



*A guide to:*

# Academy Governance



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“There’s never been a better or more important time to serve as a governor to help improve children’s lives and give them the best possible education.”

Lord Nash, Parliamentary Under-Secretary of State for Schools

## 1. INTRODUCTION

The Department for Education (DfE) and Ofsted have recently both emphasised the importance of strong governance in raising standards in education.

As a school governor, you are part of the largest group of volunteers in the country. The role of governors in academies is, however, becoming increasingly professionalised and there has been a decisive shift away from the importance of having a range of *stakeholders* on governing bodies, to focusing on recruiting governors with appropriate *skills*. It is recommended that governing bodies should regularly carry out an audit of their governing body’s experience and skills to determine whether there are areas (such as financial or HR expertise) where additional support is needed. The DfE is also encouraging academies to establish smaller governing bodies that are seen to be more effective.

The academies programme has changed the face of education in the UK but many people are still unclear about how this affects the legal structure of our educational institutions, the advantages and disadvantages of each academy structure, and the role of academy governing bodies. This document aims to demystify these areas and provide a clear overview of the role of academy governing bodies and outlines the various different academy structures. It also explains to whom academy governing bodies are accountable and the potential liability of individual governors.

## 2. GOVERNOR ROLE

A new Governors' Handbook was published by the DfE in May 2014. This states that your governing body should focus on three core strategic functions:

- ▶ Ensuring a clear vision, ethos and strategic direction;
- ▶ Holding the head teacher to account for the educational performance of the school; and
- ▶ Overseeing the financial performance of the school.

These functions are reflected in the criteria that Ofsted inspectors use to judge the effectiveness of governance in schools.

### A. Setting the strategic direction

It is the role of your governing body to set out your academy's vision, ethos and strategic framework. Your governing body should ensure that it has a vision for the future and a robust strategy for achieving its vision.

Your governing body must sign off the policies, plans and targets to achieve strategic priorities, and should regularly check on progress.

### B. Ensuring accountability

Your governing body must focus on holding the head teacher and senior leaders to account on school performance. As a governor you should play a strategic role and avoid routine involvement in operational matters.

Effective governing bodies ask the right questions:

- ▶ Which subjects get the best and worst results and why? How does this relate to the quality of teaching?
- ▶ How are you going to raise standards for all children, including the most and least able, those with special educational needs and those receiving free school meals?
- ▶ What is the school's approach to the implementation of performance related pay?
- ▶ What is the school's track record on attendance and behaviour?

### Reviewing data

Your governing body must have good data to help it to monitor and review your school's performance. It is essential that every governing body has at least one governor with the skills necessary to understand financial data and performance data. It is the head teacher's responsibility to give the governing body all the information it needs to do its job well.

Governors need to make sure that they use objective data from external sources to evaluate performance. This may include:

Ofsted reports for schools explaining their overall performance:

- ▶ The reports cover pupils' attainment and progress in core subjects.
- ▶ They show how well schools are performing compared to national averages and compared to similar schools.

Ofsted data dashboards provide an overview of school performance data in graph form:

- ▶ The dashboards include pupil attainment and progress data and display how effectively the school is narrowing the gap between pupils from disadvantaged backgrounds and their peers.
- ▶ The dashboards also allow governors to compare their school's performance to other schools.

School and college performance tables provide more detailed information:

- ▶ The tables cover pupils' attainment, school finances and school workforce.
- ▶ Governors can use performance tables to compare their own school with other schools.

RAISEonline is available to governors and provides a more detailed analysis of performance:

- ▶ It includes data on pupil attainment, progress, absence and exclusions.
- ▶ Governors who lead on understanding and scrutinising performance data should analyse the full RAISEonline summary report. It is important that all governors see some form of summary of key data for their school.

Many governors find that visiting their school, particularly during the day, is a helpful way to find out more about their school. Governors can see whether the school is implementing improvement plans. Visits also provide an opportunity to talk with pupils, staff and parents to gather their views.

### **C. Ensuring financial probity**

Your governing body is responsible for making sure that your academy's money is well spent. At least one governor should have specific skills and experience of financial matters.

Your governing body should ask key questions such as:

- ▶ Are we making full use of all our assets?
- ▶ Are other schools achieving better value for money?

How effectively your governing body does its job has a real impact on the success of the academy.

### 3. SELF-EVALUATION

Why self-evaluate?

