

Clerking in new contexts: academy trust boards

Extract from NGA Welcome to Multi Academy Trusts

Delegation to trust committees

MAT boards have to decide how many committees operating across the whole trust are necessary. Usually the board's function can be covered effectively by two trust-wide committees:

- standards committee, covering all educational and pupil-related issues
- resources committee, covering finance, staffing and premises

It is a requirement of the AFH that all MATs (regardless of any other committees they operate) must have a committee that provides “assurance over the suitability of, and compliance with, its financial systems and operational controls” – ie an audit committee.

For MATs with an annual income of over £50m there is a requirement for a dedicated audit committee that considers issues around audit of the trust (see chapter 7 for more information about audit). MATs with an income of less than £50m can include this audit function into another committee – i.e. finance. If a trust otherwise operates on a no-committee basis it must still establish an audit committee.

The AFH also states that the board should have a finance committee “to which the board delegates financial scrutiny and oversight”. While this is a should not a must, MATs which do not choose to have such a committee will need to be able to demonstrate how they keep effective oversight of the finances. Larger, or even medium-sized MATs reaching the trigger point for being a large MAT, might choose to have a separate standards committee for primary and secondary schools or might delegate the standards function to cluster committees (see below).

If you find that your MAT has significantly more than two committees, you should question why. The board needs to be clear about why they are necessary, or whether additional committees blur accountability, encourage trustees to become operational, and/or duplicate effort, creating additional work for both the executive and non-executives.

Some trust boards do operate without any committees at trust level, in which case they tend to meet more frequently, often monthly, and may well delegate more to local or cluster level.

Committee membership

The membership of any committee may include people who are not trustees, provided that a majority of the committee members are trustees (except for any ACs that do not need to include any trustees: see below). This enables trustee boards to bring in people with specific skills who may not have the time to be full trustees, but who can add real value to a particular committee. No vote on any matter can be taken at a meeting of a committee unless the majority of voting members present are trustees.

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Although some of the processes and rules for board committees are set out in the articles of association, the constitution, membership and proceedings of any committee are decided by the trustees and should be reviewed annually. They must be included in the SoD so that it is clear who is responsible for determining the membership of the committee, its chair, quorum, meeting frequency and any decision-making powers delegated to it.

Academy committees (often referred to as local governing bodies)

If the trustee board is responsible for the trust as a whole, what happens about governance at individual academy level? Like most other things, this is a matter for the board. The articles of association allow for a MAT board to establish committees at individual academy level (which we are calling ACs).

The articles of association will almost certainly refer to ACs as local governing bodies (LGBs), but over time MATs have adopted different names for them. They may in your MAT be referred to as ACs, or advisory committees/councils. Most MATs call their ACs local governing bodies, and the members of those bodies, governors. We are avoiding this as it has caused much confusion, especially for those who transfer from the predecessor maintained school; they often consider, and indeed in some cases have been told, the role will not change, when it has to.

NGA adopted the term AC to distinguish between the structure in MATs and those of a maintained school. Traditional school governance in England involves one accountable body (the governing body) for each school. That body is the one that decides which decisions it takes and which it will delegate to its committees and the headteacher. The equivalent in a MAT is the trustee board and any school-level governance is a committee of the board – this has been poorly understood and has led to confusion and indeed conflict in a number of MATs. As the trustee board is the accountable body and the ultimate decision-making body, it can at any time choose to remove delegation from any individual or committee.

This needs to be understood by all those in the governance structure and the trust board needs to ensure that is properly explained to any schools joining the trust.

When forming a MAT, or indeed bringing a new school into its fold, many trust boards have, for what may have been good reasons at the time, determined that local governance would continue with considerable delegated powers. At the same time, maintained governing bodies joining a MAT, particularly those who have voluntarily joined, have not always done sufficient homework about the legal structure of MATs and so have simply not understood that their position and role has fundamentally changed – ie they are no longer a governing body with responsibility for the school, but a body dependent on the trust board for any decision-making powers. This is true whether the MAT delegates considerable decision-making power to ACs or not – the trustee board is the accountable body and the ultimate decision-making body. It can at any time choose to remove delegation from any individual or committee.

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One of the principles of good governance is that governance structures are regularly reviewed and amended to suit the needs of the organisation. As individual MAT boards mature they may come to realise that either they need to retain more decision-making powers, or they need to be delegated to the chief executive and staff rather than ACs. A prime example of this is the line management and consequently performance management of the headteachers/principals of the academies in the trust.

