver licensing requirements. A permit is not required if no charge is made in cash or kind. Schools should apply to their LA for a permit for each minibus they

[84] The School Standards and Framework Act 1998, s47A.

[85] The Schools Forums (England) Regulations 2012 set out the required membership for Forums.

[86] Education Act 1996, s449 - 462.

operate individually. Guidance on driving school minibuses, including when a section 19 permit might be required and on school employees driving minibuses is available on GOV.UK

191. Any charges made may be used to recover some or all of the costs of running the vehicle, including loss of value. The school may not make a profit, even if it is intended to go towards the school's other running costs or charitable purposes. Further information is available from LAs or the regional Traffic Commissioners. Statutory guidance on 'Home to school travel and transport' is available on GOV.UK.

6.7.7 School companies

192. An academy trust's articles of association set out the powers that it may exercise to further its charitable object. These include the power to establish or support any charitable companies or trusts formed for the trust's object and to set up subsidiary companies to carry on any trade or business to raise funds for the trust.

193. Boards of maintained schools may also form school companies to undertake certain specified activities[87] (these are different from academy school companies). They must have the consent of their LA to do so and also need to check the terms of any relevant site trust to ensure that those activities are permitted on the land. LA consent can be refused only on certain specified grounds relating to the school's performance or financial management. Each company will have a supervising LA to make sure that the company is run on a sound financial footing.

194. A school company can be formed by one board or in conjunction with other boards and/or 'prescribed' third parties for example an academy or a further or higher education college. This allows boards to enter into contracts as a group and to pool resources without being part of a formal structural collaboration such as a MAT or a federation. School companies can be used to purchase goods and services collectively, to provide services or facilities to other schools, or to carry out functions that a LA is able to contract out.

195. Boards are able to follow a well-established procedure for forming a company[88] and have considerable flexibility in how the company is run. Where a company is formed, the board remains responsible for the running of the school: a school

[87] Education Act 2002, s11 - 13.
[88] The School Companies Regulations 2002; the School Companies (Private Finance Initiative Companies) Regulations 2002; the School Companies (Amendment) Regulations 2003 and the School Companies (Amendment) Regulations 2014

and a company are separate legal entities. It follows that if the company gets into financial trouble, there will be no risk to the school's assets or the employment of the school's staff. Teachers will not be expected to transfer to the company.

196. School companies can make a profit. The articles of the company must state whether profits may be distributed to its members in line with the procedures set out in the articles and/or to further the aims of the company.

6.8 Safeguarding and pupil welfare

197. Section 175 of the Education Act 2002, and the Education (Independent School Standards) Regulations 2014 place a duty on the boards of maintained schools and academy trusts to have arrangements in place to ensure that they:

- carry out their functions with a view to safeguarding and promoting the welfare of children; and
- have regard to the statutory guidance issued by the Secretary of State in considering what arrangements they need to make for the purpose of that section.

198. Governing bodies have a strategic leadership responsibility for their school's safeguarding arrangements and must ensure that they comply with their duties under legislation. They must have regard to KCSIE ensuring policies, procedures and training in their schools are effective and comply with the law at all times. Boards should ensure they read and have regard to this guidance.

199. Boards should ensure their schools have effective safeguarding policies and procedures in place. This should include an effective child protection policy, which should describe procedures in accordance with government guidance; reference any locally agreed multi-agency safeguarding arrangements put in place by the three safeguarding partners; include policies as reflected in Part two of KCSIE (such as peer on peer abuse); be available publicly either via the organisation's website or by other means; and it should be reviewed annually (as a minimum) and updated annually (as a minimum). Further guidance on safeguarding policies and procedures can be found in Part two of KCSIE.

200. Educational settings have a central role to play in the early identification of any welfare concerns about a child, additional needs they might have and indicators of possible abuse, neglect or other wider safeguarding concerns, such as exploitation. Guidance on what school staff should look out for can be found in Part one of KCSIE.

201. KCSIE sets out that an individual on the governing body should take strategic leadership responsibility for the organisation's wider safeguarding arrangements[89] (and the Prevent duty should be seen as part of the wider safeguarding obligation). It is important that this governor or academy trustee receives appropriate safeguarding training to undertake this role. However, it is best practice if everyone on the board has training about safeguarding, to make sure they have the knowledge and information needed to perform their functions, understand their responsibilities and assure themselves that their own organisation's safeguarding arrangements are robust.

202. Boards should ensure a senior member of the school's leadership team is designated to take lead responsibility for safeguarding and child protection. This role is known as the Designated Safeguarding Lead (DSL). It is important that the role of DSL is explicit in the role holder's job description and they have the appropriate status, authority, time, funding, training and resources to carry out the role effectively. Amongst other things, the DSL should provide advice and support to other staff, liaise with the LA, update the board's safeguarding link governor/academy trustee, provide safeguarding reports to the board and work with other agencies. Full details are available in Annex B of KCSIE.

203. The UK Council for Internet Safety has developed guidance to help boards support their school leaders to keep children safe online. This is guidance only and should be read alongside KCSIE.

6.8.1 Allegations of abuse made against other children

204. Boards and staff should recognise that children are capable of abusing other children (often referred to as peer on peer abuse), and that it can occur between children of any age and sex, including in primary schools.

205. Boards should ensure their child protection policy includes procedures to minimise the risk of peer on peer abuse and sets out how allegations of peer on peer abuse will be recorded, investigated and dealt with. It should be clear as to how victims, perpetrators and any other child affected by peer on peer abuse will be supported. The policy should reflect the different forms peer on peer abuse can take, make clear that abuse is abuse and should never be tolerated or passed off as "banter", "just having a laugh" or is "part of growing up".

206. Peer on peer abuse can manifest itself in many ways. This can include (but is not limited to): abuse within intimate personal relationships; bullying (including cyberbullying); sexual violence and sexual harassment; physical abuse such as

[89] Chapter 2 of Working Together to Safeguard Children.

hitting, kicking, hair pulling etc. which may otherwise cause physical harm; sexting and initiation/hazing type violence and rituals and upskirting.

207. The department has published detailed advice covering:

- child-on-child sexual violence and sexual harassment; and
- searching screening and confiscation advice for schools.

208. The UKCIS Education Group[90] has published sexting advice for schools and colleges. Boards should ensure sexting and the organisation's approach to it is reflected in the child protection policy.

209. Boards should ensure the child protection policy reflects the different gender issues that can be prevalent when dealing with peer on peer abuse (i.e. that it is more likely that girls will be victims and boys perpetrators). This could, for example, include girls being sexually touched/assaulted or boys being subject to initiation/hazing type violence. It should state that all peer on peer abuse is unacceptable and will be taken seriously.

6.8.2 Allegations made against teachers including supply teachers, other staff, volunteers and contractors

210. Part four of KCSIE sets out the procedures all schools must have in place for dealing with allegations.

211. Employers have a duty of care to their employees and where they are not the employer of the individual they still have responsibility to ensure that allegations are dealt with appropriately and that they liaise with the relevant parties, including supply teachers and volunteers. Boards should make sure that the school provides effective support for anyone facing an allegation. They should also provide them with a named contact within school if they are suspended. Where an allegation is made, the case manager (as per Part four of KCSIE) should discuss the case with the LA Designated Officer (LADO) immediately. This initial discussion allows both parties to consider the nature, content and context of the allegation and agree an appropriate course of action.

212. Schools should ensure that all staff understand their procedures and make clear, that all allegations should be reported straight away, normally to the case manager. The case manager will be either the headteacher or principal or, where the headteacher is the subject of an allegation, the chair of governors. The procedures should also identify the person, often the chair, to whom

[90] The UK Council for Internet Safety (UKCIS) has replaced the UK Council for Child Internet Safety (UKCCIS), although guidance is still available on the UKCCIS website.

reports should be made in the absence of the case manager, or in cases where the case manager themselves are the subject of the allegation or concern. Schools should make available to staff the contact details for the LADO responsible for providing advice and monitoring cases.

213. Case managers are expected to work with the LADO to confirm the facts about individual cases. They are also expected to reach a joint decision on the way forward in each case. Chairs have a key role in deciding courses of action, including disciplinary action, in those cases where a criminal investigation may not be required. In cases where allegations have been found to be substantiated, the chair should work with the LADO and case manager to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future.

6.8.3 The Prevent duty

214. All schools are subject to a duty under section 26 of the Counter-Terrorism and Security Act 2015, in the exercise of their functions, to have "*due regard to the need to prevent people from being drawn into terrorism*". This duty is known as the Prevent duty.

215. Schools must have regard to the Prevent duty statutory guidance. To accompany the statutory guidance, the Department has produced guidance on the duty for schools and childcare providers.

216. The government has launched the educate.against.~~hate~~ website to give parents, teachers and school leaders practical advice on protecting children from extremism. The website includes resources to assist teachers to build pupil's critical thinking skills and resilience to extremist ideologies.

217. If you are concerned that a child might be at risk of extremism, or if you have any other concern about extremism in a school please contact our helpline on counter.extremism@education.gov.uk or by calling 020 7340 7264.

6.9 Pupil well-being

6.9.1 Promoting the general well-being of pupils

218. Boards of maintained schools and academies have a statutory duty to promote well-being.[91] 'Well-being' includes:

[91] Section 21 of the Education Act 2002 for maintained schools and Part 8 of the Education (Independent School Standards) Regulations 2014 for academy trusts

- physical and mental health and emotional well-being;
- protection from harm and neglect;
- education, training and recreation;
- the contribution children make to society; and
- social and economic well-being.

219. Section 21 of the Education Act 2002 explains which issues boards should consider to reassure themselves that pupils are adequately being cared for and protected from harm while in school.

220. The guidance 'Mental health and behaviour in schools' addresses how organisations could identify and support pupils whose behaviour suggests they may have unmet mental health needs.

221. The guidance 'Counselling in schools: a blueprint for the future' provides advice for organisation leaders on setting up or improving counselling services in primary and secondary schools. It also explains how counselling fits into a whole school approach to mental health and wellbeing.

6.9.2 Pupil voice

222. The term 'pupil voice' refers to ways of listening to the views of pupils and/or involving them in decision-making. The expressions 'learner voice' or 'consulting pupils' may also be used.

