1 Introduction to governance and the academies landscape

Introduction

This chapter outlines what makes good governance in the academies sector, including providing background details of the UK Corporate Governance Code. The expectations on academy trusts to secure effective governance stem from several different sources including the legislative framework, their articles of association and funding agreements, guidance produced by the Department for Education (DfE) and Education and Skills Funding Agency (ESFA) such as the *Academies Financial Handbook*, and accountability through Ofsted (the Office for Standards in Education, Children's Services and Skills) and Regional Schools Commissioners (RSCs).

Defining good governance

Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. It is about the way that organisations establish an infrastructure that improves the quality of decision making by the board and management by ensuring that processes and monitoring controls are in place. Good corporate governance creates a structure with clear levels of accountability and communication which allows a trust to operate smoothly and staff to understand their roles and responsibilities. This will, ultimately, enable the trust to work efficiently and effectively and will support improvements in pupil outcomes.

Financial Aspects of Corporate Governance was published in 1992 in response to a series of major scandals that had taken place in the corporate world. Produced by a committee chaired by Sir Adrian Cadbury and known as the 'Cadbury Report', it covered financial, auditing and corporate governance matters and made specific recommendations on the arrangements of company boards and accounting systems to mitigate risks and failures.

The UK Corporate Governance Code (originally known as the Combined Code) was subsequently published. The Code sets 'standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders'. The purpose of corporate governance is to 'facilitate effective, entrepreneurial and prudent management that can deliver the long-term success of the company'. Although the Code is aimed primarily at listed companies, non-listed public and private companies are encouraged to comply.

In July 2018, the Financial Reporting Council published a revised Code. The revised Code has five sections:

1. Board leadership and company purpose
   - A. A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society.
   - B. The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.
   - C. The board should ensure that the necessary resources are in place for the company to meet its objectives and measure performance against them. The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.
   - D. In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.
   - E. The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.

2. Division of responsibilities
   - F. The chair leads the board and is responsible for its overall effectiveness in directing the company. They should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information.
   - G. The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision-making. There should be a clear division of responsibilities between the leadership of the board and the executive leadership of the company's business.
   - H. Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.
   - I. The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.

3. Composition, succession and evaluation
   J. Appointments to the board should be subject to a formal, rigorous and transparent procedure, and an effective succession plan should be maintained for board and senior management. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.
   K. The board and its committees should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the board as a whole and membership regularly refreshed.
   L. Annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.

4. Audit, risk and internal control
   M. The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.
   N. The board should present a fair, balanced and understandable assessment of the company's position and prospects.
   O. The board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the company is willing to take in order to achieve its long-term strategic objectives.

5. Remuneration
   P. Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy.
   Q. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome.
   R. Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of company and individual performance, and wider circumstances.

Trusts should take into consideration the principles set out in the Code, not least those relating to the operation of the board.

The DfE's *Governance Handbook* sets out the government's 'vision and priorities for effective governance' and should be read alongside the DfE's

Competency Framework for Governance and the *Clerking Competency Framework*.

The *Governance Handbook* states that the purpose of governance 'to provide confident, strategic leadership and to create robust accountability, oversight and assurance for educational and financial performance'. It is clear that all boards, no matter what types of school or how many schools they govern, have three core functions:

- ensuring clarity of vision, ethos and strategic direction;
- holding executive leaders to account for the educational performance of the organisation and its pupils, and the performance management of staff; and
- overseeing the financial performance of the organisation and making sure its money is well spent.

The handbook also sets out the six key features necessary for effective governance:

1. Strategic leadership that sets and champions vision, ethos and strategy.
2. Accountability that drives up educational standards and financial performance.
3. People with the right skills, experience, qualities and capacity.
4. Structures that reinforce clearly defined roles and responsibilities.
5. Compliance with statutory and contractual requirements.
6. Evaluation to monitor and improve the quality and impact of governance.

The DfE's guidance on Schools Causing Concern also includes expectations about effective governance and provides powers for the Regional Schools Commissioners to intervene in schools and trusts which give cause for concern, including where 'leadership and governance has broken down'. This guidance re-affirms the three core strategic roles of governance mentioned above and states that evidence that governors may be failing to deliver on one or more of these strategic roles could include, but is not restricted to:

- high governor turnover;
- a significant, unexplained change to their constitution;
- the governing body having an excessive involvement in the day-to-day running of the school;
- lack of appropriate engagement with data. This might include, but is not limited to, data on pupil learning and progress or staff recruitment;
- not sufficiently managing risks associated with strategic priorities and school improvement plans; and/or
- evidence of poor financial management and oversight, such as through consistent overspending the school's budget beyond agreed thresholds.

