

Extract from DfE Model for Single Academy Trust

Under the DfE Model Articles of Association, Academy Trusts have the power:

"To provide indemnity insurance to cover the liability of Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as Governors;"

A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as directors of the Academy Trust.

Every member of the Academy Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Academy Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Academy Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

Subject to the provisions of the Companies Act 2006 every Governor or other officer or auditor of the Academy Trust shall be indemnified out of the assets of the Academy Trust against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgment is given in favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Academy Trust.

Supporting documents

The key supporting documents provided by DfE include the Memorandum of Association and the Articles of Association.

The relative roles and responsibilities of the Academy Trust and Governing Body under the new model Articles may be summarised as follows.

The Trust

The initial subscribers to the Memorandum of Association become the members of the Trust (the Company) – the DfE prescribes a minimum of three (of the existing governors). The members' liability is limited to the extent of the guarantee (£10) and there would generally be no individual liability unless members acted outside their powers or failed to act in good faith. Liabilities to external parties would normally be those of the Trust rather than the Governors. Members can be governors and vice-versa.

The Governors

The Trust appoints the governing body (in line with the composition agreed by the pre-conversion governing body). The governors become company directors and charitable trustees - this is confirmed in the Governance FAQs on the DfE website. (In practice, a private company only needs one director).

The governing body effectively becomes the Board of Directors and runs the company on behalf of the members. The Board is a corporate entity with collective responsibility for all the activities of the company (or at least those which are delegated to it in this instance) but acts as the agent of the company rather than as a separate legal entity. The Articles of Association are the contract between the members and the directors (the Trust and the Governors) and set out the rules by which the Governors (as directors) must run the company on the Trust's (members') behalf. Directors (Governors) have unlimited liability to the company for their own defaults, but would not be liable for any debts or liabilities provided they act in good faith and within the powers and authority delegated to them. It is this potential for liability which creates the need for indemnity insurance to be taken out by the Trust which the DfE requires to be a minimum of £10m. As directors and charitable trustees, Governors will be responsible for complying with both company and charity law requirements.