223. The government believes that schools should consider the views of pupils, but it should be up to schools to determine the most effective method to do this.

224. Schools should be aware of the general principles of the United Nations Conventions on the Rights of the Child (UNCRC) – articles 2, 3, 6 and, in particular, article 12 which states the following:

- Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child;
- For this purpose, the child, in particular, shall be provided the opportunity to be heard either directly in any judicial and administrative proceedings affecting the child, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law; and

225. The UNCRC has not been incorporated into national law, so there is no statutory duty to comply with it. However, the government has reiterated its commitment to pay 'due regard' to the Convention when new policy is made, and legislation proposed. Schools are strongly encouraged to pay due regard to the Convention.

6.9.3 Behaviour and discipline

226. An academy trust must promote good behaviour amongst pupils and must ensure that a written behaviour policy is drawn up, implemented effectively and a record is kept of the sanctions imposed upon pupils for serious misbehaviour. The academy trust must also ensure that bullying at the school is prevented so far is reasonably practicable, by drawing up and implementing an effective anti-bullying strategy.[92]

227. Maintained school boards must make sure that their school has policies designed to promote good behaviour and discipline. These policies should include the school's approach to the use of reasonable force to control or restrain pupils. Guidance on reasonable force for headteachers, staff and boards has been published on GOV.UK. Maintained schools should not have a 'no contact' policy.

228. The board of a maintained school must also make and from time to time review, a written statement of principles to help the head teacher determine the measures that make up the school's behaviour policy (which must include measures to prevent all forms of bullying among pupils). This duty cannot be delegated. The board must consult the head teacher, other appropriate members of staff, parents, carers and all registered pupils before making or changing this statement of principles.[93] It must also publish the statement on a website.[94] Whilst the statutory duty to produce a statement of principles and publish it on a school's website does not apply to academies, we would encourage them to do so. Information on these responsibilities and statutory guidance to which the board must have regard is given in 'Behaviour and discipline in schools: guidance for governing bodies' issued by the Secretary of State.

[92] The Education (Independent School Standards) Regulations 2014.

[93] Education and Inspections Act 2006, s88.

[94] The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012.

6.9.4 Directing pupils off-site to improve their behaviour

229. The legislation for directing a pupil off-site does not apply to academies. However, an academy may direct a pupil off-site under general powers in their articles of association.

230. A maintained school board may send pupils to provision outside school premises that is aimed at improving their behaviour ('directing off-site').[95] [96] It should make sure that the pupil continues to receive a good education whilst addressing the needs that require intervention. The board may direct a pupil off-site without the parent's consent but should engage with parents, where possible, in the process. There are specific requirements in relation to notifying parents and reviewing the placement.[97]

231. Further information on boards' powers and responsibilities and statutory guidance to which the board must have regard, is provided in 'Alternative Provision: Statutory guidance for local authorities'.

6.9.5 Excluding pupils

232. An explanation of boards' legal duties in relation to exclusion, and statutory guidance on performing these duties, is provided in 'Exclusion from maintained schools, Academies and pupil referral units in England: Statutory guidance for those with legal responsibilities in relation to exclusion'.

233. The board has key responsibilities in relation to considering whether excluded pupils should be reinstated[98] and must arrange suitable full-time education for excluded pupils from the sixth school day of the exclusion for pupils of compulsory school age (exception for year 11 pupils who have no more public exams).[99]

234. Academy trusts are also responsible for arranging independent review panels to consider permanent exclusions, where requested by parents. For maintained schools, this duty rests with the LA.

235. Boards have a wider role to hold executive leaders to account for the lawful use of exclusion, in line with the duties set out in law, including equalities duties. Exclusion must be lawful, reasonable and fair. Disciplinary exclusions

[95] This power is routinely delegated to the headteacher.

[96] Education Act 2002, s29A.

[97] the Education (Educational Provision for Improving Behaviour) Regulations 2010.

[98] Education Act 2002, s51A and The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

[99] Education and Inspections Act 2006, s100.

should be undertaken and issued with regard to the statutory guidance. 'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil from a school, even for short periods of time, must be consistent with the relevant legislation.

236. Boards should consider carefully the level of pupil moves and the characteristics of pupils who are moving and offer challenge to school and academy trust management teams on any permanent exclusions to ensure it is a choice of last resort.

237. Ofsted defines off-rolling as the practice whereby children are removed from school rolls without formal exclusion, in ways that are in the interests of the school rather than the pupil. Off-rolling is never acceptable. Ofsted is clear that pressuring a parent to remove their child from the school (including to home educate their child) is a form of off-rolling. Ofsted's education inspection framework states that where inspectors find off-rolling, this will always be addressed in the inspection report, and where appropriate, could lead to a school's leadership being judged inadequate. Ofsted's blog 'What is off-rolling, and how does Ofsted look at it on inspection?' provides further guidance which boards may find informative.

6.9.6 School attendance

238. All boards must reassure themselves that the school keeps admission and attendance registers in accordance with regulations.[100] Guidance on school attendance has been published by the department. The board must make sure that the school provides information requested by the Secretary of State, including the termly absence data the department collects.[101]

239. Guidance on children missing education is available and all boards must be aware of the advice for them in the statutory guidance KCSIE.

6.9.7 Parenting measures

240. All boards and LAs (where applicable) have powers to use parenting contracts and apply for parenting orders where a pupil's behaviour or attendance at school becomes problematic.[102] Guidance on parental responsibility measures for behaviour and attendance is available and boards, academy trusts,

[100] The Education (Pupil Registration) (England) Regulations 2006.

[101] Education Act 1996, s538.

[102] Anti-social Behaviour Act 2003, s19 - 23 and Crime and Disorder Act 1998, s8-9.

executive leaders and LAs must have regard to it when carrying out their functions in relation to parenting contracts.

6.9.8 The school day and school year

241. Academies set their own school day and term dates. The provisions on school sessions do not apply to them. The trust board will decide the length of the school day, including session times and breaks, taking into account the recommendation of the headteacher. School employers determine the term dates.[103]

242. Maintained schools must open for at least 380 sessions (190 days) in a school year.[104] The 'School year' means the period beginning with the first day of term after July. If a school is prevented from meeting and it is not reasonably practicable for arrangements to be made for it to make up the lost session(s), it can be deemed to have been open for the required 380 sessions.

6.9.9 School food and milk

243. Boards must provide lunches for registered pupils, including nursery pupils who receive education both before and after lunch. This only applies where the lunch has been requested and, in the case of paid-for lunches, where it would not be unreasonable to provide them. These meals must be free for pupils who receive, or whose parents receive, an entitling benefit – the unreasonable clause does not apply to free meals.

244. From 1 April 2018, the entitling benefits for free school meals (FSM) have been updated following the rollout of Universal Credit. Guidance for schools and local authorities is available on GOV.UK.

245. All maintained schools and academies have a legal duty to provide a free school meal for children in reception, year 1 and year 2 upon request. Schools have been provided with substantial funding and support and guidance is available on GOV.UK.

246. Compliance with the school food standards is mandatory for all maintained schools. Academies and free schools are also expected to comply with the standards and since 2014 this has been an explicit requirement in their funding agreements.

247. Boards have a responsibility to ensure compliance and should appropriately

[103] Education Act 2002, s32.

[104] The Education (School Day and School Year) (England) Regulations 1999.

challenge senior leaders to ensure the school is meeting its obligations. Boards may wish to ask the headteacher for evidence that the school is compliant with the Standards.

248. Schools must offer at least once per school day during school hours. It must be offered free of charge to infant and benefits-based FSM pupils, if it is offered as part of their school meal and free to benefits-based FSM pupils if offered at any other time.[105]

6.9.10 School uniform

249. In all schools, boards decide whether there should be a school uniform and other rules relating to pupils' appearance and, if so, what they should be. Guidance on school uniform and related policies is available.

6.9.11 Pupils unable to attend school through ill health

250. The duty to provide suitable education for children of compulsory school age who cannot attend school due to illness or injury (alternative provision) rests with LAs. All schools, including academies, have a key role in ensuring that children on their roll with medical needs also receive a good education. They should involve the relevant LA immediately when it is clear that a pupil's health will prevent them from attending school for 15 days or more.

6.9.12 Supporting pupils in school with medical conditions

251. Governing boards of maintained schools, proprietors of academies (except 16–19 academies) and management committees of PRUs have a legal duty to ensure that their school has in place a policy to support pupils with medical conditions.[106]

252. The department's guidance, Supporting Pupils at School with Medical Conditions at School, contains statutory and non-statutory guidance to help governing bodies meet their legal responsibilities and sets out the arrangements governing bodies are expected to make, based on good practice. The aim is to ensure that all children with medical conditions, in terms of both physical and mental health, are properly supported in school. The related policies should address emergency procedures, use of individual healthcare plans, staff training, administration of medicines, roles and responsibilities,

[105] Requirements for School Food Regulations 2014 (SI 2014/1603)
[106] The Children and Families Act 2014, section 100

consulting with parents, collaborative working with healthcare professionals, and record keeping, including storage and disposal of medicines.

6.9.13 First aid

253. Where they are the employer, boards have overall responsibility for first aid under the Health and Safety (First Aid) Regulations 1981. The regulations set out first aid provision in the work place, and requires employers to provide adequate and appropriate equipment, facilities and qualified first aid personnel for employees. While the health and safety regulations do not require employers to provide first aid for anyone other than their own employees, it is strongly recommended that all educational and early years settings consider the needs of non-employees such as pupils, students and visitors when making provision for first aid.

254. Where schools have early years provision at least one person who has a current paediatric first aid certificate must be on the premises and available at all times when children are present and must accompany children on outings. Providers should take into account the number of children, staff and layout of premises to ensure that a paediatric first aider is able to respond to emergencies quickly.

6.9.14 School security

255. It is important for organisations to have a policy and plan in place to manage the risk of and respond to security related incidents. A competent person or persons should lead on security. This may or may not be the same competent person(s) with responsibility for health and safety. In order to carry out their duties the employer and the educational setting should both have regard to DfE School and College Security guidance.

School property

256. There is no universal public right of access to school sites. Section 547 of the Education Act 1996 makes it a criminal offence for a person who is on school premises without lawful entry to cause or permit a nuisance or disturbance.

