Guidance note

Specimen letter to be sent on appointment to a trustee and director of an academy

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Overall purpose

This guidance note offers the company secretary of an academy trust, which will also be a charitable company limited by guarantee, an outline of the information that should be considered when dealing with the change of trustee, director and governor. It is a specimen document for academies to amend to suit their needs.

Academies are independent but state funded schools established as charitable companies limited by guarantee. As such, they are required to comply with legislation and regulation that applies to schools, charities and companies.

For academies it is essential that those responsible for the governance of an academy are aware of their legal duties as a trustee under charity law, as a director under company law, and as a governor under education legislation. It is because of this triple responsibility that the terms ‘trustee’, ‘director’ and ‘governor’ may be used interchangeably. For the purpose of this document, we use the terms trustee, director and governor to emphasize the triple legal duties.

Under S.162–166 of the Companies Act 2006 a charitable company limited by guarantee must keep and maintain a register of directors. The following specimen document provides an outline letter to be sent to a new trustee/director of a charitable company. Academies are urged to ensure that all relevant factors relating to their organisation are included in such letters.

If you have any feedback on the content of these resources, or additional questions that you’d like to discuss, please contact the ICSA information centre: 020 7612 7035 | informationcentre@icsa.org.uk

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Specimen letter

Dear [name of appointee]

Congratulations on your appointment to the board/governing body\(^1\) of [name of academy]. I write to confirm your appointment as a trustee and director of [name of academy, and company registration number] with effect from [date] and provide further details about your role and the work of the academy.

As you are aware there are a number of formal matters connected with this appointment which must be addressed. This letter deals with these formalities and is accompanied by an induction pack of information to assist you in your new role.

Form AP01 is enclosed which has been completed using the information you recently provided. I would ask you to check this form carefully, add any missing details, and, if correct, sign where indicated. Please return it to me immediately in order that it can be filed with Companies House within the appropriate time limit. If there are any corrections, please advise me by return of post. Please note that in signing the form you are confirming your willingness to act as a director of this charitable company.

As a trustee and director you will be required to sit on a committee of the board. Copies of terms of reference for the board’s committees are included in the enclosed induction pack along with a schedule of dates of forthcoming meetings. The academy’s [articles of association/standing orders/rules/byelaws] outline the normal procedures for the request of agenda items and meeting notification.

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\(^1\) In schools the directing body is called the governing body, but to emphasize the triple legal responsibilities of trustees, directors and governors in academy trusts this letter uses the term board.
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In addition to the specific statutory duties imposed on a trustee by the Charities Act 2011 and a director under the Companies Act 2006, by education law and other relevant legislation, you are under a general duty to act reasonably and make decisions in accordance with your duty of care. You are under a duty to act prudently and in good faith. As a trustee and director you must exercise your powers for the benefit of the charity as a whole. Consequently your personal interests must not be allowed to conflict with your overriding duty to act, at all times, for the benefit of the charity and must not cause harm to the academy. I enclose the charity's conflicts of interest policy, along with a blank copy of the register of interests for you to complete and return to me.

As you will appreciate, as a trustee and director of a charitable company, you will not be entitled to receive any payment for the time you spend on your duties. However, reasonable out-of-pocket expenses properly incurred in the performance of your duties as a director and trustee, will be reimbursed in accordance with the expenses policy (enclosed).

[As an academy claiming gift aid, the Finance Act 2010 requires that trustees/directors, as managers of the charity, pass the fit and proper persons test. I therefore enclose the HMRC guidance on the test along with a declaration that you have read and understood the guidance. Please return the signed copy to me].

You will note in clause [x] of the articles of association the provisions relating to your period of service as a trustee and director, and the [re-election/re-appointment] process.

If you require any further information concerning the academy, I will endeavour to provide you with it as soon as is practicable. A summary of the principal duties and responsibilities of a trustee/director/governor is included in the enclosed induction pack. Please read and familiarise yourself with this information as soon as possible, and read and sign a copy of the declaration letter enclosed. Please retain a copy for your records.

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2 For further information refer to the ICSA Best practice guide managing conflicts of interest in the not-for-profit sector and the Charity Commission’s A Guide to Managing Conflicts of Interest for Charity Trustees.

3 Unless authorised to do so by the governing document or statute, trustees should not benefit from the position they occupy.

4 See ICSA guidance notes for a model declaration.
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In conclusion, I take this opportunity to congratulate you on your appointment and welcome you to the board. Being a charity trustee, company director and school governor can be challenging and rewarding and I would therefore invite you to contact me at any time you may require such support and information as you may need to fulfil your responsibilities effectively.

Yours sincerely

Company Secretary

Enclosed:
Form AP01
Academy’s Articles (governing document)
Standing orders/rules/byelaws
Schedule of board meetings/times/venues
Terms of reference for committees
Induction pack
Expenses policy and form
Conflict of interest policy
Register of interests form
A summary of charity trustees roles and responsibilities
Role description
The Charity Commission’s CC3: The Essential Trustee
The Charity Commission’s Charities and charity trustees – an introduction for school governors
HMRC fit and proper person guidance and declaration x 2 (one copy to be signed and retained by trustee/director/governor, the other to be signed and returned to the company secretary)
Declaration letter x 2 (one copy to be signed and retained by trustee/director/governor the other to be signed and returned to the company secretary)
ICSA is the chartered membership and qualifying body for professionals working in governance, risk and compliance, including company secretaries.

We seek to develop the skills, effectiveness and profile of people working in governance roles at all levels and in all sectors through:

- a portfolio of respected qualifications
- authoritative publications and technical guidance
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- research and advice
- board evaluation services
- market-leading entity management and board portal software.

Guidance notes are prepared by the ICSA policy team to support the work of company secretaries and other governance professionals working in the corporate and not-for-profit sectors, and in the NHS.

Guidance notes offer authoritative advice, interpretation and sample materials for the many issues involved in the management and support of boards. As such, they are invaluable for those helping their organisations to build trust through good governance.

There are over 100 guidance notes available to ICSA members at www.icsa.org.uk/guidance

The Institute of Chartered Secretaries and Administrators
Saffron House, 6–10 Kirby Street
London EC1N 8TS

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