In such circumstances, a trust could be issued with a warning notice and will be held to account by the RSC.

Strategic versus operational

The *Governance Handbook* states that one of the board's core functions is strategic leadership, which, it states, 'involves setting the organisation's overall strategic framework, including its vision and strategic priorities. It also includes responsibility for setting and modelling its culture, values and ethos'. This means that the trustees are responsible for the high-level aims of the trust and the strategy involved in meeting them: the chief executive officer/principal is responsible for the day-to-day operational matters involved in realising the strategic vision.

Ensuring that the focus of the board remains strategic is not always easy and there is often a temptation for trustees to venture into operational territory. The *Governance Handbook* makes clear that the trustees' role is to provide strategic oversight, hold the executive leaders to account for educational performance and to oversee the finances. There is an increasing recognition of the need for 'clear separation between strategic non-executive oversight and operational executive leadership' – not only does this mean that executive leaders or other staff should not sit as members of the board, but it also recognises that trustees should not be participating in the practical running of the school.

To ignore this distinction risks undermining the board and is a potential indicator of concern for the RSC. Put simply, it is impossible to hold yourself to account for the operational responsibilities that you have taken on. This principle is in line with the Charity Commission's approach to trustees and the practice for Chief Executive Officers of charities not to be appointed to the board.

Background to academisation

The first publicly funded state schools, independent of local authority control, were introduced by the Conservative government. In 1988, the Education Reform Act allowed for the establishment of City Technology Colleges (CTCs). CTCs are secondary-level schools, independent of local authority control, which specialise in mainly technology-based subjects such as science, mathematics and technology. One-fifth of capital costs were to be met by private business sponsors who owned or leased the buildings.

The aim was to base CTCs in the middle of urban areas. However, local authorities failed to support the initiative and refused to identify suitable school sites. Fifteen CTCs were built, largely on the outskirts of cities. The programme proved much more expensive than anticipated and was eventually abandoned.

The legislation for CTCs was amended by the Learning and Skills Act 2000 to introduce City Academies. The programme was intended to improve pupil performance at failing schools. It required a financial contribution from a sponsor, but the level of commitment was half that under the CTC scheme. The majority of CTCs converted to city academies.

In 2002, the Education Act amended the name of City Academies to 'Academies'. Retrospectively, these 'Mark 1' academies have become known as 'sponsored academies'.

The academies programme was significantly expanded by the Coalition government's Academies Act 2010. For the first time, any excellent maintained school, primary or secondary, could choose to become an academy and take on greater autonomy. Only schools assessed as 'Outstanding' by Ofsted could choose to convert to academy status, thereby redefining academisation as an indicator of quality.

The programme was expanded further following the comprehensive spending review in October 2010. Schools assessed as 'Good' with one or more Outstanding features could convert. Other schools were also eligible if they worked in partnership with a 'Good' or 'Outstanding' school which had committed to assist them in improvement. The policy was amended to allow 'Outstanding' special schools to convert in January 2011.

In March 2016, the Conservative government's white paper 'Education Excellence Everywhere' stated that all maintained schools would be required to convert or be in the process of converting to academy status by 2022. However, the white paper received a huge backlash and the proposal to bring in compulsory academisation was withdrawn.

The Education and Adoption Act 2016, together with the statutory guidance from Schools Causing Concern, identify those schools which have failed to 'support its pupils to fulfil their potential'. If a school falls within the criteria and is defined as 'coasting', the guidance states that Regional Schools Commissioners (RSCs) will engage with the school to consider whether additional support is required. Ultimately, this could lead to the school becoming a sponsored academy or for a coasting academy to move to a new multi-academy trust (MAT). However, this is rare in practice.

Legal structure of academies

A trust is a single or group of state-funded independent schools that is constituted as a charitable company limited by guarantee.

As a company, every trust must register with Companies House and comply with company law.

Trusts are also governed by charity law. Trusts do not need to register with the Charity Commission as they are exempt charities: the Secretary of State for Education is the 'principal regulator'.