257. If staff or pupils feel threatened by aggressive, abusive or insulting behaviour or language from unwanted visitors, steps can be taken to bar them from the school premises. If the threat remains after an individual has been barred from the school and there are reasonable grounds to suspect that someone has committed an offence, they can be removed from the school by a police officer

or a person authorised by the appropriate authority such as the governing board, LA or proprietor of that school.

258. Controlling access to school premises – GOV.UK provides guidance on how to restrict access to school premises in these circumstances.

Biometric data

259. Schools using automated biometric recognition systems should be aware of their legal duties under the Protection of Freedoms Act 2012. The General Data Protection Regulation (GDPR) (EU) 2016/679, the Data Protection Act 2018 and the Protection of Freedoms Act 2012 affect how pupils' biometric data should be processed. Schools must ensure that they handle biometric information fairly and lawfully and ensure that it is kept safe. The Department strongly recommends that schools and any persons with responsibility for processing pupils' biometric data seek independent legal advice to ensure that they comply with data protection legislation. Guidance about these duties is on GOV.UK.

Cyber Security

260. A school or academy trust's security policy or plan should also include an assessment of cyber security risk. A cyber security incident can result in a data breach where sensitive personal information on pupils, parents and staff is accessed without permission. This can have implications for safeguarding and can also result in serious disruption to the running of the school.

261. The National Cyber Security Centre has produced guidance for governors to help inform conversations with school leaders about managing cybersecurity risks.

6.9.15 Fire safety

262. All bodies responsible for schools (RBs) must ensure that their schools are compliant with the requirements of the Regulatory Reform (Fire Safety) Order 2005. Under the Order, boards should ensure, among other things, that there is an appropriate and up-to-date Fire Risk Assessment (FRA) for all school buildings within their control. These should take into account any fire safety risks and detail the mitigations in place to manage these.

263. ESFA has contacted RBs to help manage risks appropriately, based on advice from the Government's Building Safety Programme (BSP). While the BSP focuses on residential buildings, advice is also relevant for schools (including LAs, academy trusts and the governing bodies of voluntary-aided schools) to

inform continuing work on building safety. Advice on Government's Building Safety Programme is available on GOV.UK.

6.9.16 Playground supervision

264. The number of adults who should be in charge of pupils during lunch and other breaks should be determined locally by the school, having assessed risks and making sure that competent supervisors are available.

6.9.17 Promoting community cohesion

265. There is a duty for schools to promote community cohesion under the Education and Inspections Act 2006. The board decides how to fulfil this duty in the light of their local circumstances.

6.10 Admissions

6.10.1 School admissions

266. The purpose of the School Admissions Code is to ensure that all school places for maintained schools (excluding maintained special schools)[107] and academies are allocated and offered in an open and fair way. The Code has the force of law, and where the words 'must' or 'must not' are used, these represent a mandatory requirement.

267. The School Admissions Code is the statutory guidance that schools must follow when carrying out duties relating to school admissions. The Code applies to admissions to all maintained schools in England, and academies (including free schools, studio schools and UTCs) are required by their funding agreements to comply with the Code and the law relating to admissions. The Code should be read alongside the School Admission Appeals Code and other guidance and law that affect admissions and admission appeals in England. Boards, LAs, Schools Adjudicators and admission appeal panels must act in accordance with the Codes. This Handbook is a summary reference but is not a substitute for the full Codes.

268. Admission authorities are responsible for setting fair and transparent admission arrangements, making admission decisions, and arranging admission appeals in accordance with the Codes. Admission authorities decide which children are admitted in the event that the school is oversubscribed by applying the

[107] A maintained special school is a school maintained by the LA, specially designed to make special educational provision for pupils with SEN.

admissions criteria they have set and published. For community and voluntary-controlled (VC) schools, the LA is the admission authority; for all other schools it is the board.[108] Boards of voluntary-aided (VA) schools, foundation schools or academies should therefore understand their roles and responsibilities in relation to admissions.

6.10.2 Admissions arrangements

269. Admission authorities must set admission arrangements annually, notify their LA and publish the arrangements on their website in accordance with paragraph 1.47 of the School Admissions Code. When changes to the admission arrangements are proposed, admission authorities must consult. If no changes are made to the admission arrangements, they must still be consulted on at least once every 7 years. Consultation must last for a minimum of 6 weeks and take place between 1 October and 31 January. Admission arrangements must be determined (agreed as final) by 28 February each year even where the arrangements have not changed from the previous year. LAs must publish on their website before 15 March, details of where the set arrangements for all schools can be found.

270. Admission authorities for schools with a sixth form must ensure they have determined and published admission arrangements for entry into the sixth form if they intend to admit external applicants.

271. Admission authorities must, as part of setting their admission arrangements, set a clear published admission number (PAN), which states the number of applicants they will admit where enough applications are received. A board of a community or VC school can object to the Adjudicator if they disagree with their PAN (which will be set by the LA as admission authority).

272. Admission authorities cannot refuse a child a place if the school is undersubscribed (fewer applications than the PAN). The only exception is where the child has been permanently excluded from two or more schools within the past two years or, in the case of selective schools, where the child has not met the required academic standard. Regardless of faith, a child must be offered a place in a school with a religious designation if they apply to the school and it is undersubscribed.

273. Admission authorities cannot introduce new arrangements to select all or part of their intake based on high academic ability.

[108] An LA can delegate admissions to the boards of community and VC schools.

274. The infant class size limit is 30 pupils per teacher. Additional children may be admitted under limited exceptional circumstances, which are set out in the Code.

275. Admission authorities for oversubscribed schools must keep a waiting list until at least 31 December of each school year of admission. They must order the waiting list and give priority for places solely according to their published oversubscription criteria, regardless of when an application was made or how long the child's name has been on the list.

276. A place in a nursery class does not guarantee admission to the reception class. Parents must make a separate application for any transfer from nursery to primary school.

277. Any person or body can make an objection to the Schools Adjudicator about the admission arrangements of any academy or maintained school. The objection must be made by 15 May in the year in which the admission arrangements are determined. Further information on how to make an objection is available on the Office of the Schools Adjudicator website.

278. Where an own admission authority receives an application from a parent/carer for an in-year admission, they must notify the LA of the application and outcome. They must also inform the parents/carers of their right to appeal against the refusal of a place.

279. All admission authorities must participate in their local Fair Access Protocol (FAP). The FAP is intended to ensure that unplaced children, especially the most vulnerable, are provided with a suitable school place as quickly as possible.

Admission of pupils with SEN: duties of Admission Authorities (including boards)

280. The School Admissions Code[109] makes clear that all children and young people whose EHC plan names a specific school, must be admitted to that school. The admission of pupils with SEN but without EHC plans should be handled in the same way as for all other pupils. Admission authorities must ensure that their arrangements will not disadvantage unfairly or discriminate against a child with a disability or special educational needs.

[109] The Codes are supported by The School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and The School Admissions (Appeal Arrangements) (England) Regulations 2012.

Admission to special schools for pupils with SEN

281. The board of maintained special schools, academy special schools, non-maintained special schools and institutions approved by the Secretary of State to be named in an EHC plan have the same duty to admit as maintained schools (see above). Children or young people without EHC plans can be admitted to special schools in specific circumstances – including for the purposes of assessment or following a change of circumstances[110] (see paragraphs 1.29 and 1.30 of the SEND Code of Practice 0-25, January 2015).

Admission of looked-after children and previously looked-after children

282. Admission authorities are required, with some limited exceptions, to give priority to looked-after children in the care of a LA or provided with accommodation by a LA pursuant to section 22 of the Children's Act 1989 and certain previously looked-after children (those adopted from care under the Adoption and Children Act 2002 or who left care under a 'Special Guardianship Order' or 'Child Arrangements Order') in their oversubscription criteria.[111] In an organisation's published admission arrangements, the first and highest oversubscription criterion must be looked-after children and previously looked-after children (see paragraph 1.7 of the Admissions Code). Provisions also apply to schools with a religious character and grammar schools (paragraphs 1.37 and 1.19 of the Admissions Code).

283. The law gives an LA that looks after a child the right to direct the admission authority of any maintained school to give them a place.[112] This applies even where the school is currently full, or is in another LA area (see paragraph 3.19 of the School Admission Code).

284. Where an LA considers that an academy trust will best meet the needs of any child, it can ask the academy to admit that child but has no power to direct it to do so. The LA and the academy trust will usually come to an agreement, but if the academy trust refuses to admit the child, the LA can ask the Secretary of State to intervene. The Secretary of State has the power under an academy trust's Funding Agreement to direct the academy trust to admit a child and can seek advice from the Schools Adjudicator in reaching a decision.[113]

[110] Children and Families Act 2014, s33

[111] The School Admissions (School Admissions and Co-ordination of Admission Arrangements) (England) Regulations 2012.

[112] School Standards and Framework Act 1998, s97A.

[113] School Standards and Framework Act 1998, s25(3A).

6.10.3 Admission appeals

285. Admissions appeal panels are independent panels set up by admissions authorities in line with the School Admission Appeals Code. They hear appeals against admission decisions. The Appeals Code provides details on appeal procedures and outlines a parent's or child's right of appeal. Where a panel finds in favour of the parent or child, the decision is binding on the school.

6.11 School premises

6.11.1 Ownership of land and buildings

286. Boards should fully understand the individual history and circumstances of the school, including who holds all the land the school currently makes use of and on what basis the land is held and used. This includes considering the category of the existing school (community, foundation without a foundation, foundation with a foundation, voluntary-aided, voluntary-controlled or academy); the history of the school, including any particular arrangements that were made when it was set up; details of any change of category or any change in the school's location or size that would have involved relocation or expansion onto new land, the current arrangements by which land is either held for the purposes of the school or used by the school (including the pattern of use and the nature of that land); and any existing arrangements allowing others to make use of the school's land.

287. LAs remain the most common landowners, owning land on a freehold basis for various categories of school, including land which is leased to academies. Charitable foundations or trusts are also significant landowners, particularly in the case of voluntary schools and academies that are linked to religious bodies. Land owned by such bodies may have been privately donated for charitable purposes and be subject to various restrictions through charity law on how it may be used. Individual governing bodies or academy trusts themselves may also hold themselves freehold or leasehold interests. There may be several parcels of land which together constitute a single school site, and these may each have different landowners and ownership arrangements. There may likewise be multiple interests in a single piece of land – for example the LA owns the freehold to a playing field, the academy trust holds the lease from the LA, and another school has a usage agreement with the academy trust to use the field part of the time. This is why understanding the landowning arrangements and basis of occupation is important.