More recently, there has been an enhanced inspection of governing bodies by Ofsted as part of their leadership and management assessment. Self-evaluation is crucial as it:

- ▶ Is a core function of governing bodies;
- ▶ Encourages governors to improve;
- ▶ Is what outstanding governing bodies do; and
- ▶ Is what Ofsted now looks for.

*“The (outstanding) governing bodies constantly reflect on their own effectiveness and readily make changes to improve. They consider their own training needs, as well as how they organise their work”*

*Learning from the Best, Ofsted, 2011*

Your governing body should have a working document which links back to your objectives and priorities – are you doing what you said you would? Practical tips for your governing body to effectively self-evaluate your performance include:

- ▶ Being evaluative, rather than descriptive: “we did this and it had this effect,” rather than “we did this”;
- ▶ Linking self-evaluation to the academy’s improvement plan;
- ▶ Identifying areas where you need to improve further;
- ▶ Evaluating your impact on the academy; and
- ▶ Grading your efforts against Ofsted grades/descriptors.

## 4. ACADEMY TRUST MODEL

Governors must have a clear understanding of the governance structure of their academy trust to enable them to play an effective role in the governance of their academy. The memorandum and articles of association are the governing documents required to establish an academy trust (a charitable company limited by guarantee). The memorandum contains the names of the subscribers who will be the academy's first members. The articles of association are the constitution of the company and set out how the school should be run. The memorandum and articles of association must be filed at Companies House to incorporate the company. Academy trusts are deemed to be exempt charities so there is no need for them to be registered with the Charity Commission.

The model articles of association provide scope for flexibility on the composition of the academy trust. A single academy trust has two layers of governance:

### Members –

Members comprise:

- ▶ The original signatories of the Memorandum.

Members can, by special resolution, appoint and remove additional Members. Members may also agree unanimously to remove any Member who is a signatory (that Member's agreement is not required).

The role of the Members is to:

- ▶ Oversee the achievement of the objectives of the company;
- ▶ Take part in annual and extraordinary general meetings;
- ▶ Receive accounts;
- ▶ Appoint some of the Directors (governors); and
- ▶ Have the right to amend the Articles of the company and ultimately to remove the Directors.

The Members' liability is limited to £10.

### Directors –

As a governor of an academy trust you will also become a company director. The Directors are responsible for the three core strategic governance functions outlined above.

The Board of an academy trust shall comprise not less than three directors but must include at least two elected parent governors. The Board will also usually include:

- ▶ Head teacher;
- ▶ Staff governors (staff including the head teacher to comprise no more than a third of the governing body);
- ▶ Governors appointed by the Members;
- ▶ Governors appointed by any Foundation/Diocese/Sponsors; and
- ▶ Any co-opted governors appointed by the other governors.

Academy trusts must ensure that they are not local authority influenced. A company is deemed to be influenced if 20% or more of its members or directors are 'associated persons'. This covers members of local authorities (including members within the last four years); employees of local authorities; and officers of companies under the control of a local authority. Any person who is an elected councillor will be regarded as an associated person whether the local authority is a county council, district council, borough council, parish council, or a community council.

The Directors of an academy trust shall each school year elect a Chairman and Vice Chairman. The appointment of the Chair is particularly significant for the effective running of the school. A good Chair will have the following skills:

- ▶ An excellent understanding of the educational landscape;
- ▶ A good working relationship with the head teacher;
- ▶ The confidence to hold the senior leadership team to account;
- ▶ An ability to encourage team working; and
- ▶ An excellent knowledge of the academy.

## Delegation

The Board of Directors can decide what powers to delegate in an academy trust. It is important for Directors to consider whether to use their powers to delegate functions and decisions to committees, individual governors or the senior leadership team.

In order to ensure the academy is run properly:

- ▶ Delegation should be clearly laid out in writing with instructions that important matters should promptly be reported to the Directors;
- ▶ There should be clear and regular reporting procedures which are enforced in practice;
- ▶ There should be a majority of Directors on any committee; and
- ▶ Delegation should be annually reviewed and monitored.

### Case study: Brentford School for Girls

“When the Governors considered what they would want from an Academy they decided the key points for our school would be:

- ▶ Independence from the Local Authority: This is a key issue for us as there was a possibility that pressure could be applied by the LA to force our single sex school to become co-educational. It was important to us that we would retain our single sex status unless we chose to consult and move the alternative forward.
- ▶ An increase in net capacity: The school saw that the ability to set our own admissions meant we could increase our pupil admission numbers, this would ensure we were much more cost effective.
- ▶ Benefits in financial management: The school would have more autonomy over these arrangements.
- ▶ Control over plans for building improvements.

