



Department
for Education

Terms of Reference for Advisory Boards

(formerly called headteacher boards)

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Summary

This publication defines the purpose and structure of the Regional Schools Commissioners' advisory boards (ABs) which have been established to achieve their aims and objectives. In addition, the terms of reference (ToR) describe the responsibilities of ABs and their members.

The purpose of the advisory boards

Regional schools commissioners (RSCs) work with school leaders to raise standards, provide advice, and take action in underperforming schools. Each RSC is supported by their own AB for their region. The role of AB members is to provide advice, scrutiny and challenge to the RSCs' decision making. AB members do not make decisions. It is the RSCs that take decisions, within the scope of their responsibilities, in the name of the Secretary of State (SoS) for Education. RSCs should be informed by the views of their AB who bring local expertise and knowledge to the system to advise the RSC on the issues. AB members are non-executive and, as such, are not DfE employees.

AB members provide an important additional check and balance to the RSCs' decision making process. If an RSC intended to take a decision which did not accord with the majority advice from AB members, the RSC must report this to the National Schools Commissioner and to the minister for their consideration and decision.

Remit

Each AB provides advice and challenge to support the RSCs on key decisions based on members' prior experience and local knowledge. This can involve assessing school performance data, reviewing the governance structure of a new trust or challenging a school's improvement plan.

RSCs and ABs also make use of local networks to gather information to ensure a robust decision is reached by the RSC. This process is an integral part of a self-improving system in which respected school leaders take greater responsibility for regulating the system.

The [RSC decision making framework](#) contains the parameters within which these decisions are taken. Each RSC works with their AB to determine how they will operate together to shape and address the particular priorities for their region.

Membership

Each AB is made up of four to eight members in addition to the RSC.

AB members are generally headteachers, former headteachers, trustees or business leaders and are either elected, appointed, or co-opted to the board. For the first time in the 2021 elections we are also allowing experienced academy trust CEOs to stand for election to ABs. Each AB member, irrespective of how they gained membership, has equal status. No more than one member per single academy trust can be elected, appointed or co-opted onto the same AB.

An AB member can have membership of no more than one board.

Elected members

Four members of each AB are elected, as part of a three-year election cycle, by academy headteachers and executive headteachers in their RSC's region.

Elected members are required to meet one of the following five criteria:

- be currently serving as a headteacher of an academy judged by Ofsted as Outstanding overall on the day before candidate nominations commence
- be currently serving as a headteacher of an academy judged by Ofsted as Good overall with outstanding leadership and management on the day before candidate nominations commence
- have been a CEO of an academy trust for at least two years on the day before candidate nominations commence
- have retired from the headship of an academy in the past two years (on the day before candidate nominations commence) and met either of the first two criteria above at the time of your departure
- have served as a headteacher of an academy, which met either of the first two criteria above at the time of your departure, and you are now serving as a trust Senior Executive Leader^{1*} (SEL)

Additionally, the department has a clear expectation that nominees will have a proven track record of strong financial leadership and governance. We will therefore undertake appropriate due diligence checks on nominees, taking into consideration their academy and trust's:

¹ A SEL is defined in the Academies financial handbook 2019.

- Current and historical financial position
- Open or closed Financial Notice to Improve (where applicable)
- Late financial returns
- Executive pay issues across the trust and the trust's response to any high pay challenge (where applicable)
- Related party transactions
- General compliance with the Academies Financial Handbook

To be eligible for election to an AB, a headteacher or a retired headteacher must work/have worked at an academy in the same region as the AB they are standing for election. CEOs and Senior Executive Leaders are only permitted to stand for election in a region in which they have an academy/academies.

The elections use a first-past-the-post system with some conditions, to ensure each AB has at least one elected member with primary expertise and one elected member with secondary expertise, and no more than one headteacher, CEO or SEL per academy trust is elected onto any one AB. Headteachers from the same trust can be elected to different ABs if the trust operates across more than one region.

The electorate is comprised of headteachers (and executive headteachers) of academies in the region, which are open on the first day of the month in which the 2021 AB election polls open.

