



HM Government

Secure Schools Governance Guide

For the Secure Academy Trustees

July 2024

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1. Introduction

Aim of the Secure Schools Governance Guide

- 1.1. The Secure Schools Governance Guide is guidance from the Ministry of Justice (MoJ) for the boards of trustees of secure schools. It supplements existing guidance on the governance of academies and children's homes issued by the Department for Education (DfE). Secure academy trust boards should understand and comply with this guidance, alongside this guidance, and particular note should be paid to:
 - The [DfE Academy Trust Governance Guide](#), which describes the roles and duties of the governing boards for schools, academy trusts, including Multi-Academy Trusts (MATs), and details the skills, knowledge and behaviours they need to be effective.
 - The [Guide to the Children's Home's Regulations including the quality standards](#), a guide is for all those involved with the care of children, and in some cases those aged 18 or over, in children's homes. It accompanies the [Children's Homes \(England\) Regulations 2015](#) (referred to in this document as 'The CHRs 2015'), which must be complied with.
- 1.2. The purpose of this guidance is to signpost to the above guidance and explain how the board of trustees of secure academy trusts will be expected to comply with pre-existing frameworks, in-line with the key areas of effective governance. This guidance also highlights where there are key considerations or explicit points of divergence in expectations for the governance of Secure Academy Trusts.
- 1.3. The board will also be required to comply with the Secure Academy Trust's Articles of Association and submit and comply with a Governance Plan, to be completed in-line with the MoJ Secure Schools Governance Checklist. The Governance Checklist summarises the tasks the board will need to complete during the pre-opening phase before submitting your governance plan.
- 1.4. The DfE Academy Trust Governance guide also includes sections on the evaluation of governance. The Secure Schools Assurance Handbook sets out requirements the operational assurance arrangements to which academy trusts that operate secure schools ('Secure Academy Trusts') must adhere, including requirements in regard to compliance, evaluation and inspection.
- 1.5. Boards should note that not all areas of DfE guidance will be relevant for secure schools, and that for topics such as finance or inspection they should primarily consult the Secure Schools Financial and Assurance handbooks. This guidance should be considered as part of the wider package of guidance and requirements on secure schools from the Youth Custody Service (YCS) and the MoJ.

Review date

- 1.6. This guidance is kept under review and updated by the MoJ and YCS to reflect changes to the law or relevant policy.

Terminology

the *board of trustees* (referred to in this document as 'the board', may also be called the governing board) refers to the accountable body consisting of directors who perform the governance role for the Secure Academy Trust, including the role of charity trustees. Where the board of trustees acts as the registered provider, then the board of trustees may be referred to as the registered provider.

the *registered provider* refers to the person who is registered under Part 2 of the Care Standards Act 2000 (this could be an individual, partnership or organisation running the home). In the case of secure schools the registered provider is likely to be the secure school proprietor themselves.

the *registered manager* refers to a person who is registered under Part 2 of the Care Standards Act 2000 as the manager of the secure school.

the *responsible individual* refers to an individual who is a director, manager, secretary or other officer of an organisation which is the registered provider; and is nominated by that organisation for the purpose of supervising the management of the home on behalf of the organisation.

the *registered person* refers to any person who is the registered provider or the registered manager of the secure school.

The *registered provider*, *registered manager*, *responsible individual*, and *registered person* are all defined in both the Children's Homes (England) Regulations 2015 and the Care Standards Act 2000 (Registration) (England) Regulations 2010.

Members refers to the founders and/or subsequent members of the Secure Academy Trust.

trustees/directors refers to those who sit on the board of trustees. Where the board of trustees becomes the 'registered provider', then the trustees/directors can also be included in this definition

the *secure academy organisation/trust* refers to the legal entity that represents the secure school.

executive leaders refers to those held to account by the board of trustees for the operation and performance of the secure school. This will include the registered manager.