We decided stand-alone status to be appropriate for us because of our geographical position and as we are unique as the only single sex, non-denominational girls’ school in the Local Authority.

The change has meant extra work for our Business Manager and finance team and a need to keep a close check on deadlines for submissions. Governors have remained largely as before but need to be aware of their responsibilities as laid out in the articles of association. We now have more community governors on our governing body as we have no LA governors. The school recruit these and can therefore ensure that they have the skills we require to fulfil our obligations.”

Caren Benn, Clerk to the Governors, Brentford School for Girls

## 5. ACADEMY GROUPS

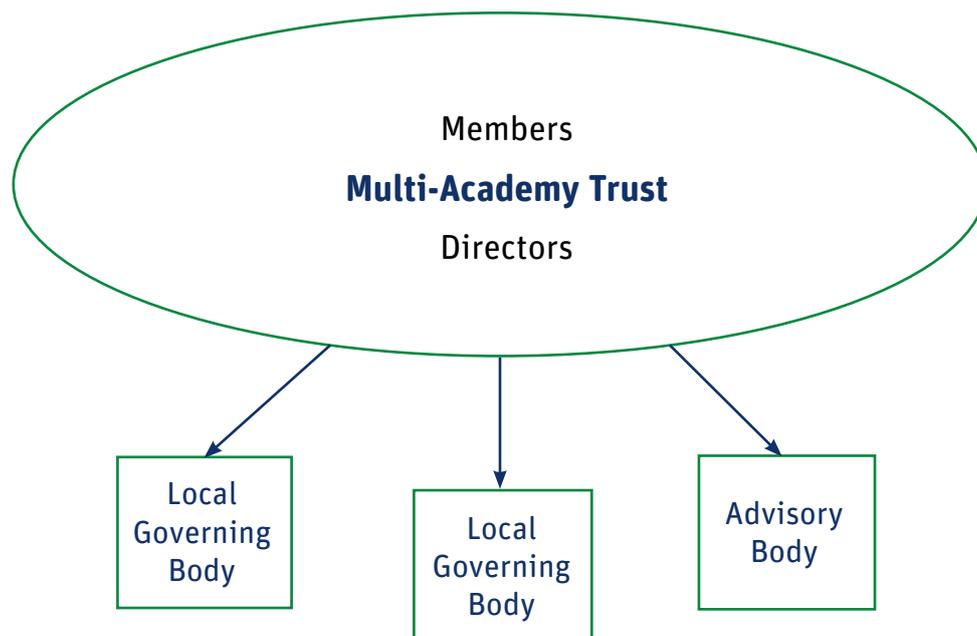
In the early days of the academies programme, many schools were converting as stand alone academies. In the past few years, schools have been increasingly converting to academy status in groups or existing academies are expanding to take advantage of the benefits of collaboration. There are three models for academy groups that have been approved by the DfE and these are set out in more detail below.

### A. Multi-Academy Trust (MAT)

A MAT is a single academy trust for all schools within the group and provides the strongest form of governance. Members of the MAT are chosen by the schools or the sponsor. The role of the MAT members is supervisory and on the whole 'hands-off'. The MAT will have a Board of Directors which will deal with the strategic running of the MAT. This will in turn delegate the day-to-day running of the school to each academy's local governing body. The level of delegation to local governing bodies can be varied to reflect the level of performance of each school.

Each academy will usually be represented on the Board of Directors of the MAT. In many cases, the Chair of each local governing body and possibly each head teacher will be Directors. There is no requirement to have staff representation on the Board. There should be two parent Directors but this requirement is often fulfilled by appointments to the local governing bodies. In the case of sponsored MATs, the sponsor will appoint the majority of the Board of Directors.

Each local governing body will have a similar governance structure to a single academy trust. If a sponsor is involved, it may appoint the majority of the governors. In circumstances where an academy is in special measures, the MAT can set up a purely advisory body that will have no delegated powers.



## Why use a Multi-Academy Trust?

If you are converting with a group of schools, at least one of which is not regarded as performing well, the DfE prefer this model as it provides a strong governance structure. Recent research has shown that there is a clear correlation between the MAT model and school improvement.

