

BRIEFING

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Maintained Schools, Academies and Multi Academy Trusts: The Role of the Clerk

Introduction

We are often asked about the role of the Clerk in schools and academies, which is not perhaps surprising given the key role that Clerks play. Indeed, guidance published by the National College for Teaching and Leadership (“NCTL”) states that “*high-quality clerking is key to governing body effectiveness*”.

This briefing note is intended to summarise the legal position and available guidance in this respect.

The Legal Position

The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 (“the Regulations”) set out the legal position on the role of the Clerk in maintained schools, however these do not apply to academies and multi academy trusts (“MATs”). Instead, the role of the Clerk is included within their articles of association, which are based on the Department for Education (“DfE”)’s model.

The DfE’s Governance Handbook published in January 2017 (which applies to maintained schools and academies) refers to the “professional clerk” and states:

“High quality professional clerking is crucial to the effective functioning of the board. The clerk should be the boards’ ‘governance professional’. Their role is not only about good and effective organisation and administration, but also, and more importantly, about helping the board

understand its role, functions and legal duties and supporting the chair to enable and facilitate strategic debate and decision making. This is crucial in helping the board exercise its functions expediently and confidently, so that it can stay focused on its core functions.

Boards should set demanding standards for the service they expect from their professional clerk and assure themselves that they are employing a clerk with suitable skills, training and knowledge. Consequently, they should expect to pay an appropriate amount commensurate to the professional service they expect their professional clerk to deliver.”

Maintained Schools

Regulation 6(3) of the Regulations states “*The governing body must appoint a clerk with a view to ensuring their efficient functioning and must have regard to advice from the clerk as to the nature of the governing body’s functions.*”.

Regulation 10 provides that the Clerk must not be a Governor or the Headteacher, but that where the Clerk is absent at a meeting, the Governing Body may appoint one of their number (except the Headteacher) to act as the Clerk at that meeting. Accordingly, there is nothing to prevent the Clerk being an employee of the school.

The Regulations provide that the Clerk must convene and attend Governing Body meetings and draw up minutes for signature by the Chair at the next meeting, maintain a register of members of the Governing Body and of associate members

and report any vacancies to the Governing Body, and perform other tasks at the request of the Governing Body.

Regulation 16 provides that the Clerk is not required to withdraw from a meeting due to a conflict of interests (unless their appointment, remuneration or disciplinary action against them is to be considered) however the Clerk must take care not act in any capacity other than that of a Clerk during the meeting.

A Clerk must be appointed to each committee of the Governing Body in the same way, and subject to the same rules set out above. In most cases, this will be the same person as the Clerk to the Governing Body.

Academies

Academies are private companies limited by guarantee and, as such, having a board of Directors/Trustees (“the Trust Board”) rather than a Governing Body (although MATs often have committees to carry out the day to day governance of individual academies which may be called Local Governing Bodies, or Advisory Boards, Bodies, or Councils).

Article 81 provides that the Clerk “shall be appointed by the Trustees for such term, at such remuneration and upon such conditions as they may think fit” and goes on to state that the Clerk cannot be a Trustee or the Headteacher/Chief Executive Officer of the trust. Where the Clerk does not attend a board meeting, the Trust Board may appoint one of their number.

The articles are not prescriptive as to the role of the Clerk, other than to confirm that the Clerk will be responsible for the minutes in the same way as the Clerk at a maintained school, and must comply with directions given by Trustees.

The articles confirm that the Clerk may also be, but does not have to be, the Company Secretary of the company/trust.

The Role

In general terms, a Clerk to the Governing Body/Trust Board and its committees must:

- Advise the Governing Body/Trust Board and

its committees on governance, legal and procedural matters. This is not about influencing decisions, but rather advising on the correct legal or procedural basis for coming to decisions. In order to fulfil this role, the Clerk will need to have a good working knowledge of relevant legislation/statutory guidance, together with access to legal advice and support from an external source;

- Provide effective administrative support to the Governing Body/Trust Board and its committees. This will involve convening meetings with effective calendar management, preparing agendas (with the Chair) and good quality minute taking and record keeping skills;
- Ensure the Governing Body/Trust Board is properly constituted. This will involve being familiar with the instrument of government/articles of association (and, in the case of MATs, the scheme of delegation), and keeping track of appointments, resignations and vacancies that need to be filled (in the case of academies and MATs, this will be done in conjunction with the Company Secretary, if separate appointments have been made);

The clerk is sometimes referred to as the “constitutional conscience” of a Governing Body, while being at the same time accountable to the Governing Body. There must be a clear separation of functions between the Clerk and the Governing Body.

Training for Clerks

It is important that Clerks have the necessary skills to perform their role, and that they are able to undertake suitable training to support them with this.

Our School Support Service offers an education seminar programme which often includes seminars which focus on governance and/or are specifically aimed at Clerks and Company Secretaries.

In addition, the DfE has published information about the Clerk to Governing Bodies Training Programme, a comprehensive course which takes 35 hours to complete. Further details about the course can be accessed [here](#),

Other Clerking Functions

The role of the Clerk to the Governing Body/Trust Board and its committees should not be confused with other Clerking roles, for example the Clerk to a Governors' Statutory Review Committee or an Independent Review Panel dealing with exclusions from school, who must undertake specific training as set out in the regulations and statutory guidance on exclusions.

For further information, please speak to a member of our School Support Service team on 0345-070-7437 or send an email to schoolsupport@wslaw.co.uk.