2. The purpose of governance

- 2.1. The purpose of governance is to provide strategic leadership, accountability, and assurance for operation and performance. Robust and responsive governance will be vital in successfully bringing together the legislation and frameworks under which secure schools will operate. It will also be key in fully realising the vision for secure schools: child focussed providers, strong leaders with freedom and autonomy, and a specialised workforce offering bespoke provision for individual children that has education, healthcare and physical activity at its heart – in a therapeutic environment in a secure setting.
- 2.2. By virtue of the legal designation, the board must ensure that the Secure School meets all requirements of a Secure 16 to 19 Academy, as both:
 - an approved provider of secure accommodation pursuant to section 1B of the Academies Act 2010, and;
 - a secure children’s home (SCH) as an approved provider of secure accommodation pursuant to Regulation 2 of the Children’s Homes (England) Regulations 2015 (CHR 2015).
- 2.3. In the context of both the academy and SCH frameworks, the board should understand the broader aims of the system that they are working within. The principal aim of the youth justice system, as outlined in Section 37 of the Crime and Disorder Act 1998, is to ‘prevent offending by children and young persons’. Accordingly, secure academy trust boards should hold the executive team to account for how well they support the resettlement and transitions of children when they leave the secure school (which may include transition to the adult estate), by tackling the behaviours that may have resulted in their offending. The board should understand the importance of aligning with the wider aims of the youth justice system, in terms of improving life outcomes, ensuring safety and wellbeing, and addressing safeguarding needs.
- 2.4. In addition, the board must be aware that they share responsibility for the health outcomes of children and young people in custody with the healthcare provider, taking into account the [NHS commissioning » Children and young people \(england.nhs.uk\)](https://www.england.nhs.uk)
- 2.5. Whilst YCS and NHS England may have differing overall organisational aims, good, integrated governance, that is benchmarked by the jointly designed outcomes framework for secure schools, should support meeting both of these aims in relation to the secure school.
- 2.6. In practice, the board will need to fulfil three core functions to deliver effective governance:
 - Ensuring clarity of vision, ethos and strategic direction (including outcome measures across justice, education and health as set out in the Outcomes framework, co-produced by NHS England and the YCS), in-line with the wider vision for secure schools

- Holding executive leaders to account for the overall operation and performance of the school and its students, and the performance management of staff; and
- Overseeing the financial performance of the school and making sure funds are spent in line with the Secure Schools Financial Handbook.

2.7. Section 2 of the DfE Academy Trust Governance Guide describes in full the purpose of academy trust governance in providing:

- Strategic leadership of the academy trust
- Accountability and assurance
- Strategic engagement

3. Leadership and Accountability

Key roles and structures

- 3.1. The effectiveness of a board of trustees depends on the quality of its people and how they work together and with executive leaders. Having familiarised yourselves with the legal requirements under the CHR 2015, company, and charity law, you must ensure that your governance structures are arranged in a way that is fully compliant, open and transparent and provides effective governance.
- 3.2. Governance structures and decision-making forums should be designed with consideration of the roles and legal responsibilities that are mandated in the CHR 2015: the registered provider, registered manager, registered person and responsible individual. However, you should be aware of the relevant DfE guidance, and consider how the roles set out in the CHR 2015 will align with the structure of the secure school as an academy. In addition to guidance on Strategic Leadership, People and Structures in the DfE Academy Trust Governance Guide (sections 2, 4 and 5), the [DfE guidance on roles and responsibilities](#) describes in detail the responsibilities each person holds in academy trust governance.
- 3.3. The chair of trustees is responsible for ensuring the effective functioning of the board and setting professional standards of governance. The board must also appoint a Governance Professional (Clerk to the board. Legal Roles under the Children's Homes Regulations.)

The Registered Provider

Under the CHR 2015, the registered provider is defined as the person who is registered under Part 2 of the Care Standards Act 2000 as the person carrying on the home. Representatives from the school will need to register with Ofsted to represent the organisation. The registered provider has certain distinct legal responsibilities set out in the CHR 2015, and should have due regard to the [Guide to the Children's Home Regulations](#) including the quality standards when interpreting those regulations.

The Registered Manager

The Secure School will need to appoint a registered manager, who will also need to register with Ofsted. The responsibilities of the registered manager are set out in the CHR 2015 and the [Guide to the Children's Home Regulations](#) including the quality standards.