A MAT is a good model to promote collaboration between your group of schools. In a MAT, academies can pool resources, benefitting from economies of scale and shared expertise across the schools. It also makes it easier for staff to work between the schools. If there is a primary and a secondary within the MAT, it will allow for a better transition between each school, effectively creating all-through schooling.

A MAT is not appropriate in all circumstances. Governing bodies must decide whether the benefits of collaboration outweigh the loss of autonomy. If different categories of school, such as community and voluntary aided schools, are considering converting together they must be confident that a MAT is the right model for all the schools because of the changes in governance that arise. There are two other models that may be more appropriate and these are set out in more detail below.

### **Case study: The Harris Federation**

The legal powers and responsibilities of governors are held by the Harris Federation Board. The central Board believes that local governance is important and when done well can add great value to the education of young people. The central Board therefore delegates its powers and duties to the local Board to undertake so that the local Board can operate as a 'critical friend'. The only power that is not delegated is the right to set the budget annually. Each local governing body recommends a budget to the Federation's main Board who in the end make the final decision on the budget. This is because the Harris Federation is one legal entity and so cannot have the theoretical possibility of a school setting a deficit budget and impacting the other schools. In practice this issue has never arisen. The local governors undertake the range of roles and responsibilities that might be expected in any school. The local Boards are typically smaller than many with around 10 governors including elected parents and staff.

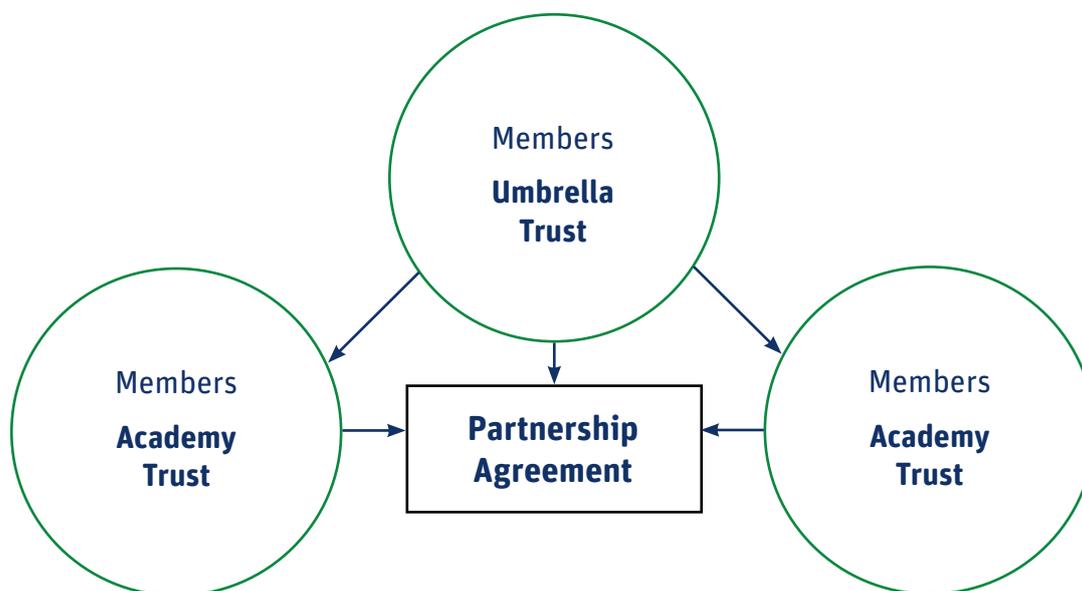
The main Board receives high level performance data and holds academy chairs of governors and principals to account. It also approves all Federation-wide policies and makes strategic decisions on allocation of resources and overall strategy.

## B. Umbrella Trust (UT)

In an UT, each school will have its own separate academy trust and the governing body will be responsible for overseeing the running of the academy on a day-to-day basis. Before conversion, existing staff, land and assets will need to be transferred to the individual academy trusts. Each governing body will also enter in to a Funding Agreement with the Secretary of State, setting out the conditions that must be complied with to receive funding for their academy.

Each individual academy is linked together by the UT. The overarching UT will have members and governors drawn from persons from each academy trust. You will need to consider whether some academies should have more influence over the running of the UT than others (will each academy be an equal partner or if there is a lead school, should a majority of members and directors of the UT be from that lead school?) The UT will have the right to intervene in the running of each academy trust, depending on the individual academy's level of performance.