A funding agreement is signed by the trust and the Secretary of State which forms a contract between the two parties. In a multi-academy trust, this is replaced by a master funding agreement between the trust and the Secretary of State, as well as a supplemental funding agreement with each individual academy. In return for ongoing public funding, the trust agrees to comply with the requirements set out in the funding agreement. These requirements extend to ongoing guidance produced by ESFA/DfE and explicit reference is made to the *Academies Financial Handbook*. The articles of association are also included as an appendix to the funding agreement.

Charity status

The Charities Act 2011 states that a charity must:

- be established for charitable purposes only; and
- have a purpose that is for the public benefit.

For trusts, the charitable purpose is 'the advancement of education' which is set out in the objects clause of the articles of association as 'to advance for the public benefit education in the United Kingdom'. Charities must be independent of outside control.

However, trusts do not need to apply for charity status as they are automatically classified as exempt charities (Academies Act 2010, s 12(4)). Trusts formed before August 2011 had to stop using their charity number and apply to be removed from the Charity Commission register.

Trusts are not directly regulated by the Charity Commission. Instead, the Secretary of State for Education is the principal regulator and, therefore, responsible for ensuring compliance by trustees with 'their legal obligations in exercising control and management of the administration' of the trust (Charities Act 2011, s. 26(3)). In practice, the role is undertaken by the Education & Skills Funding Agency (ESFA). Information about specific charity law requirements are provided to trusts and their advisors by ESFA. It can use existing monitoring and oversight to check compliance but will have no additional powers by virtue of its role as principal regulator and can involve the Charity Commission if there are concerns. There is a memorandum of understanding between the DfE and the Charity Commission which sets out the working arrangements around co-ordinating regulatory operations and formulates the framework within which they work. This clarifies their respective roles and responsibilities and the circumstances in which the Secretary of State will invite the Charity Commission to use its powers of intervention and investigation.

If the trust has an endowment or other charitable fund, that too may benefit from the exempt status. The fund must be a charity itself, controlled by the trust and established for one or more of its purposes. The funds should also be included in the trust's accounts.

For tax purposes, trusts must make a formal application to HMRC via Government Gateway for recognition as a charity. This will mean that the trust will not pay tax on most types of income and can reclaim tax that has been paid such as bank interest or via Gift Aid. The trust will need to complete tax returns if it does not hold recognition as a charity for tax purposes or if it receives income that does not qualify for tax relief.

Charity status imposes additional restrictions on the operation of the trust such as restrictions around non-charitable trading.

Parent Teacher Associations (PTAs) are separate legal entities and must register with the Charity Commission if appropriate. Some PTAs choose to operate as a committee or club.

The shift from the stakeholder model

Early converter academies had articles which provided for stakeholder representation particularly at board level – the model articles had trustees appointed by the members, elected parent and staff trustees and the headteacher/principal. The idea is that the board will act in the best interests of all stakeholders (parents on behalf of pupils, staff, community, etc.) if they are represented. Of course, in practice, the efficacy of board dynamics is not that simple!

The DfE's preference has now shifted from the stakeholder model. The emphasis is now on making the right trustee appointments; consideration should focus on best fit and individual skills rather than simply which sector of the community the potential trustee is drawn from!

Careful consideration must be given to building and maintaining a board which has a balance of skills, experience and capacity that will provide effective direction and governance for the trust.

The move away from a representative appointment system helps to ensure that the focus remains on the provision of the best education for all pupils irrespective of the cohort or academy (in a MAT setting) and without the personal agenda sometimes brought by individual stakeholders.

The *Governance Handbook 2017* explains how membership of the board should focus on skills:

> 'the primary consideration in appointment decisions should be acquiring the skills and experience the board needs to be effective. Boards should therefore develop a skills-based set of recruitment criteria which they should share with any third parties, such as academy trust Members or a foundation or sponsor, that has a role in appointing people to the board.'

In some trusts, particularly the 'early adopters' of academy status, there is often a high crossover of membership, with the same individuals involved at member, board and in MATs at local governance level. Whilst this is normally acceptable within the articles of association there is now a preference from the DfE for greater degrees of separation. The *Academies Financial Handbook 2018* states:

> 'the Department's view is that there should be a significant degree of separation between the individuals who are members and those who are trustees. If members sit on the board of trustees this may reduce the objectivity with which the members can exercise their powers. The Department's strong preference is for a majority of members to be independent of the board of trustees'.

There is also an increasing preference for a separation between the membership of MAT boards and those serving on local governing bodies.