The Registered Person

The registered person in a children's home is either the registered provider or the registered manager of the home. They have distinct legal responsibilities established in the CHR 2015. The registered person must have regard to the [Guide to the Children's Home Regulations](#) including the quality standards in interpreting and meeting the Regulations.

The Responsible Individual

If the registered provider is an organisation, as well as appointing a registered manager, they must also appoint a responsible individual to represent the children's home/secure school to Ofsted. The responsible individual must be a director, manager, secretary or other officer of the organisation.

The role of the responsible individual is to supervise the management of the children's home. As such, the registered manager is normally different from the Responsible Individual because one manages the home and the other supervises the management of the home on behalf of the organisation.

- 3.4. The board must ensure that the people designated to fulfil the formal roles of running a children's home as prescribed in the CHR 2015 satisfy the necessary 'fitness criteria' in part 3 (including schedule 2). Regulation 29 of the CHR 2015 should be considered in relation to the continuing professional development required to be completed by the registered person, the responsible individual and the registered manager.
- 3.5. The board should be organised to facilitate strong links between healthcare and the secure school governance structures, to enable a fully integrated operating model. In the same way, the healthcare provider should design the structures and relationships to enable their organisation to operate as part of the whole secure school and deliver an integrated therapeutic model of care. You may wish to consult the [Health and Justice Children Programme national partnership agreement 2023-25](#) which aims to enable a more fully integrated approach to the commissioning and delivery of excellent health services, and to improve the health and wellbeing of those within the children and young people secure estate in England.
- 3.6. To ensure you meet your legal duties of reporting to Ofsted and have good succession planning in place to ensure compliance, boards should be familiar with part 7 of the CHR 2015 (particularly regulations 48 to 51).
- 3.7. The board will need to comply with requirements for section 128 checks of members and trustees, as set out in the [DfE Guidance on Keeping Children Safe in Education](#). Section 128 checks identify whether a person is banned from being involved in the management and governance of schools. Staffing and leadership under the healthcare provider will undergo similar compliance requirements through NHS England recruitment checks and NHS Standard Contracts.

- 3.8. Secure schools will also be registered on the DfE website Get Information About Schools (GIAS). You should comply with the requirements to keep governance information on GIAS up to date as outlined in the DfE Academy Trust Governance Guide.
- 3.9. Employees of the Secure Academy Trust (or staff roles on an unpaid voluntary basis) must not be members unless permitted by their articles of association. The articles do not allow members to be employees.
- 3.10. Secure Academy Trusts must not have de facto trustees (as defined in appendix 1 of the Charities SORP 2015) or shadow directors (as defined in section 251(1) of the Companies Act 2006).
- 3.11. For general guidance on the skills and best practice in recruiting trustees, please refer to section 2 of the DfE Academy Trust Governance Guide.
- 3.12. As outlined in the Secure Schools Governance Checklist, the board should appoint a governance professional, whose role is also described within this DfE guidance.
- 3.13. The board will be responsible for creating robust accountability for executive leaders, holding them to account for performance against educational, health and justice outcomes, requirements in the Assurance Handbook, integrated delivery alongside the healthcare provider, financial and organisational performance, and ensuring money is well spent. As outlined in the Governance Checklist, accountability should also consider oversight of all other employees (excluding health employees, which the health provider is accountable for), understanding the diverse needs of the student cohort and processes for monitoring performance, intervention and continuous improvement. Section 5 of the DfE Academy Trust Governance Guide also provides further guidance on this topic. However, within the boundaries of the legislation, the board will have the autonomy to decide how accountability arrangements in the secure school will be structured.
- 3.14. The Secure Schools Financial Handbook describes the financial responsibilities of academy trusts that operate secure schools, including the roles of trustees, members and other staff, and the rules that govern the board members responsibilities for setting the levels of executive pay.

