



## Duties of Directors / Trustees in an Academy Trust

As a MAT is a charitable company limited by guarantee, the trustees have duties as directors under company law, and trustees under charity law. These duties are similar to those that governors of a maintained school have, but it is important to understand what those duties are and how they may apply. All Trustees hold the position of Trustee and Director of Polaris Multi Academy Trust. They are expected to attend the board meetings (4 times a year) as well as any committee meetings they are linked to (3 meetings per committee).

Trustees should all have a copy of the MAT's Articles of Association. This is its governing document and the first point of reference for questions related to procedure and powers. In addition, the following duties are relevant to the role.

The board has three functions:

- Setting the strategic direction
- Clarity of vision, values and ethos
- Engaging stakeholders and meeting statutory duties

Understanding boundaries of role

- Creating robust accountability
- Using data to provide challenge and hold leaders to account for teaching, achievement, behaviour and safety
- Strengthening school leadership, including the LGB
- Supporting and performance managing the CEO
- Evaluating the school and governing bodies' impact
- Ensuring financial probity
- Solvency and effective financial management
- Use of Pupil Premium and other resources to overcome barriers to learning

### Trustees' duties

#### 1. *Duty to ensure compliance*

Trustees must:

- Ensure that the MAT complies with charity law, and with the requirements of the Secretary of State for Education as its principal regulator. In particular, they prepare and submit annual accounts as required by law.
- Ensure that the MAT does not breach any of the requirements or rules set out in its governing document, the articles of association, and that it remains true to the charitable purpose and objects set out there – i.e., the advancement of education.
- Comply with the requirements of other regulators that govern the activities of the MAT.
- Act with integrity and avoid any personal conflicts of interest or misuse of charity funds or assets.

The duty of compliance is wide. One habit for the board to form, when making decisions, is always to ask: *Does this directly further the MAT's objects?* If that question is difficult to answer it will be quickly clear that the activity/proposal may not be aligned and therefore not compliant with the MAT's purpose.





## ***Duty of prudence***

Trustees must:

- Ensure that the MAT is and will remain solvent.
- Use funds and assets reasonably, and only in furtherance of the charity's objects.
- Avoid undertaking activities that might place the MAT's funds, assets or reputation at undue risk.
- Take special care when investing the funds of the MAT.

This duty focuses particularly on the assets of the MAT; the trustees have a responsibility to protect those assets. For MATs this may also include consideration of the reserves held. MATs, as charities, should not hold excessive reserves, the overarching principle being that the assets of the MAT should be used for the benefit of the young people in the school at the time. If the MAT wishes to hold a large reserve for some reason, trustees should take advice. Trustees also need to be aware that if the MAT's assets are used by third parties, (for example, profit making companies), that those should not be offered without charge but subject to an appropriate fee.

## ***Duty of care***

- Trustees must use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well run and efficient.
- Trustees should consider getting external professional advice on all matters where there may be material risk to the MAT, or where the trustees may be in breach of their duties.

## **Directors' duties**

### ***Duty to act within their powers***

Directors must ensure that all decisions are within the scope of the objects and powers of the MAT's articles of association.

### ***Duty to promote the success of the company***

Directors are required to act in good faith in a way which they consider would be most likely to promote the success of the MAT, and in achieving its purpose.

In practice this also means considering the long-term implications of their decisions as well as:

- the interests of the MAT's employees
- fostering the MAT's relationships with suppliers, customers and others
- the impact of activities on the community and environment
- maintaining a reputation for high standards of conduct.

### ***Duty to exercise independent judgment***

A director is on the board to act in the best interests of the MAT as a whole, not to represent the interests of just one academy. That applies irrespective of the circumstances in which the director has been appointed. Their duty is to the MAT as a whole. A director must not be partisan. Nor can directors give away their decision-making role. Of course, they can sign agreements that commit the MAT to a particular course of action, and they can do anything that the articles authorise them to



do, but as a general rule they cannot delegate their powers without the ability to take them back or to change their mind.

#### 4. ***Duty to exercise reasonable care, skill and diligence***

The law requires a director to use reasonable care, skill and diligence in carrying out their tasks. Directors of MATs should view their role not as an honorary position; it's a 'proper' job, requiring a reasonable input, even from an unpaid non-executive.

The Companies Act sets out a double test in respect of this duty.

First, there is an objective standard: a director must have the knowledge, skill and experience that would *reasonably* be expected of anyone doing that role. Second, a subjective standard must also be met: a director has to perform according to the knowledge, skill and experience they actually have.

So there is a basic level of competence expected of all directors. But there is also a higher standard expected of those with special skill or experience. For example, a qualified accountant doing the job of finance director will be judged against the standard of a fellow professional with a detailed understanding of the company's finances. A non-executive director (who is also a qualified accountant) may not have day-to-day knowledge of the MAT's business and will not see all of the information, but they will have a broader experience and will be expected to use that to probe and challenge the executive. All will be expected to bring relevant professional skills and qualifications to bear.

**The next three duties relate to conflicts of interest.** Directors' obligations to the MAT must not clash with other interests they may have. Transparency in their dealings and relationships is vital. These are the principles behind the following three duties.

#### 5. ***Duty to avoid a situational conflict of interest***

A director must avoid a situation in which he or she: 'has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company' (Companies Act).

In practical terms this means that directors should declare any private interests relating to their MAT duties, and take steps to reduce the conflict. From a practical perspective this includes maintaining a register of interests, and keeping it up to date.

Directors' decisions should be taken in the public interest and not for financial benefit. Decisions should be based on merit, and reasons should be given for decisions reached.

If directors have other outside interests they should remember that while it may be clear to them in what capacity they are acting, it may not be so clear to others around the board table, or externally. The procedure you should follow if you believe there may be a conflict of interest is to check your articles and your code of conduct. The articles give examples of conflict and sets out what you should do. If you are in doubt, declare it and leave the meeting.

#### 6. ***Duty not to accept benefits from third parties***

A director is not permitted to accept a benefit from a third party conferred by reason of their being a director or doing (or not doing) anything as a director. This applies not only to financial benefit; it could be a position or interest.





## **7. *Duty to declare an interest in proposed transactions with the company***

If the basic principle is that the MAT 'company' and a director should not have conflicting interests, it follows that there should be restrictions on them entering into a contract with each other. When the MAT is entering into a contract for services a director must disclose any interest they have in the contract, whether direct or indirect, before the contract is signed. The disclosure must be full and frank so that, before the board approves the contract, it is aware of the nature and extent of the director's interest.

Directors should be aware that this extends to include any 'connected party/person'. A connected person includes a member of a director's family (his or her parents, children, stepchildren, civil partner and the children of a civil partner).

Also includes someone with whom the director lives as a partner in an enduring family relationship (including that person's children or stepchildren); and a company which the director is connected or a firm which he or she is a partner.