288. The department has published a resource for organisations that provides information, guidance and tools to assist with the management of estates.

289. Governing bodies who are considering academy conversion should be aware of the need to consider transfer of land and buildings early in the process, in particular the need to engage with the trust that owns the land and assets where appropriate. The department publishes guidance on how different types of land should treated on conversion.

290. In the majority of schools set up through private finance initiatives (PFI), the construction of the buildings is funded by a private sector contractor and their funders. The buildings are then operated and maintained by that private sector contractor for an agreed period, typically 25 years. The PFI contract will set out the maintenance programme. These contracts will remain in force even if the LA transfers its interest in the school land to the academy trust, if the school converts to academy status. At the end of the contract term, responsibility for the buildings will revert to the trust.

6.11.2 Disposal and protection of publicly funded school land

291. Under Schedule 1 of the Academies Act 2010, the prior consent of the Secretary of State for Education is required to dispose of any land, whether or not it is playing field land. The latter may also require separate consent under Section 77 of the School Standards and Framework Act 1998. Guidance on where consent is needed for any disposal (which will include granting leases) is set out in the Academy property transactions: advice and forms. Special protection is given to playing field land as set out in the Playing fields and school land: selling or change of use advice.

6.11.3 Closure of a foundation or voluntary school

292. The board, or trust that holds the land and assets must apply to the Secretary of State when a foundation or voluntary school is to be closed.[114] The Secretary of State will consider making a statutory decision ('direction') about what should happen to that land that is publicly funded land as defined by Schedule 22 to the Schools Standards and Framework Act 1998, because it was bought or improved at public expense.

[114] School Standards and Framework Act 1998, Schedule 22, Part 2.

6.11.4 Funding for capital investment

School Condition Allocations (SCA)

293. Schools and others responsible for school buildings receive condition funding through different routes depending on their size and type. Investment must prioritise keeping buildings and grounds safe and in good working order by tackling poor building conditions, building compliance, health and safety issues, and energy efficiency.

294. LAs, larger MATs and (from FY 2020–21) larger VA school responsible bodies receive direct SCA to invest in priorities across the schools for which they are responsible. Smaller academy trusts, sixth form colleges and (from FY 2020–21) smaller VA school bodies are able to bid to the Condition Improvement Fund (CIF).

295. For FY 2020–21, MATs and VA responsible bodies must have met both of the following eligibility criteria to receive direct SCA:

- the trust or VA responsible body must have five or more open schools at the start of September 2019; and
- those open schools (or their predecessor schools) must have had at least 3,000 pupils counted in the spring 2019 census.

296. For nursery schools and sixth forms, the department use the number of full-time equivalent (FTE) pupils rather than headcount. See Condition funding methodology for 2020 to 2021 for more information on how we count pupil numbers, and eligibility for academy chains.

297. Single academy trusts, small MATs, small VA bodies and sixth-form colleges apply to the condition improvement fund (CIF) instead of receiving an SCA. Those eligible for CIF are also notified in the autumn.

Basic Need Capital

298. 'Basic need' supports the capital requirement for providing additional pupil places both in new or expanded maintained schools, and academies. Basic need funding is allocated on a purely formulaic basis using data from the Annual Schools Capacity Survey. It is made available to LAs in the first instance and it is for each LA to decide how basic need allocations should be prioritised at local level. The LA officer can supply further information on the planned use of basic need funding with responsibility for pupil place planning.

Devolved Formula Capital

299. All of the above institution types in 6.11.4 are eligible for Devolved Formula Capital (DFC), which is a per-school formulaic allocation for any capital purpose.

300. DFC is made available to schools for their own use, in line with departmental guidance. DFC is based on the spring census of the previous financial year. LAs should pass on the level of DFC, as calculated for each school by the department, to their schools. DFC is normally used for smaller capital works or the purchase of capital items such as purchases including information and communication technology.

Developments at schools

301. The Building Regulations 2010, School Premises Regulations 2012 (for maintained schools) and Part 5 of the Education (Independent School Standards) (England) Regulations 2014 (for academies) set standards for the design and construction of buildings in England and Wales. Information on these building regulations and associated guidance is available on GOV.UK. Their prime purpose is to ensure the safety and health of people in or around buildings, but they also cover energy conservation and accessibility, health, safety, and welfare, acoustics, lighting, water supplies, and outdoor space. They cover the construction of new schools and many alterations of, and improvements to, existing school buildings. As with other building types, developments at schools are bound by normal planning controls.

Arrangements for funding premises-related work at VA schools

302. Responsibility for capital work and maintenance to VA school premises is split between the board and the LA. The governing body is responsible for all capital expenditure relating to school premises other than playing field land and any structures them. It is also responsible for boundary walls and fences on both playing field and non-playing field land. LAs remain responsible for capital expenditure on playing fields and buildings and structures erected on them in connection with its use as a playing field. The Secretary of State makes support available to governing bodies in meeting their obligations through capital grants, but legislation limits the level of support the Secretary of State may provide to 90 per cent of costs, unless exceptional circumstances apply. LAs are able to help boards with their 10 per cent contributions, subject to their own spending priorities and budget availability.

303. Guidance on disposal or change of use of publicly funded land at voluntary-aided schools can be found on GOV.UK at School land and property: protection, transfer and disposal.

6.12 Control and community use of school premises

6.12.1 Day-to-day control of school premises

304. Boards have the day to day responsibility of the use of their school premises and for what goes on there. However, the legislation enabling community use and services differs between maintained schools, which have explicit statutory powers, and academies which must rely mainly on the objects and powers set out in their articles of association.

305. The governing body of maintained schools are given day to day control over what happens in school buildings and grounds both inside and outside school hours through law and are responsible for deciding how school premises are used (see section 6.12.6 Transfer of Control Agreements). They also have a separate legislative power to provide community facilities and services and support these from their revenue budgets.[115] However, for voluntary and Foundation Schools this is limited both by the statute and by any requirements contained in the school's trust deed (if have one). These schools must therefore work closely with the trust that owns the land and assets over the use of premises for community facilities and services, as these may conflict with the purposes of the trust, and in extreme cases result in land being lost to the school.

306. All maintained schools must also liaise closely with their LA, as legislation also gives the LA some powers of direction over the use of school premises. Exceptions to the governing body's ability to control the use of school premises may exist:

- in a school where land is held by a charitable trust and the terms of the original trust document place restrictions on how the land may be used;
- in a school where a trust deed transfers control to someone other than the board;
- in a school where the governing body do not hold the freehold of land, and the terms of any lease place restrictions on how the land may be used;

[115] Education Act 2002. S.27

- where a Transfer of Control Agreement (TOCA) has been made (see section 6.12.6);
- where the LA issues directions[116] on how school premises should be used, e.g. regular booking for youth or community groups; or
- where the school is needed for local or general elections.

307. The academy trust board do not have statutory control of their premises and must refer to the terms on which they occupy their site to determine their powers around community use of their premises and what happens in them on a day to day basis. Neither do they have the power that maintained schools have to provide community facilities or services or to support these from their revenue budget or to enter into TOCAs.

308. There is nothing that would normally prevent academy trust boards from agreeing casual use or short term lettings in the same way as maintained schools, but longer term leases or licences can only be made by the trust board itself, if it has a freehold or leasehold interest in the land and any lease permits sub-leases or licences. This will normally be the position for academies occupying land leased from the LA.

309. Academy trusts occupying sites owned by a trust that owns the land and assets do not normally do so under leases and so cannot themselves lease or sublease any part of the premises. Only the trust that owns the land and assets can do that. Also, arrangements that in a maintained school might be carried out under TOCAs, must in these academies also be made by the trust that owns the land and assets in agreement with the trust board. As in maintained schools, academy trusts occupying land held by a trust that owns the land and assets must therefore consult very closely with the trust that owns the land and assets in respect of the provision of community services and facilities, to ensure that use falls within the purposes of the site trust.

310. Academy trusts should also check their funding agreement. The current model funding agreement says that '*to the extent that it is compatible with the academy trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the academy trust must ensure that the academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community*'. The funding

[116] Directions should be reasonable and not interfere too much with the board's control. For example, the LA should not require premises to be made available to it if this would mean the board breaking a booking agreement.

agreement will set out how the grant available from the Secretary of State can be used.

311. Guidance on when ESFA consent is required to dispose of, or acquire land, and to grant, or to take on, leases and joint use agreements is set out in the AFH and in more detail in the Academy property transactions: advice and forms.

6.12.2 The 'charitable purpose' requirement

312. The board of a maintained school has the power to provide, or enter into contracts to provide any facilities or services that will further any 'charitable purpose' for the benefit of pupils at its school, families of pupils or people who live and work in the local community.[117] This power is in addition to boards' powers and responsibilities on the control and community use of school premises. Schools that occupy land held on trust must consult with the trust that owns the land and assets to ensure that the intended activities do not breach the trust.

313. 'Charitable purposes'[118] may cover such services and activities as:

- childcare (including before and after school and during the holidays);
- adult and family learning;
- health and social services; and
- parenting support and other facilities of benefit to the local community. Examples include access to information and communication technology (ICT), or sports facilities.

314. This is not an exhaustive list and a wide range of services will be covered within the definition of charitable purposes. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

315. Since all academy trusts are charities, their charitable object (or objects) is (are) set out in its articles of association, together with the powers that the academy trust can exercise in pursuit of their charitable object(s). The charitable purposes of any underlying site trust are also likely to be relevant.

[117] Education Act 2002, s27.

[118] The Charities Act 2011.

6.12.3 Use of premises for extended activities and community services

316. Community use of school sites can benefit schools, their pupils and their parents. Schools offering community facilities and services may benefit from improved behaviour and attendance. Such arrangements can also enable schools to make the best use of their premises, which may otherwise be underused before and after the school day and in school holidays. Subject to some LA powers, governing bodies can normally charge for the provision of community facilities and services, or for renting or letting facilities to voluntary groups, which can provide a useful revenue stream.