Independent trustees

The corporate sector has seen an increasing prominence of the role of the non-executive director (NED). The Higgs Report in 2003 called them 'custodians of the governance process'. In the context of the academies sector, the objective viewpoint of the independent trustee enables robust governance and an impartial viewpoint from which to oversee the development of strategy that is truly in the best interests of the trust and all pupils and staff. Unlike NEDs in the corporate world, trustees receive no payment or financial benefit as trusts are charitable structures in receipt of public funding.

There has now been a distinct shift by the DfE away from the stakeholder model of governance representation and there is a particular emphasis on not appointing trust staff to the board. As well as retaining 'clear lines of accountability through the trust's single senior executive leader', this also supports the creation of an independent board. Although the current model articles permit the trust's CEO to be appointed as a trustee, it will be through a member resolution (who could choose not to appoint) and is subject to the CEO's approval. In any event, there is distinct move away from this model with some RSCs advocating a separation of powers. The Charity Commission has long been concerned about the potential for conflicts to arise from any employees holding a position on the board and most CEOs in the charitable and third sector are not trustees.

Trustees may still have other commitments which mean that their independence may be compromised on particular issues. It is essential that declarations of interests and potential conflicts of loyalty are made and reviewed regularly and that any conflicts of interest are handled appropriately.

Lord Agnew, Parliamentary Under-Secretary of State for the School System, wrote to auditors in June 2018 about the issue:

> The role of the chair and non-execs on a trust. At departmental level, we have increased the level of engagement with chairs. There are training courses run by some audit firms aimed at non-exec board members. We would encourage you to think about this as an added service if you are not already doing it.

Academy freedoms

Historically, much emphasis was placed by the DfE on the freedoms that academisation offered:

- freedom from local authority control;
- the ability to set pay and conditions for staff;
- freedom not to follow the national curriculum;
- the ability to set the length of terms and school days.

It was claimed that these freedoms allowed academies to innovate and raise academic standards.

As publicly funded independent schools, trusts receive their funding direct from the government and not via the local authority. The trust can choose how to allocate the budget and, in a MAT, may decide on the level of funding allocation per academy. The trust is not restricted in its choice of suppliers and can shop around for best value. However, most local authorities now offer their services on a traded basis to all schools.

All staff that previously worked for a school that became a Single Academy Trust (SAT) or formed or joined a MAT will would be protected by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). These employees will transfer to their new trust employer on the same terms and conditions. Of course, the trust is free to consult with transferred staff and their union representatives to subsequently change terms and conditions. Typically, changes will relate to increased rates of pay to attract and retain high-quality staff or changes to the working day. The trust can set its own pay and conditions that are not aligned to the nationally agreed terms and conditions for any new members of staff.

Whether these really represent freedoms that offer any value to trusts or their academies is a moot point and the DfE has largely discontinued referring to them. Interestingly, in a letter to auditors in the academies community sent in June 2018, Lord Agnew, Parliamentary Under-Secretary of State for the School System, identified general annual grant (GAG) pooling as 'one of the greatest freedoms a MAT has. The opportunity to pool GAG is particularly valuable, in particular to simplify the provision of support to weaker schools in a MAT until they can grow their pupil numbers.'

The role of governance in school improvement

The *Governance Handbook* states that one of the purposes of governance is to 'create robust accountability, oversight and assurance for educational and financial performance'. In addition to setting the strategic vision, the governing board's core functions are to hold executive leaders to account for 'the educational performance of the organisation and its pupils, and the performance management of staff' as well as to oversee the financial performance of the organisation, making sure its money is well spent. Good governance is about more than just compliance with statutory requirements; the governing board is responsible, and accountable, for securing educational standards in the trust. Good governance not only underpins the success of a trust but is essential for it.

Trustees, and members of local governing boards with delegated responsibility, must always recognise the distinction between strategic and operational and their role in terms of oversight. This may not always be easy. Whilst it is essential that trustees are able to understand and analyse pupil performance data, both live and historic, they are not responsible for that data or its use – they must be able to identify trends or pick up any potential concerns from the data which they should question the executive leadership about and may be able to triangulate through the use of third-party reports or their own visits or learning walks. The same is true of the financial affairs of the trust: the board should not be involved in their preparation but should be suitably conversant with financial reports to enable robust questioning and monitoring as well as oversight of a suitable programme of internal controls and external audit.

Trustees and governors must be extremely wary of over-reliance on the executive to draw attention to areas that require consideration. All must be proactive in ensuring that they understand the workings of the trust and the data that is presented to them and independently seek information or verification so far as this is possible.

