

Title	Elliot Plain English Governance
Prepared by	Hugh Greenway
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Purpose

Much guff is written about governance and serves only to confuse many of those involved.

This paper is designed to engage those involved with the Elliot Foundation and its academies with the ideas and constructs that make up its governance such that they can help the Trust better achieve its goal of **‘improving education for the public benefit’**.

This paper does not replace the more formal and constrained governance documents in the Elliot Foundation (listed below under “Related documents”). It is intended as a supplement to help understanding.

Main questions

- Who has authority?
- From where do they derive that authority?
- What are the limits of that authority?
- What are the counterbalances to that authority?

What happens when a school becomes an academy

Schools are things that the general public think they understand, largely because they all went to one and send their children to one. However, understanding of how they are funded and administered is less common.

- Government raises taxes from citizens
- It decides how much to spend on education and how that money will be allocated
- Historically the largest part of this budget was devolved to Local Authorities who had the responsibility to run schools in their local areas whilst central government retained the policy, regulation and oversight roles
- Local authorities retained a slice of the money given to them from government and passed the remainder on to schools
- These schools are known as LA maintained schools and the best way to understand this is through the powers that an LA has
 - The LA can open or close the school
 - The LA is the employer of all the staff in the school
 - The LA is responsible for the safeguarding of the children in the school

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- The LA can significantly influence the funding of the school although it cannot set the budget
- [For the sake of simplicity this does not include faith based schools]
- When a school becomes an academy the 'school' ceases to exist as a legal entity
- It is replaced by a contract between central government and a company that is also a charity
- This contract basically states that:
 - The Charity (or Trust) agrees to provide education meeting the requirements of government to children on the site that was previously known as School X
 - Government agrees to pay the Charity to do so
 - Indefinitely
- What then happens is that all the staff employed by the LA in the school have their contracts of employment transferred to the Charity
- And the local authority leases the land and buildings to the Charity for 125 years
- The Charity also assumes responsibility for all the other contracts that pertained to the school
 - Energy and utilities, maintenance, stationery, IT and photocopiers etc.

What is a Multi Academy Trust?

- A Multi Academy Trust is a limited company with charitable objects that has been approved by the DfE to run one or more academies
 - Previously schools could opt to be a stand-alone academy but fortunately the DfE has woken up to the fact that this is a dangerously silly idea
- As a limited company with charitable objects the MAT is governed by Company Law and Charity Law
- As well as being governed by the terms of its contract with government, which the government gets to change when it likes
- In the simplest sense an academy happens when government decides to outsource the running of a school to a private charity
 - It is legally impossible for a profit making company to run academies (despite media noise that suggests otherwise)

What are Members?

- Companies differ from Charities in that companies have owners
- Charities do not have owners they are legal entities held 'in trust' to pursue their charitable objects
- The closest thing they have is Members
 - Members are signatories to the Memorandum and Articles of the Company
 - They are volunteers

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- Who have the power to appoint and dismiss Trustees
- Who in turn hold the Executive of the Trust to Account

What are Trustees?

- Trustees are the charity equivalent of Company Directors
- They appoint the CEO and authorise the direction of the company as a whole
- They are jointly and severally accountable for the Trust as a whole
- Although financially they only risk £10, they may be struck off the directors' register or prosecuted if they fail to fulfill their fiduciary responsibilities

What is an Accounting Officer?

- An 'accounting officer' is an evolving term which has specific responsibilities in the UK education sector
 - It is a person (usually the CEO) who is personally responsible to parliament for ensuring
 - Public money is spent on the purposes intended
 - Propriety and regularity
 - Value for money is obtained and risks are managed
- Basically it is a scapegoat

What is the Operations Group?

- The Ops Group are the senior managers of the Trust as a whole
- Chaired by the CEO, the FD, Regional Directors, HR Director, Governance and Policy Director, Estates Director and Programme Director meet fortnightly to address the day to day running of the Trust as a whole
- The Ops Group has executive powers necessary to run schools delegated to it by the Board of Trustees

What is an LGB?

- Within the Elliot Foundation, an academy 'Local Governing Body' is a group of volunteers convened by the Trust to support and challenge the Principal and Senior Leadership Team on behalf of the children and community that the school serves
- LGBs have no powers other than those delegated to them by the Trust Board
- *In extremis*, if an LGB is not functioning properly the Trust Board (under its articles of association) may suspend the LGB and appoint the Ops Group to support the school directly

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Who has the power?