317. Examples of community provision by maintained schools include nurseries, children's centres, after-school clubs, adult education, out-of-school childcare (including breakfast clubs and holiday care), and sport and youth clubs.

318. In deciding what, if any, extended activities to offer and in making decisions on the form any such activities should take, boards should make sure that:

- extended activities or services benefit the public (or in an academy's case, comply with its charitable objects) and that any profits made are reinvested in the service or in the school;
- such activities are permitted under any applicable site trust;
- extended activities or services do not conflict with their statutory duties, in particular their duty to promote high educational achievement in the school;
- any childcare for children provided by the school and any other childcare provided is registered where necessary or as appropriate with Ofsted; and
- the arrangements comply with the statutory requirements for safeguarding children, including under the Childcare Act 2006 and Part 2 of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, explained in the statutory guidance, Disqualification under the Childcare Act 2006.

6.12.4 Restrictions on extended activities in maintained schools

319. A maintained school board cannot engage in any activity that might interfere with its duty to promote high standards of educational achievement at the school.[119] The board's use of the power set out in Section 27 of the Education Act 2002, is also subject to any limits or restrictions contained in the school's

[119] School Standards and Framework Act 1998, s38

instrument of government or in its trust deed (if it has one) and to any local directions issued by the LA regarding the control of school premises.

320. Before carrying out any plans to provide facilities or services using the power in section 27 of the Education Act 2002, the maintained school board must consult with the LA, school staff, and parents of its school's registered pupils. The board can also consult some or all of the registered pupils, where the board considers this appropriate in view of their age and understanding and where the exercise of the power would affect those pupils, and anyone else that the board consider appropriate. This must include any trust that owns the land and assets that there may be.

6.12.5 Provision of childcare and other community services

321. Many schools and academies offer comprehensive programmes of before and after school and holiday care, and other activities, throughout the year. These programmes support pupils and parents, places the schools and academies at the hearts of their communities, and can generate profit that can be reinvested to improve services.

322. Maintained schools may change the age range of their school, by following the prescribed alteration process to set up early years provision (in which case the children would be pupils of the school) or they may choose to set-up early years provision for the benefit of people who live or work in the locality using their community powers (in which case the children would not be pupils of the school). Legislation no longer requires the board to consult the LA, school staff, parents, etc., but a school should do this as a matter of course. In addition, schools are no longer required to have regard to guidance issued by the Secretary of State or the LA when setting up community services.

323. Academy trusts may change the age range of the academy by following the significant change process and may choose to run extended services and provide childcare, as well as run nurseries and children's centres. This may require a change to their articles of association. Academy trusts are advised to contact the ESFA who will advise.

324. There are three possible arrangements that would allow an academy to operate a nursery on their premises:

- direct provision of a nursery by the academy trust as a charitable activity within the academy's objects;
- provision of a nursery through a wholly-owned subsidiary company of the academy trust; or

- the academy trust contracts out nursery provision to an independent provider (which may or may not be a charity; and in which an academy trustee may have an interest).

325. Since some of the options open to schools require the active involvement of any trust that owns the land and assets, the school and the board (and the LA if relevant) must work closely together, each using their powers for the benefit both of the school and of the local community. Any rental or profit that may accrue to the trust that owns the land and assets, must be used the purposes of their trust, which will normally mean agreed purposes of the school.

326. The wraparound and holiday childcare: responding to requests guidance aims to help schools understand how to respond to requests from parents and childcare providers about wraparound and holiday childcare.

327. All schools must ensure that any staff providing early years or later years childcare satisfy the arrangements explained in statutory guidance, Disqualification under the Childcare Act 2006. Where childcare is provided on site by another provider the school should ensure that the provider has appropriate policies and procedures in place in regard to safeguarding children, including under the Childcare Act 2006 and Part 2 Childcare (Disqualification) Regulations 2018 of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.[120]

6.12.6 Transfer of control agreements

328. In some situations, the governing bodies may decide to transfer the control of part of their premises to some other body in order to provide community facilities or services. The other body, known as the 'controlling body', will continue to occupy and use the premises during the times specified in the agreement. Transferring control of the premises to local community groups, sports associations and service providers can allow school facilities to be used without needing ongoing management or administrative time from the school staff.

329. Legislation provides for the governing body to do this under Transfer of Control Agreements (TOCAs). [121] This power is subject to LA agreement (or the Secretary of State's agreement in the case of a Foundation school), if the

[120] Part 3 Amendment of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 is not relevant.
[121] School Standards and Framework Act 1998, Schedule 13

transfer covers the use of premises during school hours. It is also essential that the boards of voluntary and Foundation schools involve the trust that owns the land and assets (if any) in any decisions about TOCAs. LAs do not have the power to require the governing body to enter into a TOCA and their powers to direct the governing body to provide specific facilities or services are also governed by legislation.

330. While schools commonly enter into casual or short-term lettings of their premises, governing bodies do not normally have the power to enter into a lease, except where the board of a foundation school holds the freehold. Otherwise any lease is only able to be made by the trust that owns the land assets or by the LA, each in respect of the land that it owns. In some situations, a lease or licence may be preferable to a TOCA and care must be taken about these because of the historic legislation under which voluntary and some foundation school sites are provided.

331. Governing bodies, LAs and the trust that owns the land and assets should work closely together to make best use of their respective powers for these purposes.

6.12.7 Ofsted registration and inspection for childcare facilities

332. Boards should be aware that schools do not have to register childcare provision for children over two separately with Ofsted, where:

- at least one of the children is a registered pupil at the school;
- it is provided as part of the school's activities; and
- delivered directly by an employee of the school.

333. Where a school engages childcare providers, who are not required to be registered by Ofsted, it is advised to work only with providers who are registered on the voluntary part of the Ofsted Childcare Register.

6.13 Conversion to academy status

334. Boards play a pivotal role in deciding whether conversion to academy status is right for their school. The board must pass a resolution confirming its desire to convert to academy status before making a formal application to start the conversion process. The governing body of a foundation or voluntary school that has a foundation must obtain their consent and the consent of the trustees of the school, before applying for an academy order.

335. Maintained school boards considering conversion to academy status must consult people that they think appropriate. Schools with a religious designation must also consult their Diocesan board or relevant religious authority and must secure that body's consent before submitting an application.

336. Schools can consult in a number of ways such as via a website, newsletters and face-to-face meetings or discussions. It is important that people being consulted are given all relevant information about what is proposed and have a fair chance to respond. There is no set time for carrying out a consultation, although it is useful to have discussions early in the process. The consultation process must be completed before a funding agreement is signed with the Secretary of State.

337. The board must be able to confirm that a consultation has taken place, when it was carried out and that the views obtained were properly considered. Schools do not have to provide documentary evidence of this as part of the academy conversion process but will need to make sure it is available on request.

338. Under equalities legislation, a public authority must**,** in the exercise of its functions, have 'due regard' to the need to eliminate discrimination, promote equality of opportunity and foster good relations when carrying out their duties (amongst other matters). Boards should consider whether they have met the requirements under the Equality Act 2010 or whether any further action needs to be taken in relation to their conversion to academy status.

339. When a school converts to an academy, TUPE legislation has effect to transfer the contracts of employment of the school's employees to the new employer so that they remain employed under the same terms and conditions of employment help with their employer immediately prior to the transfer. This means that all the existing employer's rights, powers, duties and liabilities under or in connection with the contracts of employment transfer to the new employer. The existing employer (the LA in community and VC schools and the board in foundation and VA schools) has a statutory obligation to inform their employees' representatives (i.e. trade union or elected representatives)[122] that:

- the transfer is to take place;
- the date of the transfer and the reasons for it;
- the legal economic and social implications of the transfer; and

[122] Where employee representatives are elected, the employer must follow the statutory requirements for elections of representatives under regulation 14 of TUPE.

- whether the current employer, or as the new employer, the academy trust, expects to make changes connected to the transfer that will affect the employees' employment and, if so, what those changes will be.

340. It is also good practice to provide this information to the employees themselves at an early stage in the process. Employers should consider seeking legal advice to make sure that they can identify the potential implications for employees of the transfer.

341. The academy trust is required to inform the existing employer of the proposed changes connected to the transfer in good time to enable the existing employer to consult with the employee representatives about these measures. The existing employer is required to consult with employee representatives about any such proposed changes with a view to seeking their agreement to these.

342. A collection of documents that schools converting to an academy will need as they go through the conversion process is available on GOV.UK.

6.14 School organisational changes

343. Proposers[123] may propose to make changes to the characteristics of a school through the school organisation 'prescribed alterations' process (for maintained schools) or the significant change process (for academies). Examples of such proposals are:

- a change of age range;
- physical expansion of premises (including onto a satellite site);
- a change of school type (for maintained schools);
- transfer of site or discontinuance of a split site;
- co-educational to single sex or vice versa; or
- changes to SEND provision etc.

344. Through the maintained school closure process and the significant change and closure by mutual agreement process for academies proposers may also propose additional changes, such as:

- closing a school (including to facilitate a merger or amalgamation of schools); or

[123] LAs and boards for maintained schools and academy trusts for academies

- in relation to academies only, to add or change a faith designation.

345. The processes that boards and LAs need to follow for making prescribed alterations to, or establishing or closing a maintained school are set out in legislation and summarised in statutory guidance.[124]

346. The process for academy trusts to make a significant change to an open academy is also set out in guidance and will require the submission of a fast track application or full business case (depending upon the type of change and Ofsted rating of the school) to the RSC, (who makes decisions on behalf of the Secretary of State) or to the Secretary of State.

Closure of a voluntary or foundation school

347. The board of a foundation, VA or VC school may close their school by giving two years' notice. This must follow the process set out in section 30 of the School Standards and Framework Act 1998 and described in the opening and closing maintained schools guidance.

Change of category to foundation

348. It is possible for a community, VA or VC school to change category to become a foundation school and for a community special to become a foundation special school. The process also allows for the addition or removal of a foundation (trust) and/or foundation majority on the board, by following the statutory process as described in the Making 'prescribed alterations' to maintained schools guidance.[125]

349. The board of a foundation school may remove the trust or alter the school's instrument of government so that the trust no longer appoints the majority of the board. This would apply where they consider it to be in the best interests of the school. It applies only to foundation schools that have been established, or have acquired their trust, under the Education and Inspections Act 2006. This is

[124] The Education and Inspections Act 2006, the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013, the School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2013, and the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

[125] The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, Schedule 1.

a statutory process.[126] When a trust is removed, the school becomes a 'foundation school without a foundation'.