Appointment and co-option

Two members of each AB may be appointed by the RSC on behalf of the Secretary of State.

The RSC may also seek approval from the Secretary of State to co-opt further members to fill any skills or expertise gaps. ABs have members with a variety of skills, including education, governance and business leadership. RSCs will want to ensure a mix of skills through appointments and co-option.

Prospective appointed and co-opted AB membership candidates that are, or have been, connected to an academy or academy trust, will only be selected after due diligence checks have been carried out with colleagues in the Education and Skills Funding Agency (ESFA).

The RSC will determine the term of an appointment or co-option. This could be for any period of time from very short periods to a full three-year term to meet a specific need for skills or expertise.

If an elected member resigns or is disqualified (by the conditions set out below, in suitability of members and disqualification) the RSC may co-opt a suitable replacement to serve in place of the former elected member. In such cases, the term of membership can run for the period up to the date of the next election. There will be no by-elections.

Frequency of meetings and availability

The frequency and schedule of meetings is decided by the RSC in discussion with the AB based on business need and availability.

As regional experts and champions of local academies, AB members may be asked to attend meetings or training outside of the region in which they serve.

Working practices

RSCs seek advice from their AB in a variety of ways including by email and telephone. Formal AB meetings, which the RSC chairs, are frequent enough for AB members to share their knowledge and experience, discuss complex cases, and offer timely advice and challenge to the RSC as required. Records of AB meetings are usually published on a monthly basis, with a six-week delay. This allows parties affected by the decisions to be notified of decisions before they are made public.

The RSC and AB agree flexible and pragmatic arrangements for giving advice. The RSC also enables AB members (except those who have registered a conflict of interest) to give their views in and between AB meetings, using appropriate methods of communication. AB members may need to give advice at short notice and, if they are not able to do so, the RSC may proceed to make decisions. The RSC sometimes consults particular members on specific matters rather than the whole board. On other occasions, the RSC may need to make quick decisions and will be unable to consult the AB. If an AB member has a concern about the operation of the AB and its RSC, and is unable to resolve this matter with the RSC, they can contact the National Schools Commissioner.

Conflicts of Interest

Conflicts of interests are defined as any personal or business interest within the past five years which may, or may be seen as, influencing a member's judgement in performing their role. AB members must immediately declare to the RSC's office any actual, potential or perceived conflicts of interest that might impact their AB duties, and the office must maintain an accurate and up-to-date register of all conflicts.

AB members must remove themselves from discussions of, and must not provide advice on, cases where they have a conflict of interest, where there is a potential conflict of interest or where there is a perception of a conflict of interest. This may include, for example, where the decision to be taken by the RSC relates to a trust of which a member's academy is a part, or if the decision to be taken has an impact on the academy where the member works, has previously worked, or relates to an academy to which they have given advice.

Each member must consider their conflicts of interests in each case with which they are asked to advise. AB members should also consider conflicts of interest that may arise where spouses, family members, professional colleagues (both past and present), and acquaintances are involved in cases on which they are asked to give advice.

It is the AB member's responsibility to ensure that they are familiar with the DfE rules on handling conflicts of interests, that they comply with these rules and that their entry in the [DfE's register of members' interests](#) is accurate and up-to-date. If a member wishes to take up new employment or appointments during their term of office, they must inform the RSC.

If a conflict of interest is discovered that has not been declared, this may be considered serious misconduct, and the member may be required to relinquish their membership of the AB.

Gifts and Hospitality

An AB member must not accept any gifts or hospitality which might reasonably appear to compromise their personal judgement or integrity or place them under an improper obligation.

An AB member must never canvass or seek gifts, or hospitality.

An AB member must comply with the rules set by the DfE on the acceptance of gifts and hospitality. The member must inform the RSC of any offer of gifts or hospitality and ensure that, where a gift or hospitality is accepted, this is recorded in the gifts and hospitality log.

Each AB member is responsible for their own decisions on the acceptance of gifts or hospitality and for ensuring that any gifts or hospitality accepted can stand up to public scrutiny and will not bring the DfE into disrepute.