To sponsor a new academy

- Only the board of trustees can approve a new school joining the Trust as an academy
- But this is usually at the recommendation of CEO and other Executives in the Operations Group
- We have always run the Operations Group on the principle that 'anyone can hit the brakes' so all Directors have to agree for a new school to join before it is recommended to the Trust Board

To close an academy

- Under its contract the Trust can give seven years' notice if it wishes to close a school or withdraw from running it
- In practice, however, provided that the Regional Schools Commissioner agrees a Trust can withdraw from sponsoring or close as school at any agreed date

To set a budget

- Because the money received from government is placed as the disposal of the Trustees, only they can authorise budgets either for the Trust as a whole or for individual academies
- However, a large amount of this work is delegated according to the Scheme of Delegation which the Trustees approve
- So in practice each Principal and their LGB will propose a budget to the Finance Committee of the Trust
- The Finance Committee may instruct the central finance team to review budgets before it then recommends them to the Trust Board for Approval
- The same process is followed for the Head Office budget

To sign a contract

- Only those specified in the Scheme of Delegation may sign contracts and attach liabilities to the Trust as a whole
 - The limits of financial authority are laid out in the Scheme of Financial Delegation

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To employ (and dismiss) someone

- The Trust is the employer so the MAT board approve the overall pay-scales but delegate authority to
 - The CEO and the Operations Group to employ Head office staff
 - The CEO and the Operations Group in conjunction with LGBs to appoint Academy Principals
 - Academy Principals to appoint academy staff

To set a policy

- The Trust is the employer so Trustees must approve policies unless they have specifically delegated that responsibility to the Operations Group or to Academy Local Governing Bodies

What are the limits to these powers

The limits to the powers listed above are laid out in the following documents (where possible these are listed hierarchically)

- The law of the land and specifically statute law pertaining to companies, charities and academies
 - The Articles and Memoranda of the Elliot Foundation Academies Trust Ltd
 - The Trust's Scheme of Delegation approved by its Trustees
 - The Master Funding Agreement between the Trust and Government
 - Any additional restrictions placed upon the Trust by the DfE via the Academies Finance Handbook or is regulating agencies (ESFA, OFSTED, RSCs)

What are the checks and balances

Contractual oversight

- The contract between the MAT and government requires the MAT to deliver services that meet the criteria set out by government
 - Which means that government can and does move the goalposts
 - And in the event that the MAT does not comply it risks having schools and funding and even control of its organisation taken away
- In the event that government does not keep its promises or acts inconsistently or unfairly, the only recourse for the MAT is to sue government in the courts

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- Which is almost without exception a really bad idea

Regulators

- In addition to Ofsted, MATs are subject to the following regulators
 - Education & Skills Funding Agency (ESFA) - for governance, regulatory compliance and financial probity
 - Regional Schools Commissioners (RSCs) - for the performance of schools, governance and regulatory compliance (note the overlap with the ESFA)
 - Department for Education (DfE) - the SOS has direct authority to intervene in MATs which is normally but not always delegated to RSCs
 - Charities Commission - for compliance with charity law
 - Companies House - for compliance with company law
 - National Audit Office (NAO) - for delivering value for money and the proper use of public funds
 - Public Accounts Committee - as above
 - Her Majesty's Revenue & Customs (HMRC) - for direct and indirect tax compliance
 - UK Border agency - for right to work and visa issues
 - Health & Safety Executive (HSE) - for health and safety
 - Information Commissioner's Office (ICO) - for compliance with data security law and GDPR
 - Local Authorities - despite being outside LA control, MATs fall under the scope of LA responsibility for Safeguarding, Access and Inclusion and Pupil Place Provision

Fourth estate and public opinion

- In addition to the regulators above MATs are also subject to the court of public opinion which is served by the news media
- In a free society the press should be entitled and encouraged to report upon any matters that they deem in the public interest

Stakeholder representation and feedback loops

- Every MAT is required by statute to have at least 2 parent governors
 - Either on the MAT Board of Trustees
 - Or on each academy Local Governing Body
 - The Elliot Foundation has opted for the latter option
- In addition The Elliot Foundation draws representation from each region onto the Trust board itself

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- The Elliot Foundation also surveys its Headteachers and LGB chairs annually about the services provided by the Trust
- And surveys all staff biennially
- This latter will be replaced by an annual stakeholder engagement programme that consults all:
 - Staff
 - Parents and
 - Pupils in every school
 - This will be implemented by the end of 2019

Related documents

- TEFAT Articles of association and memorandum
- TEFAT Terms of Reference (TOR)
- TEFAT Scheme of Delegation (SOD)
- Academies Financial Handbook
- Accountability, representation & feedback 2018