Right of referral by a board

350. The board or relevant foundation of a foundation, foundation special, VA or VC school, or the Roman Catholic or Church of England diocese within the relevant LA area can refer a LA's 'prescribed alteration' or closure decision to the Schools Adjudicator. The Schools Adjudicator will then make a new decision. Any request for referral must be made within four weeks of the LA's decision.

6.15 Information sharing

351. This section details the roles and responsibilities of boards, headteachers, LAs and other educational establishments in giving information to each other, parents/carers, pupils and the Secretary of State for Education.

352. Any reference to parents in this section includes all adults with parental responsibility. It also acknowledges the rights, duties, powers, responsibilities and authority that parents have by law.

6.15.1 Information from the board to the Secretary of State

Information from academy trusts to the ESFA

353. Academy trusts must provide ESFA, or its agents, with the information required in order to exercise its responsibilities, and to meet funding requirements. This information must be of sufficient quality to meet the purposes for which it has been requested. The academy trust must provide the information when, and in the format ESFA and its agents request it. ESFA will consider the impact on academy trust business and staff workload in the deadlines it specifies for the provision of information.

354. On occasion, ESFA will require urgent information from the academy trust, usually as a result of requests to ESFA to fulfil its duties to provide information to the Secretary of State and account to parliament. ESFA will act reasonably in its requests for information and will have regard to the costs and timescales of providing the information, and where appropriate to its confidentiality. In requesting information, ESFA will also consider information previously supplied

[126] The Education and Inspections Act 2006, Sch 1, s25 and s26 of, and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations.2007.

by the academy trust to ESFA or other stakeholders with whom ESFA is realistically able to share information. ESFA may also request information that the academy trust gathers to meet its own needs.

355. In the event that the academy trust does not return the information ESFA requires by the specified deadline, or that the information is not of an acceptable quality, ESFA may carry out whatever investigations it deems necessary to collect the information, where appropriate in consultation with the academy trust. ESFA may deduct, as necessary, all or part of the cost of the investigations from ESFA's recurrent funding of the academy trust.

The trust information to the Standards and Testing Agency (STA)

356. At the end of key stage 2, national curriculum tests must be returned to the STA for marking, and teacher assessment outcomes must also be submitted to the STA.

Get Information About Schools (GIAS)

357. GIAS is the department's register of educational establishments in England and Wales. It contains vital information about academies (including free schools), maintained schools, federations, further education (FE) colleges (FE and sixth corporations, specialist designated colleges and special post 16 institutions) and higher education institutions, and is used by the department and many key partners to contact establishments, update systems, perform analysis and inform policy decisions, some of which might carry funding implications.

358. All establishments have a GIAS record that should be kept up to date. Anyone can access the public site, however to amend the establishment's record and access non-public information the site must be accessed via DfE Sign-in (DSI). Each establishment has a DSI approver who should ensure the establishment's record is kept up to date. The approver can assign access to the establishment's record for other establishment colleagues if they wish to. For LA maintained schools, the LA is also able to access the establishment's record to make amendments.

359. GIAS is the legislative avenue for LA maintained schools to inform the Secretary of State of changes to their establishment made through the prescribed alterations regulation process: Making significant changes ('prescribed alterations') to maintained schools. For academies the Making significant changes to an open academy and closure by mutual agreement guidance sets out that GIAS must be kept up-to-date.

360. GIAS is also the approved process for schools to inform the Secretary of State of their intention to join or leave a federation. Information on federating is available on GOV.UK.

361. All governance boards are required to provide information to the Secretary of State about people involved in governance via GIAS which is also the National Database of Governors and Trustees.

362. Trust must notify ESFA via GIAS of:

- the appointment or removal of Members, chair of trustees, all other academy trustees, accounting officer and chief financial officer, including direct contact details; and
- headteacher including contact details, chair of local governing bodies including contact details and local governors (where adopted) for constituting academies in a MAT within 14 days of any change.

363. It is essential that all establishments ensure their details are up-to-date on the GIAS website, including their governance details which are reflected through The Education Act 1996 and the AFH.

364. For further information on how to update your establishment's information on GIAS please see the guidance section on the site.

DfE Sign-in

365. DfE sign-in allows providers[127] to register and access relevant DfE services through a single log on.

366. The board must reassure itself that mandatory data collections and statistical returns requested by the Secretary of State are given to the relevant timescales and security standards.

367. The board of an academy must also refer to its funding agreement and articles of association for details of information to be given to the Secretary of State.

Performance Tables and Analyse School Performance (ASP)

368. Information from the school performance tables and ASP provide a valuable tool to help boards monitor and compare school performance. The board must reassure itself that its school takes part in performance tables data checking exercises.

[127] Schools, trusts, FE providers and LAs

369. In September, schools can view their data including results. Amendments to results must be made in October with supporting evidence. The department informs headteachers and LAs in advance of when each checking exercise will start and when the checking website will become available.

6.15.2 Information from the board to the LA

370. The board of a maintained school must give the LA any relevant information or reports in connection with the discharge of the board's functions that the LA may need.

371. Boards should ensure that their schools submit results from the Early Years Foundation Stage (EYFSP), the year 1 phonics screening check, and the end of key stage 1 teacher assessment to the LA.

372. Boards of all schools must ensure that the LA is provided with relevant information about its pupils that the LA requests so that it can arrange services to encourage or help young people participate in education or training.[128] The LA should also be notified as soon as possible when a pupil unexpectedly stops attending school.

373. Boards of all schools, including community and foundation special schools and academies must on request, provide certain information[129] to parents of pupils or prospective pupils, to LAs and to primary care trusts, including:

- basic information about the school's SEND provision;
- information about the school's policies for the assessment and provision for all pupils with SEND; and
- information about school staffing policies and relationships with external partners.

374. The board must publish the information in a single document and make copies available free of charge to parents, the LA and the primary care trust. The LA may publish the information referred to above if the board agrees. Where there is an agreement, the board must supply the LA with the information, which must be published without alteration. Further information is available in the 'SEND Code of Practice'.

[128] Education and Skills Act 2008, s72

[129] Education (Special Educational Needs) (Information) (England) Regulations 1999.

6.15.3 Annual reports to parents

375. Before the end of the summer term of each school year, headteachers of maintained schools are responsible for preparing and providing parents of every registered pupil with a written report on their child's achievements. The information to be included in the annual report to parents is set out in legislation.[130]

6.15.4 Information from the board to parents

School prospectus and publishing school information online

376. Boards of maintained schools are required to publish on a website the information specified in the School Information Regulations. These regulations were amended[131] to remove the requirement for maintained schools to publish an annual prospectus. Schools keep the freedom to choose whether they wish to continue marketing themselves through a prospectus and/or publish on a website additional information they feel is necessary to meet the needs of parents and the wider community.

377. Maintained school boards will need to reassure themselves that the school continues to meet any legislative requirements in developing specific policies and communicating them to parents. The department publishes advice on statutory policies for schools.

378. All boards should publish on their school website up-to-date details of their governance arrangements in a readily accessible form.[132] Further details are in section 5.5.

379. Maintained schools must publish whole-school results from key stages 2 and 4.[133] The department also publishes national analyses of the results.

380. Academies must comply, by their funding agreements, with the relevant sections of independent schools standards prescribed under section 157 of the Education Act 2002.

[130] Education (Pupil Information) (England) Regulations 2005, Schedule 1 (and the 2008 amendments to the Regulations).

[131] The School Information (England) (Amendment) Regulations 2012.

[132] Readily accessible means that the information should be on a webpage without the need to download or open a separate document.

[133] The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012.

381. The current model funding agreement requires academies to publish some information on their website. Any academy should refer to its funding agreement for specific requirements.

382. Further information on what maintained schools must publish online is available on GOV.UK.

383. Further information on what academies, free schools and colleges should publish online is available on GOV.UK.

The Home-School Agreement

384. The statutory obligation for maintained schools to provide written home-school agreements was withdrawn from January 2016.[134]

Pupils' information

385. The board of a maintained school should reassure itself that its school:[135]

- keeps pupils' curricular and educational records;
- provides access to these records to parents;
- reports at least annually on their pupils' progress and educational achievements;
- provides a report to school leavers; and
- makes sure that the pupils' educational records and common transfer file (CTF) are transferred securely.[136]

386. The statutory duties imposed by the Education (Pupil Information) (England) Regulations 2005, such as those to provide parents with access to their child's educational records, do not apply to mainstream academies.

387. Data Protection legislation gives all pupils, regardless of age, the right of access to their own educational records held at school or by the LA. In certain circumstances, a parent, on behalf of their child, may make requests for this information. The DPA's subject access rights only give parents the right to see personal information about their child when the child is unable to act on their own behalf, or gives their consent.

[134] Deregulation Act 2015, Sch16 para 2

[135] The Education (Pupil Information) (England) Regulations 2005.

[136] For example, by using the department's DfE Sign-in system as pupils change schools.

388. An academy's funding agreement itself does not place any requirements on academy trusts about providing information to parents for individual pupils. Academy trusts must meet the Education (Independent School Standards) Regulations 2014 (SI 2014/3283). Paragraph 32(1) (f) in Part 6 of Schedule 1 requires them to issue an annual written report of a pupil's progress and attainment in the main subject areas.

389. The requirement in the Pupil Information Regulations is for the secure transfer of educational records to a pupil's new school applies no matter where the pupil's new school is in the United Kingdom. This includes transfers from maintained schools to academies and independent schools. However, the Pupil Information Regulations and the requirement to transfer educational records and CTF do not apply where a child changes schools between academies or from an academy to a maintained school.

Retention of pupil educational records

390. All schools are directly responsible under the Data Protection legislation for the collation, retention, storage and security of all information they produce and hold. This includes educational records, headteacher's reports and any other personal information of individuals – pupils, staff and parents. As such, schools should consult their legal advisers and develop a data retention policy in accordance with the Data Protection legislation.