The *Governance Competency Framework*, introduced in January 2017, sets out what is expected of trustees. It explains the principles and personal attributes which all trustees should have: committed, confident, curious, challenging, collaborative, critical and creative. These, together with the 'commitment of time and energy to the role', underpin effective governance. It specifically states that trustees should 'understand the impact of effective governance on the quality of education and on outcomes for all children and young people'. The *Competency Framework* details the specific knowledge and skills required which are split into what is essential for everyone, what is required of the chair and what is required by at least one person on the board.

In a letter to auditors in June 2018, Lord Agnew, Parliamentary Under-Secretary of State for the School System, included a series of questions that should be considered around simple changes of operation that could yield 'impressive results':

- Are your clients using a standard employment contract for all teaching staff so that they can be cross-deployed to different schools?
- Are they using the same exam boards in all their schools to enable cross-school marking and also to optimise the point above?
- Do they have a central electronic purchase order system to ensure strong controls on expenditure?
- Do they have a central bank account that simplifies bank reconciliations and ensures that there is constant, easy visibility of the cash position?
- Are they benchmarking their supply costs and, if over a number of years the level is constant, have they considered employing permanent staff to fill some of this requirement thereby improving the quality and removing agency charges?
- Are they accessing the Department's procurement arrangements if they are providing better value than they can achieve on their own?

Principles of good governance

Effective governance is not imposed by the government or external body but must be put in place by the trust. As a result, an increasing number of trusts are engaging the services of governance professionals to advise the board on appropriate structures and processes. The importance of professional support for the board is recognised in the *Clerking Competency Framework* and in the provision of support via the programme to establish national leaders of Governance. However, there has been considerable focus on governance by the corporate and charity sectors which trusts can rely on. As well as the UK Corporate Governance Code, some guiding principles have been established which should be adopted.

The Nolan Principles

The Committee on Standards in Public Life chaired by Lord Nolan was formed in October 1994 following the 'Cash for Questions' affair in the House of Commons. The remit of the Committee was to examine the concerns about standards of conduct of holders of public office and to make recommendations as to any changes in present arrangements which might be required 'to ensure the highest standards of propriety in public life'.

The Committee established the Seven Principles of Public Life often known as the 'Nolan Principles'. They apply to anyone who works in education and are explicitly referred to in the *Governance Handbook*, the *Academies Financial Handbook*.

1. *Selflessness* – Holders of public office should act solely in terms of the public interest. They should not do so to gain financial or other benefits for themselves, their family or their friends.
2. *Integrity* – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.
3. *Objectivity* – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. *Accountability* – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to whatever scrutiny is appropriate to their office.
5. *Openness* – Holders of public office should act and take decisions in an open and transparent manner. They should give reasons for their decisions and withhold information from the public only when there are clear and lawful reasons for so doing.
6. *Honesty* – Holders of public office have a duty to declare any private interests

relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7. *Leadership* – Holders of public office should actively promote and robustly support these principles by leadership, exhibiting the principles in their own behaviour. They should be willing to challenge poor behaviour wherever it occurs.

Code of governance

The Charity Governance Code is intended to be a practical tool to help trustees to develop high standards of governance. It 'sets the principles and recommended practice for good governance and is deliberately aspirational'. This, it explains, is intentional, so that all charities will use the Code as a tool for continuous improvement.

- *Organisational purpose*. The board is clear about the charity's aims and ensures that these are being delivered effectively and sustainably.
- *Leadership*. Every charity is led by an effective board that provides strategic leadership in line with the charity's aims and values.
- *Integrity*. The board acts with integrity, adopting values and creating a culture which help achieve the organisation's charitable purposes. The board is aware of the importance of the public's confidence and trust in charities, and trustees undertake their duties accordingly.
- *Decision making, risk and control*. The board makes sure that its decision-making processes are informed, rigorous and timely and that effective delegation, control and risk assessment and management systems are set up and monitored.
- *Board effectiveness*. The board works as an effective team, using the appropriate balance of skills, experience, backgrounds and knowledge to make informed decisions.
- *Diversity*. The board's approach to diversity supports its effectiveness, leadership and decision making.
- *Openness and accountability*. The board leads the organisation in being transparent and accountable. The charity is open in its work, unless there is good reason for it not to be.