A Partnership Agreement sets out how the UT and the academies within the group will work together. It provides a framework for co-operation and may focus on both financial matters and school improvement. Your group of schools will need to agree whether each academy will be free to pick and choose which services to purchase.



### Why use the UT model?

The UT model is ideal for those schools that want to retain their autonomy with a separate academy trust but also to formalise collaboration between the academies. It is a useful model for a group with mixed categories of schools (e.g. voluntary aided/controlled schools and community schools that want to retain their governance structures). The UT can also be used to supply shared services to the group of academies and to other schools.

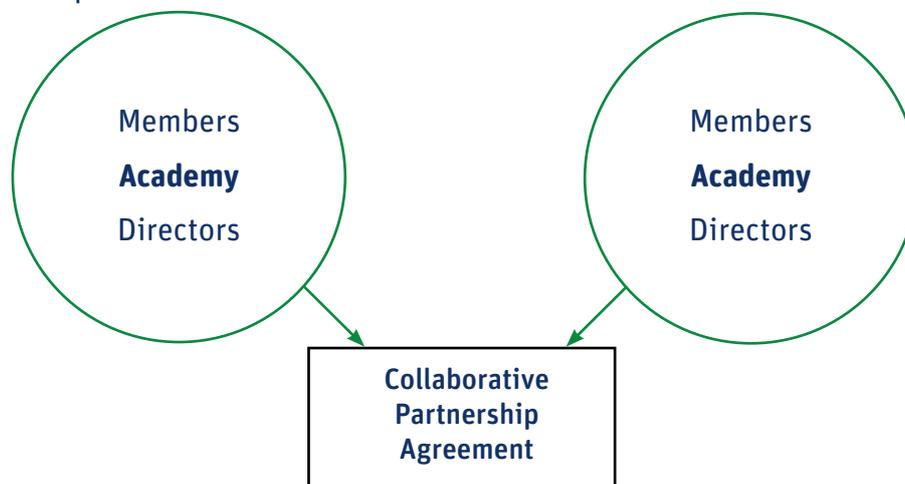
### C. Collaborative Partnership

In a Collaborative Partnership each school converts as an individual academy trust. This model provides the highest degree of autonomy as there are no shared governance arrangements. Each academy trust will have its own members and governors who are responsible for the day-to-day running of the school. Each individual academy will employ staff, hold the legal interest in land and enter into a Funding Agreement with the Secretary of State for Education.

The schools in the group will enter into a formal Collaborative Partnership Agreement that will set out how the schools will work together, what they hope to achieve and how they plan to achieve it. This model can be built on existing relationships, or be a new partnership between schools.

The Collaborative Partnership Agreement can be drafted to suit the needs of your group of schools. Areas that schools may decide to collaborate on include:

- ▶ Joint purchasing;
- ▶ Employing Finance Directors;
- ▶ Training staff;
- ▶ Mentoring the Senior Leadership Team;
- ▶ Sharing facilities; and
- ▶ School improvement services.



#### Why use the Collaborative Partnership model?

The Collaborative Partnership model provides the greatest autonomy for schools, whilst allowing for collaboration within the group. Schools will be able to minimise costs through joint purchasing and sharing resources. In a Collaborative Partnership, schools will be able to share expertise to raise standards and meet agreed improvement targets.

A Collaborative Partnership can include different categories of schools (such as community and voluntary aided schools) that have converted to academy status. Maintained schools can also join a Collaborative Partnership, whereas an UT and MAT are only designed for academies.

## 6. THE ACCOUNTABILITY OF ACADEMY GOVERNORS

The governing body of an academy is accountable to Ofsted in the same way as a maintained school. Ofsted Subsidiary Guidance: Supporting the Inspection of Maintained Schools and Academies, published in 2013, states that:

“Inspectors must evaluate the extent to which governors both challenge and support the school and hold senior staff, including the head teacher, to account for the achievement of the pupils... they hold important strategic responsibilities for the development and improvement of the school.”

Ofsted will consider whether a governing body:

- ▶ Carries out its statutory duties;
- ▶ Understands the strengths and weaknesses of your academy;
- ▶ Takes account of pupil data;
- ▶ Is aware of the quality of teaching and how this impacts in different subject areas;
- ▶ Understands how the academy makes decisions about teachers’ salary progression; and
- ▶ Is challenging and supporting the leadership in equal measure.

If a governing body fails to fulfil these requirements it will indicate a weakness in the quality of leadership and management of the school. The role of governors is critical in ensuring that a school is successful and achieves a good Ofsted grade.