Suitability of members and disqualification

The behaviour and actions of an AB member must be governed by the principles set out in these terms of reference. It is the responsibility of each AB member to ensure that they are familiar with, and complies with, all the relevant provisions of the terms of reference.

An AB member is disqualified from holding or continuing to hold the office of AB membership if that person:

- is involved in any activities, illegal or otherwise, which could bring the AB into disrepute
- is directly involved in the running of businesses or activities that may be considered inappropriate for children and young people (e.g. tobacco, gambling, adult entertainment, alcohol)
- is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989, a disqualification order or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002, or an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)
- has been removed from the office of charity trustee or trustee for a charity by the Charity Commission or Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 from being concerned in the management or control of anybody
- is subject to a prohibition order or interim prohibition order under section 141B of, or Schedule 11A to, the Education Act 2002
- is barred from participating in the management of an independent school
- has been sentenced to six months or more in prison (without the option of a fine) in the two years before becoming an AB member or since becoming an AB member; has received a prison sentence of three years or more in the seven years before becoming an AB member; or has at any time received a prison sentence of four years or more
- becomes a Parliamentary Candidate or an MP
- is unable to fulfil the requirement to devote a minimum of half a day per week to their role or if the member fails to adequately attend meetings of the AB or offer timely advice to the RSC for a period of more than 2 months
- fails (or its employing company, any officers or representatives of it fails) to fulfil their obligations relating to the payment of Social Security contributions
- fails (or its employing company, any officers or representatives of it fail) to fulfil their obligations relating to payment of taxes

- does anything that constitutes serious misconduct as specified throughout this document, AB member terms document or any supplementary guidance or instruction issued to the AB members to assist them in carrying out their role

An AB member, regardless of how they gained their place on the board, is required to relinquish membership of the AB if disqualified under these criteria or if the RSC and the National Schools Commissioner agree that their actions constitute serious misconduct or that their continued membership of the AB is likely to bring the system into disrepute. In cases where the member does not relinquish their membership when required to do so, the DfE will withhold payment for their services, and the RSC will not seek their advice or rely on any advice given by the member.

The role of an AB member carries a regionally visible profile and AB members, prospective members and those involved in any appointments to the board must use their own discretion and judgement in determining, on a case-by-case basis, any additional circumstances that might prevent the reputation of an individual being in keeping with the role of an AB member. AB members should advise the RSC as soon as possible, if anything occurs in their private or working life which, if it became generally known, might bring them, the AB or the RSC into disrepute, or call into question their integrity, authority or standing as an AB member.

Resignation process

An AB member may resign with immediate effect, or with notice agreed with the RSC, at any time by informing the RSC in writing and copying the letter to the National Schools Commissioner.

If, as a result of an Ofsted inspection, an elected member's academy no longer satisfies the eligibility criteria, this does not automatically mean that the member cannot continue to serve on the AB. The member must consider with their RSC whether it is appropriate for them to remain on the AB.

Use of Official Information

An AB member must not misuse information gained in the course of their public service for personal gain or for political purpose. This includes providing information to a trust or school they are giving, or have given, advice on.

An AB member must not disclose any information which is confidential in nature or which is provided in confidence without authority. This duty continues to apply after they have left the board.

Resources and payment

ABs are not part of the DfE and will not be in charge of any DfE finances and cannot directly allocate financial resources.

Each AB member must comply with the rules set by the DfE regarding remuneration and expenses. It is the AB members' responsibility to ensure compliance with all relevant HM Revenue and Customs' requirements concerning payments, including expenses.

An AB member's employer (e.g. academy trust) will be remunerated for the time they spend on AB related business. This is to assist the organisation in releasing employees to fulfil AB business and recompense AB members for their travel. Where an AB member is self-employed (e.g. retired) they will be paid directly. The rate is inclusive of expenses and travel within the region.

Annex A - The Nolan Seven Principles of Public Life

The Nolan Seven Principles of Public Life should be observed by advisory board members.

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

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.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

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.

Leadership

Holders of public office should promote and support these principles by leadership and example.



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