Although the Code is not a regulatory requirement, it is expected that all charities 'apply or explain' the approach that they are taking to applying the code to ensure transparency. It is suggested that charities include a brief statement in their annual report explaining the use of the Code or whether an alternative governance code is followed.

Whilst there is no absolute obligation on trusts to adhere to the Code or other recommendations, trusts are recipients of public funding and free of local authority control so must demonstrate a greater regard for effective, accountable and independent governance.

The seven principles apply directly to anyone who works as a public office-holder. This includes anyone who works in academies and any appointed or elected as a trustee or member.

Collaboration

The government's emphasis is on the creation of a sustainable, self-improving school system. One of the key elements is through school-to-school support and collaborative arrangements. Although not formally monitored by the DfE, RSCs take into consideration the collaborative arrangements in place and support provided when looking at vulnerable or underperforming schools. Collaborative arrangements enable pooling of resources which can be used to improve school performance, expand the curriculum or get better value for money.

Schools often have long histories of working with other local schools in their cluster or partnership to offer opportunities for pupils or provide a forum for headteachers to share experiences and best practice. Informal collaborative arrangements like this can be expanded to enable more structured school improvement work to take place between academies, maintained schools and independent schools. Although there is no shared governance, it is possible to agree a memorandum of understanding which sets out the details around the arrangements.

This type of collaborative arrangement would be regarded in law as a partnership. This would pose a high risk: all parties in a partnership have 'joint and several' liability which means that every individual party is liable to the full extent of an obligation in respect of a liability. One of the schools in the partnership could find themselves liable to pay the full extent of a claim to a claimant – it would then need to take action against the other partners for a contribution. This makes it more difficult to employ staff centrally or make large joint purchases: an individual school or trust will need to employ staff or procure goods or services which will then be sold to the other partners.

The Education Act 2002 (ss 11–13) permits maintained schools and trusts to collaborate through a 'school company':

- to provide services or facilities for any schools;
- to exercise relevant LA functions; or
- to contract for goods or services from third parties on behalf of member schools.

The rise of the multi-academy trust

The most formalised collaborative structure is the MAT. Every school that joins a MAT ceases to exist as a separate legal entity. Instead, the MAT offers a single legal structure where the future success or failure of every academy is interlinked. Whilst support for school improvement can be secured through more informal collaborative routes, in a MAT the trust is responsible and accountable.

All staff working at all of the academies as well as those employed centrally are employees of the MAT. This facilitates the sharing and transfer of employees across the trust to wherever the need is greatest (subject to individual terms and conditions of staff who have be transferred under TUPE). The MAT model offers an ideal structure to provide effective support in a cost efficient and timely way to any academy that needs it.

The MAT structure also offers flexibility around the use of funding. Although funding for individual academies is largely calculated on the basis of pupil numbers, the *Academies Financial Handbook 2018* allows MATs to pool General Annual Grant (GAG) to form a central fund which can be applied in accordance with the trustees' wishes.

The MAT structure is favoured by the DfE and RSCs will encourage forming or joining a MAT for schools contemplating academisation. Whilst technically the SAT model is still available for excellent schools, RSCs will often look for suitable arrangements so that a MAT can be formed with other vulnerable schools. Support will be sought for schools that are underperforming with the vast majority of sponsors being MATs.

Chapter summary

- Good governance is based on an infrastructure of processes and monitoring controls which improves the quality of board decisions. Corporate governance is shaped by the UK Corporate Governance Code and, for trusts, the DfE's *Governance Handbook*. One of the board's key core functions is strategic leadership.
- The concept of state-funded schools independent of local authority control was introduced in 1988 and has been developed by successive governments. A trust is a charitable company limited by guarantee and must comply with company and charity law.
- Trusts are regulated by the Secretary of State for Education, who acts via ESFA, as the principal regulator. A formal application must be made to HMRC for recognition as a charity for tax purposes.
- There has been a shift from the stakeholder model of representation on the board to a skills-based emphasis. There is also an emphasis on not appointing trust staff to the board and for appropriate degrees of separation in the tiers of governance. The current model articles do allow for the members to appoint the CEO to the board if they agree to act.
- Good governance is essential to the success of trusts. It must provide robust accountability, oversight and assurance for educational and financial performance. Trustees should recognise and adopt guiding principles including the Nolan Principles and other codes for the charity sector.
- The creation of a sustainable, self-improving school system will require school-to-school support and collaborative arrangements. The most formalised collaborative structure is the MAT which is a single legal entity.