The governing body of an academy is responsible to the DfE for ensuring compliance with the terms of its Funding Agreement. The Secretary of State could ultimately terminate the Funding Agreement if an academy is in breach of the terms or requires significant improvement. It is important that governors are familiar with the terms of their Funding Agreement.

Governors must also ensure compliance with charity law and company law. Further details of these responsibilities are set out below:

### Directors’ duties

In an academy, governors have new responsibilities as company directors and charity trustees. However, as you will see, many of these responsibilities (such as the duty to act in the best interests of the academy) will be familiar as they overlap with your existing duties as governors.

The duties of Directors are set out in sections 170 to 181 of the Companies Act 2006. The duties are:

- ▶ To act within the academy’s powers – to act in accordance with the company’s constitution and only use the powers for the purposes for which they are conferred;

- ▶ To promote the success of the company – to act in the academy’s best interests, taking everything you think relevant into account. Success is achieving the school’s charitable objectives;
- ▶ To exercise independent judgment – you remain responsible for the work you give to others and so although you can delegate matters to committees, you should still check any committee recommendation. Governors elected by a particular body are not representatives of that body so although they can inform the governing body of the views of that body they have to make decisions on their own.
- ▶ To exercise reasonable care, skill and diligence – be careful and well informed about the company’s affairs. If you have any special skills or experience, use them;
- ▶ To avoid conflicts of interest – actual or potential, direct or indirect, between your own interests and those of the company;
- ▶ To declare interests in proposed transactions or arrangements – to not take part in Board discussions and to not vote on those matters in accordance with the Articles; and
- ▶ Not to accept benefits from third parties – unless they cannot reasonably be regarded as giving rise to a conflict of interest.

## Trustees’ duties

Governors are also charity trustees as the academy is established as a charitable company. As charity trustees of the academy trust, you have a number of duties:

- ▶ Duty to comply with the articles of association and charity law – to ensure the charity is using its resources for charitable purposes (to “advance for the public benefit education in the United Kingdom”). Before making a decision, charity trustees should ask themselves, does this directly further the academy’s objects?;
- ▶ Duty to act in the best interests of the charity – to avoid any conflict of interests;
- ▶ Duty to act reasonably in all matters – to use reasonable care and skill in your work as a charity trustee. If you have special skills/knowledge, you will be subject to a higher duty in respect of your area of expertise. Charity trustees must consider whether it is appropriate to get external advice;
- ▶ Duty to act prudently and to safeguard and protect the assets of the charity – to ensure the academy trust remains solvent; to ensure safeguards are put in place to protect the charity’s property/funds; and to minimise the risk of employment claims; and
- ▶ Duty not to profit – charity trustees are under a duty not to benefit financially from their position (unless authorised in the articles of association).

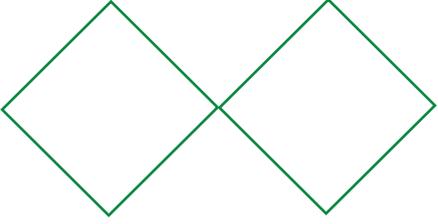
## 7. LIABILITIES OF ACADEMY GOVERNORS

As a governor in an academy is now a company director and charity trustee, this new role brings potential liabilities but these should not generally be a concern to a governor who is acting in good faith. Directors will be responsible for fulfilling the academy's company secretarial requirements, however, these can be delegated to an external organisation.

The articles of association allow the academy trust to indemnify a governor against claims brought against them in their capacity as a director. You should ensure that your academy takes out directors' indemnity insurance. In an exceptional situation, a director who has acted fraudulently could be prosecuted under criminal law and could also be disqualified from acting as a director as well as being subject to a fine. In most cases, however, where a director is acting in good faith any claim should be covered by the directors' indemnity insurance.

It is important that all governors are offered appropriate training in their new role. Practical measures can be taken by governors to ensure that you are in compliance with your duties:

- ▶ Regularly attending and preparing for meetings;
- ▶ Ensuring that your governing body regularly reviews its compliance with its statutory duties and the performance of its policies;
- ▶ Ensuring that your academy has proper procedures for reporting on its financial information to governors;
- ▶ Reading and being familiar with the memorandum and articles of association of the academy;
- ▶ Having in place a governors Code of Conduct; and
- ▶ Encouraging the governing body to act upon legal, financial and other professional advice whenever necessary.



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