6.15.5 Data Protection Act (DPA) 2018 and the General Data Protection Regulations (GDPR)

391. Organisations have direct responsibility for ensuring that they comply with the data protection legislation and handle personal data in line with it.

392. The DPA places certain statutory obligations on schools. These include, but are not limited to:

- notifying the Information Commissioner's Office (ICO) of the school's register entry (name and address of the data controller and a general description of how personal information is processed);
- providing a statement or 'privacy notice' to individuals, such as pupils and parents, whose personal data is being processed or held; and
- responding to requests for personal data or 'subject access requests' within one calendar month.

393. Various guidance on GDPR is available on the ICO website. Governors and academy trustees may find the guidance on accountability and governance useful.

394. Organisations should also consider:

- obtaining their own data protection and/or legal advice;
- formulating their own data protection or data handling policies; and
- ensuring that staff understand and follow policy when handling personal data.

395. The department has published a tool kit for schools and advice on Cloud software services and the Data Protection Act.

6.15.6 Freedom of Information Act 2000

396. The board is responsible for making sure that the school complies with the Freedom of Information Act 2000 (FOIA). It should also reassure itself that the school has in place a Freedom of Information (FOI) publication scheme. The legal presumption of openness makes it more important that a school decides its policies and conducts its day-to-day operations in a way that stands up to public scrutiny.

397. As requests for information can be directed to the school through anyone who works there, the board should make certain that all members of staff are aware of the FOIA and how requests for information are handled by the school. Boards may choose to charge a fee, which must be calculated according to the FOI and Data Protection (Appropriate Limits and Fees) Regulations 2004. The ICO publishes guidance on its website.

398. Schools are under a duty to provide advice and assistance to anyone requesting information and must respond to the enquiry promptly, and in any event, within 20 working days of receipt (not including school holidays).[137]

[137] The Freedom of Information (Time for Compliance with Request) Regulations 2004, 2009 and 2010 exclude days that are not school days from the 20 working day period.

6.16 Complaints

399. The boards of all maintained schools have a duty to establish procedures for dealing with complaints about the school and any community facilities or services that it provides unless alternate statutory procedures apply.[138]

400. All LA maintained schools must publish their complaints procedures online.

401. Academy trusts must ensure they have a procedure that deals with complaints from parents of pupils and that it is effectively implemented. This must comply with the Education (Independent School Standards) Regulations 2014. Part 7 of the regulations sets out the standard about how the manner in which complaints are handled is met. The department expects academy trusts to also respond to complaints from individuals who are not parents of pupils.

402. Academy trusts must make their complaints procedure available on request. The expectation is that this should be published online.

403. Any individual can complain to the Secretary of State for Education about a school in England. For maintained schools, the department considers complaints to determine whether a school board has acted unreasonably in the performance or exercise of its education powers or duties or has failed to perform a duty. Where this is established, the Secretary of State has powers of intervene and give directions to the board.[139] ESFA handle complaints about academies on behalf of the Secretary of State, in accordance with their terms of the school's funding agreement.

404. If requested to do so, a LA maintained school board must provide the department with any specific information relevant to the department's consideration of a complaint.[140]

405. Guidance on making a complaint about a school gives detailed information about the role of the Secretary of State and ESFA in the complaints process. Guidance to help LA maintained schools and academies draw up a complaints procedure is available.

406. By law, and in certain circumstances, Ofsted is able to investigate complaints by parents about their child's school to decide whether to use its inspection

[138] Education Act 2002, s29. For academies and independent schools – The Education (Independent School Standards) Regulations 2014.
[139] Education Act 1996, s496 - 497.
[140] Education Act 1996, s538

powers. It has powers to obtain information to facilitate an investigation. Boards may find it useful to familiarise themselves with Ofsted's guidance to parents.

407. If requested to do so, the board must provide Ofsted with any specific information and any other information that the school considers relevant to the investigation of a complaint.

408. Should Ofsted consider it appropriate for the purpose of an investigation that they meet with parents, then the board (or in the case of a school which does not have a delegated budget, the LA) must co-operate with Ofsted in arranging the meeting. This includes allowing a meeting to take place on the school premises, fixing a date for the meeting and notifying parents and the LA of the meeting. A representative of the board and the LA may also attend the meeting.

409. If Ofsted prepares a report of an investigation, that report must be passed to the board (or in the case of a school without a delegated budget, the LA). The body must then send a copy of the Ofsted report to all registered parents.

6.17 Whistleblowing

410. Academy trusts should have appropriate procedures in place for whistleblowing. The trust board should agree the whistleblowing procedure and publish it on the academy trust's website. Academy trusts should appoint at least one academy trustee and one member of staff, who other staff can contact to report concerns, and academy trusts should ensure all staff are aware of the whistleblowing process and how concerns will be managed. The academy trust should ensure all concerns raised with them by whistleblowers are responded to properly and fairly.

411. Every maintained school should have a whistleblowing procedure and the governing body is responsible for agreeing and establishing this, which should be based on the LA's procedure. Maintained schools should appoint at least one member of staff and at least one governor, who other members of staff can contact if they wish to report concerns. The governing body should ensure that all staff know about the school's whistleblowing arrangements, and who they can contact in the LA in case a staff member feels they need to report to someone outside the school.

412. The whistleblowing charity Protect provides support for organisations and confidential independent advice to employees about wrongdoing in the workplace. You can contact Protect at:

General enquiries: 020 3117 2520

Protect Advice line: whistle@protect-advice.org.uk

413. The whistleblowing page on GOV.UK provides further information on the areas for which whistleblowing arrangements should cover.

7. Evaluation

1. This section is about the importance of regular evaluation by both the board and objective third parties of the effectiveness of governance and the performance of schools. It concludes this handbook with a summary of the support available to boards to help them improve their effectiveness.

7.1 Developing the board's effectiveness

2. Boards should regularly evaluate their own effectiveness. As explained in guidance for maintained schools, the chair has a particular responsibility for ensuring the effective functioning of the board. Good chairs lead by example and ask for regular feedback from their board to improve their own effectiveness and have an annual conversation with each person to discuss the impact of their contribution to the work of the board.

3. The department funds providers to deliver training programmes to governors/academy trustees and clerks. Further details of the providers can be found on GOV.UK. The National Governance Association offers a Chair of Governors' 360 service which provides an analysis of the chair's current performance and aims to offer comprehensive information regarding areas of strength, as well as areas where improvement may be required (there is a charge for this service).

4. Boards should carry out regular audits of the skills they possess in the light of the skills and competences they need, taking account of the department's Competency framework for governance, and actively seek to address any gaps they identify – through either recruitment or training as discussed further below. They should also reflect regularly on whether they have the right overall balance of people and skills, review their structures and processes to improve efficiency and reduce unnecessary workload (both their own workload, that of executive leaders and staff) and consider the benefits that might result from restructuring the board's constitution and membership. 'A possible road map for governing board reconstitution' published by the National Co-ordinators of Governor Services (NCOGS) aims to help boards with the practicalities of how to approach the process of reconstitution.

5. The governing or trust board is also advised to use the Clerking Competency Framework to identify the type of clerk required to support the chair and the board. A good clerk will contribute to the efficiency, effectiveness, productivity and compliance of the governing board.

6. Academy trusts producing audited accounts for the first time, for example newly-converted academies, must set out in the governance statement

published within the annual accounts, details of what they have done in their first year to review and develop their governance structure and the composition of the board of trustees. Established trusts should also include in their annual accounts an assessment of the trust's governance, including a review of the composition of the board in terms of skills, effectiveness, leadership and impact.

7. There is a range of tools available that suggest suitable questions to help with self-evaluation. The All-Party Parliamentary Group on Education Governance and Leadership has produced 'Twenty key questions for a board to ask itself' and Twenty-one questions for MAT Boards. The EEF DIY evaluation guide introduces principles of evaluation and provides advice on designing and carrying out small-scale evaluations in schools.

7.2 External reviews of governance

8. An objective independent external review of the effectiveness of the board can be a more powerful diagnostic tool than a self-evaluation. This is particularly important before the board undertakes any significant change – such as conversion to academy status or before a MAT grows significantly. Guidance on commissioning and conducting an external review is available on GOV.UK.

9. It is crucial that a board takes this recommendation for an external review as a wake-up call and moves promptly and decisively to commission a high-quality independent review and act upon its plan of SMART[141] actions to improve its effectiveness. To inform the focus of the external review, boards should use their attendance at the end of inspection feedback meeting to make sure they understand the reason(s) the external review of governance was recommended and the specific weaknesses inspectors have identified.

10. It is for the board to decide how the external review will take place, and to commission and pay for it, having regard to the published advice on the form and nature of such reviews. It is essential that boards recognise that an external review of governance should be independent and objective, and not conducted by a 'friend' of the board. The DfE, many LAs, and governance support organisations are able to signpost boards to a growing number of potential providers that may be commissioned to undertake the review. Such reviews aim to be developmental and do not represent a further inspection.

11. The impact of the external review will be assessed and reported on by inspectors conducting subsequent monitoring visits and the next section 5

[141] Specific, measurable, achievable, realistic, timed.

inspection. If the board has not undertaken a review by the time of the next section 8 or section 5 inspections, or is not acting on its findings, inspectors may take account of this when evaluating the progress made by the school and the school's overall effectiveness. In some cases, this may lead to a school being judged to be inadequate.

12. Schools causing concern guidance advises LAs to take note of all recommendations made to maintained schools for an external review. This is because the recommendation could potentially signal that there has been a failure of governance that is prejudicing standards, which could in turn warrant the use of a LA warning notice to improve.

13. Boards do not need to wait for an Ofsted inspection recommendation to seek a review and can arrange an external review of governance at any time to improve the effectiveness of the work of the board.

7.3 Inspections

7.3.1 Ofsted Section 5 inspections and Section 8 inspections

14. Routine Ofsted inspections of state-funded schools under section 5 and section 8 of the Education Act 2005 are currently suspended as part of the Government's response to coronavirus. During the autumn term 2020, Ofsted inspectors will visit a sample of schools to discuss how they are managing the return to education of all their pupils. Ofsted has published information about the autumn visits: Education Plans from September 2020. Ofsted may also inspect a school in response to any significant concerns, such as safeguarding. It is intended that routine Ofsted inspections will restart from January 2021, with the exact timing being kept under review.