It is a commonly held view that performance management should be carried out by the member of staff to whom the individual reports to – eg the chief executive or other senior executive in relation to academy headteachers. NGA agrees that as the board is employing the chief executive to manage the organisation, they must be allowed to carry out this role and performance manage employees who report to them. While the chief executive will almost certainly wish to seek information from ACs (where they exist) about the headteacher's performance, this is not a task that should be left solely in the hands of the AC. It may be that the chief executive will include the chair of the AC in the appraisal meeting, but this must be a decision for the chief executive. This is also one of the areas where MATs' SoDs have not always been entirely clear, and we have come across examples of where both the chief executive and AC think they are responsible for the performance management of the headteacher. It is entirely at the trustee board's discretion what to delegate to the AC and whether to set them up purely as advisory boards. NGA recommends that the language used reflects this relationship – NGA uses the term academy council to describe a local committee that has few governance functions delegated to it. However, they may still have an important role in monitoring progress and engaging the academy's stakeholders, in other words being the eyes and ears of the MAT board (see section 5.7 for details of stakeholder engagement).

All MAT boards need to have regard to their articles of association when considering ACs. Although the most recent iteration of the model articles provides considerable discretion as to whether to set up ACs, previous versions of the articles may be more prescriptive. Although a number of early MATs have now adopted the more recent wording in relation to the establishment of ACs. It is of course open to the trustee board to propose a change to the articles in relation to the establishment of ACs and trustees should not shy away from making the decision to propose changes to their articles if they believe it will enable the trust to achieve its aims more effectively. Such a proposal would have to be approved by the members. Regardless of whether your articles do require you to constitute ACs, it remains the prerogative of the trust board to determine whether to delegate any decision-making powers to them.

Most articles currently require that if the trust board does not contain two elected parent trustees then there must be at least two elected parent 'local governors' on each LGB. The rule requiring the majority of committee members to be trustees does not apply to LGBs.

Some MATs do have a trustee sitting on each AC, but this is impractical with larger MATs, and even sitting on one AC can mean a greater time commitment than is usual for a trustee (see page 18). But more importantly, it is not good practice and creates duplication, rather than separation in the governance layers. If trustees sit also at local governance

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level it can give them a partial view when making decisions at board level, and can risk each trustee arguing for what benefits ‘their’ academy.

While in some MATs, all ACs have the same composition determined by the trustee board, many allow a degree of local discretion about how they are constituted. It is also possible to vary the functions delegated to different ACs and to vary what is delegated to an individual AC over time. For example, where a ‘good’ or ‘outstanding’ school has voluntarily joined a MAT, the new AC may be given considerable delegated functions, but within the same MAT, an AC in a school that is not performing so well may be given very few delegated functions and so is effectively an academy council.

If there are small schools within the MAT, it is sensible to consider whether they need their own AC or whether it is more effective to have one committee with oversight of a number of schools. You will still want mechanisms for listening to stakeholders from each school, but that can be done without an AC. This is how many local authority federations have worked and can be effective, particularly where the schools are in close geographic proximity.

Delegation to individual trustees

It is possible for the board to decide to delegate any of its functions to an individual trustee; however, in NGA’s view it is not advisable to use this option frequently or make it a significant part of your SoD. The board is a corporate body with corporate legal duties and responsibilities; the strength of the board is gained from the collective skills, knowledge and experience of the team of trustees. Relying on one individual volunteer without checks and balances is risky in comparison. There needs to be a very good reason for adopting that route as opposed to using a committee or increased executive delegation with very clear accountability routes (but see Chair’s action below).

Furthermore, using an individual trustee with expertise in a particular area can also confuse roles; trustees with particular expertise (eg accountancy, PR, human resources, legal, buildings, health and safety) are recruited for their ability to analyse the information presented to the board by the executive, not to act as a pro bono adviser. It is perfectly acceptable to use such a professional to give pro bono advice instead of them becoming a trustee; this may better suit an individual who is concerned about the time commitment needed for trusteeship.

In order for the board of trustees to hold the chief executive and MAT staff to account, some trustees may be given particular academies or strands of the strategic plan to get to know (see chapter 5); however, this should be a factfinding role, and not a decision-making one.