Appointing new or replacement trustees and members

- 3.15. The YCS will carry out checks on those applying to run the secure school to provide reassurance of their suitability to manage public money and run a school. This will include due diligence checks, financial checks, Disclosure and Barring Service (DBS) checks and other checks necessary to ensure that the secure school is set up and run by those who are suitable to do so.
- 3.16. All members and trustees when appointed will need to complete the suitability and declarations form. The chair of trustees will be responsible for ensuring that all sections of the form are complete, and the declaration pages are signed. All completed documents should be scanned as a PDF and emailed to SecureSchools.Operations@justice.gov.uk

- 3.17. If there are any changes to the members and trustees, the chair of trustees must report these changes by email to the YCS as soon as possible.
- 3.18. On appointment new members and trustees must obtain a new enhanced DBS certificate, even if they already hold one. All other members and trustees must have an enhanced DBS certificate. The chair of trustees must ensure that these requirements are met. The chair of trustees must also assess whether any offences or police information disclosed on a certificate are such that an individual is not suitable to hold the role of member or trustee.

Appointing new or replacement chair of trustees

- 3.19. New or replacement chair of trustees must complete a suitability check with the Education and Skills Funding Agency (ESFA) as soon as they are appointed. This is to comply with legislation and to keep children safe in education. We recognise that secure schools in pre-opening will not be able to register their chair with 'Get Information on Schools' (GIAS) until they have had a successful Ofsted pre-registration inspection. Chairs should therefore move straight to point 3 of the application process.

The suitability check includes:

- information about your identity verified by a recognised professional, using the verification form on this page
- information confirming your right to work in the United Kingdom (UK)
- the outcome of an enhanced DBS check
- if you have lived outside of the UK, an overseas criminal records check or certificate of good character

When completing a suitability check ESFA will consider any further information, including where individuals are barred from teaching or the management of a school.

To apply for suitability and enhanced Disclosure and Barring Service (DBS) checks, visit <https://www.gov.uk/government/publications/academy-trust-chair-suitability-checks/academy-trust-chair-suitability-checks-guidance-for-applicants>

Members

- 3.19. Secure Academy Trusts are founded by Members, who play a key role in safeguarding the governance process. Members can be individuals or organisations, and while they should not be involved in the day-to-day business of the Secure School, they have a set of limited but important powers including appointing or removing trustees and members, amending the Articles of Association, and directing trustees (by special resolution) in the case of failings or unlawful actions.

3.20. As described in section 4 of the DfE Academy Trust Governance Guide, DfE require that academy trusts have a minimum of three members, with a strong preference for a minimum of five. This will be the default and preferred membership structure for secure schools. However, at the discretion of the MoJ, these arrangements may be reviewed dependant on the individual circumstances and preferences of the provider. The provider must make a strong and valid case to the MoJ should they wish to deviate from the preferred structure. The MoJ will only make exceptions to this structure if all governance requirements are adequately met in the alternative structure.

Parent trustees

3.21. As noted in section 4 of the DfE Academy Trust Governance Guide and the DfE's Model Articles of Association, Academy Trust boards of trustees should have two reserved spaces for elected parents, carers or other individuals with parental responsibilities.

3.22. By contrast, while not prevented from appointing a parent trustee, Secure Academy Trust boards will not be subject to the DfE requirement to elect or reserve places for parent trustees. This deviation recognises the specific challenges that such a requirement may present to Secure Academy Trusts.

3.23. However, boards will be expected to demonstrate that the role of the parent or carer is effectively captured at board level. This requirement is also set out in the Secure Schools Financial Handbook and MoJ Governance Checklist, and should reflect both:

A: Representing the role of the parent or carer, in highlighting the views and concerns of children to the board, in addition to wellbeing issues more generally, and

B: Highlighting views of students' parents or carers themselves where these are received and ensuring that mechanisms for listening and responding to parents or carers views effectively.

3.24. Secure Academy Trust Boards will have scope to determine how to meet this requirement, but they may wish to explore involving local authorities or charitable organisations, as well as learning from good practice in the role of 'link trustees' (who oversee specific aspects of work at a school).

4. Further guidance

4.1. Boards may find it useful to consult the following publication for further guidance on effective governance:

- The Charity Commission provides further information and guidance for charity trustees.



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