15. Ofsted publishes guidance on its inspections of state-funded schools: a Section 5 School Inspection Handbook and a Section 8 School Inspection Handbook. The handbooks set out details of the school inspection process, including how boards are involved, and the criteria for inspections, including how the effectiveness of governance is assessed and reported. Ofsted also publishes specific guidance on the inspection of safeguarding in early years, education and skills.

16. Governors are encouraged to read the 'Clarification for schools' section of the Section 5 School Inspection Handbook (paragraphs 43-48), which aims to dispel myths about inspection that can result in unnecessary workload in schools.

17. As part of the inspection process, Ofsted considers responses to its online Parent View survey. The views of parents help inspectors form a picture of how a school is performing and Parent View can provide valuable information on how well the school engages with parents. Boards can access the toolkit Ofsted has developed for schools.

18. When a school is notified of a section 5 inspection, the board must take reasonable steps to notify parents of registered pupils and other prescribed persons[142] of the inspection.

19. When it receives the report, the board, must arrange for: [143]

    - the parents of all pupils to be sent a copy of it within five working days;[144]
    - the report to be made available to any member of the public who wishes to see it, at such times and places as may be reasonable; and
    - copies of the report to be provided to anyone who asks.

20. The School Information Regulations[145] require boards of maintained schools to publish specified information on a website. This includes publishing details of where and how parents may access the most recent report about the school published by Ofsted, for example, by a link to the school's report on the Ofsted website. The board should also consider translating the report into other languages where appropriate.

7.3.2 Section 48 inspections[146]

21. The board of a voluntary or foundation school or academy that has been designated as having a religious character is responsible for making sure that the content of the school's act of collective worship, and any denominational religious education provided for pupils, is inspected approximately every 5 years[147] (a 'section 48 inspection'). The duty to arrange a section 48 inspection is currently suspended as part of the Government's response to coronavirus.[148]

22. These aspects of the school's provision will not be included in the section 5 inspection arranged by Ofsted. The board may also arrange for the section 48 inspection to cover the spiritual, moral, social and cultural development of pupils at the school. The contractual arrangements for the carrying out of

[142] Education (School Inspection) (England) Regulations 2005, regulation 4
[143] Education Act 2005, s14 and s16
[144] Education (School Inspection) (England) Regulations 2005, regulation 6
[145]The School Information (England) Regulations 2008.
[146] Education Act 2005 Applies to academies via clauses in the funding agreement.
[147] Education (School Inspection) (England) Regulations 2005, regulation 10
[148] Coronavirus Act Disapplication Notices - school inspections

section 48 inspections, including fees, are a matter for the board. When choosing an inspector for the section 48 inspection, the board (or in the case of a VC school, the Foundation Governors) must consult the relevant body where such a body has been prescribed[149] as shown in the table below:

School designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools
Sikh	Network of Sikh Organisations
Seventh-day Adventist	Education Department of the British Union Conference of Seventh-day Adventists

23. A grant is available towards the cost of the section 48 inspection. The process for claiming the grant is managed by the individual faith groups. An inspection report must be prepared within 15 working days of the end of the inspection.[150] Under section 49, the board must publish this in the same way as for section 5 inspections.

7.4 Schools causing concern

Maintained schools

24. A maintained school that is causing concern is one that is 'eligible for intervention' or which meets the criteria for the LA and/or the RSC (on behalf of the Secretary of State) to issue a warning notice as set out in Part 4 of the Education and Inspections Act 2006.

25. A maintained school will be eligible for intervention if it is judged inadequate by Ofsted, or fails to comply with a warning notice. The Schools Causing Concern guidance sets out the conditions under which a warning notice may be issued and the role of LAs and RSCs in relation to warning notices and schools eligible for intervention.

[149] Education (School Inspection) (England) Regulations 2005, regulation 9
[150] Education (School Inspection) (England) Regulations 2005, regulation 11

26. For governance concerns the guidance states that an RSC or LA should consider issuing a warning notice to a maintained school where the governing body is failing to deliver on one or more of the three strategic roles for governance set out in section 1.1 of this document, and this is resulting in a serious breakdown in the way the schools is managed or governed or it is likely to adversely affect standards of pupil performance.

27. The RSC or LA may judge that the governance of a maintained school that is eligible for intervention, on whatever grounds, needs improvement. If the maintained school (and/or the appropriate authority, on its behalf) is unable or unwilling to bring about changes in governance itself, the LA or RSC will exercise their powers to appoint additional governors, or to replace the governing body by appointing an IEB. The RSC may also consider whether an academy order should be made. These processes are also set out in the Schools causing concern guidance.

Academies

28. The Schools causing concern guidance describes how RSCs will make decisions and the process they will follow when academies are judged inadequate. Further arrangements for addressing concerns in academies will be set out in each academy's funding agreement.

29. The RSC is able to terminate the funding agreement of an academy that has been judged inadequate. This is a power rather than a duty, meaning the RSC may decide not to terminate, for example, where a change of sponsor would prevent the consolidation of improvements in a school.

30. Arrangements for academies to be issued with a warning notice where they have not been judged inadequate by Ofsted but are otherwise causing concern, are set out in the individual academy's funding agreement. Such warning notices can usually be given on the same grounds as those for maintained schools, which is unacceptable performance, a breakdown in leadership and governance or the safety of pupils or staff. More detail can be found out in the Schools Causing Concern guidance or the academy's funding agreement.

31. Where the ESFA has concerns about financial management and/or governance in an academy trust it may issue, and publish, a Financial Notice to Improve (FNtI). The academy trust must comply with the FNtI. Failure to comply will be deemed a funding agreement breach. The funding agreement may be terminated due to non-compliance with an FNtI.

7.5 Support to be effective

7.5.1 Support from DfE

32. The department funds free support to help boards recruit to address their skills gaps:

    - Academy Ambassadors recruits senior business leaders to serve on the boards of MATs; and
    - Inspiring Governance enables schools and colleges to search and identify online people from the world of work with relevant skills and experience who are willing to offer support in a variety of ways, including joining a board.

33. It also provides other forms of support through its:

    - funded development programmes for governance leaders and clerks; and
    - expert peer-mentoring support to chairs through the National Leaders of Governance (NLGs)[151] programme.

34. The Making Data Work report and the school workload reduction toolkit contain principles and resources for executive leaders and boards to work with staff to address teacher workload issues. Boards should be aware of these materials and act on the recommendations to support staff wellbeing and retention.

7.5.2 Other training and support

35. The organisations below are known to operate in the education sector, delivering governance training and support. However, this is not a definitive or DfE-endorsed list of suppliers who deliver relevant services. Organisations are responsible for carrying out their own searches and due diligence to ensure they secure the most appropriate service for their needs on a value for money basis. Support and training for boards is also available from:

    - National Governance Association (NGA), a 'not for profit' membership organisation for governing boards in England from both maintained schools and academy trusts;
    - The National Governance Association's Chair of Governors' 360 Appraisal service provides an analysis of the chair's current performance, and aims to offer information regarding areas of strength, as well as areas where improvement may be required (there is a charge for this service);

[151] The NLG programme is currently being reviewed.

- The National Governance Association's Learning Link offers flexible e-learning to help governors, academy trustees, chairs and clerks develop their governance skills and knowledge;
- The Confederation of School Trusts (CST) represents the interests of self-governing schools to government, the National Employers' Organisation for School Teachers (NEOST), unions and other groups;
- Modern Governor is a provider of online training for school boards offering a number of e-learning modules;
- The Key for School Governors is a membership service that provides guidance on school governance;
- Governors for Schools (GfS) is a recruitment organisation for individuals with specific transferable business and management skills to fill boards' skills gaps. Together with The Key for School Governors and Lloyds Banking Group, GfS have developed a selection of online modules, covering a variety of topics linked to governance;
- LAs who provide guidance through their own governance support services;
- Other commercial governance support organisations; and
- Peer-to-peer support online: there are a growing number of opportunities to share experiences with each other online through groups such as @ukgovchat, that aims to enable those serving on boards to share good practice, and support and challenge each other.

7.5.3 Other resources

36. Other resources boards may find useful include:

- The Confederation of School Trusts (CST) has published guidance on effective governance and effective financial management;
- Improvement Capacity Framework for Trust Governance adapts the sixteen core competencies in the DfE's Competency Framework as a basis for trust boards to assess their corporate capacity and effectiveness;
- CST Code: Principles for Setting Executive Pay a document about setting executive pay in trust academies; and
- Role Description for the Chair of the Trust Board draws on and is aligned with the DfE's Competency Framework for Governance;
- The Chartered Governance Institute provides guidance for academy trusts including a useful maturity matrix and a specimen job description for the academy company secretary role; and

- A professional development competency framework for governance professionals;
- The National Governance Association has developed an induction resource entitled Welcome to Governance for both LA maintained schools and trust academies;
- The Chair's Handbook, a guide for chairs and aspiring chairs (this handbook has a cost);
- Guidance on the crucial role of the chair, developed jointly with the department; and
- Guidance on recruiting and retaining governors and trustees.
- Welcome to a Multi- Academy Trust for new MAT academy trustees (this document has a cost);
- The APPG's Twenty-one Questions for Multi-academy Trusts - Key questions a MAT board should ask itself;
- Developed a skills audit and matrix for boards, structured around the core functions of the board to help them identify skills and knowledge they need to deliver their functions effectively; and
- A Model Code of Conduct which aims to help boards draft their own code of conduct, one which sets out the purpose of the board and describes the appropriate relationship between individuals, the whole board and the leadership team of the school.
- The National Governance Association and the Wellcome Trust have jointly developed guidance, Being Strategic, to offer boards in all settings a framework that they can use to set a strategy for their organisation. It includes guidance on how boards can evaluate their own practice, set the strategic direction for their school and monitor progress against this;
- The New Schools Network's academy resource hub provides advice and resources on expansion as well as jobs, suppliers and events;
- Education Endowment Foundation (EEF) is an independent grant-making charity dedicated to breaking the link between family income and educational achievement;
- UKCCIS guidance for school governors/academy trustees to help boards support their school leaders to keep children safe online: Online safety in schools and colleges: Questions from the Governing Board.

Department for Education

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