

## **Trust Board: Terms of Reference**

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**Talent Education Trust (operating as Anglo-Portuguese School of London or "The Trust")**

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## 1 Introduction

These terms of reference have been made by the Trustees (also referred to as the **Board** or **Board of Trustees**) of Talent Education Trust (the **Trust**) (**the Trust**).

## 2 Core values

The Board of the Trust must at all times:

- observe the highest standards of impartiality, integrity and objectivity in relation to the governance of the Trust;
- be accountable to its stakeholders and regulatory bodies for its activities;
- engage in a partnership with the Trust's leadership team (the **Leadership Team**).

## 3 Expectations of the Trust's Trustees

All Trustees are required to:

- follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life (referred to as "the Nolan Principles" and set out in Appendix 1);
- comply with:
  - the Articles of Association (the **Articles**);
  - these terms of reference;
  - the Scheme of Governance; [and]
  - [the conflicts of interest policy;] [and]
  - the code of conduct appended at Appendix 2 of these terms of reference.
- uphold the visions and values of the Trust
- ensure they understand their duties, rights and responsibilities (including their duties and responsibilities as charity trustees as set out in Appendix 4), and that they are familiar with the function and role of the Trust;
- have regard to the Department for Education (**DfE**) guidance on the governance of academy trusts including the Handbook, the Governance Handbook and the Competency Framework for Governance (as amended from time to time)
- not misuse information gained in the course of their Trusteeship for personal gain, nor seek to use the opportunity of service to promote their private interests or those of connected persons, firms, businesses or other organisations;
- participate actively in the induction process and any relevant training.

## 4 Powers, functions and responsibilities of Trustees

The Trustees are responsible for the governance and supervision of the Trust, Leadership Team and its committees.

The Trustees have a number of duties and responsibilities relating to the governance of the Trust and its finances. In summary, the Trustees are responsible for:

- establishing the vision, mission and values for the Trust;

- carrying on the Trust in accordance with the objects of the Trust as set out in the Articles and safeguarding the assets of the Trust;
- designing strategy and structure for the operation of the Trust;
- the delegation of the running of APSoL and the direction of the education, pastoral care, financial and other policies of APSoL to the Leadership Team;
- ensuring sound management and administration of the Trust by the Leadership Team, and ensuring that the Leadership Team is equipped with the relevant skills and guidance;
- financial controls and the financial management of the Trust in accordance with the provisions of the Academy Trust Handbook, which sets out in detail provisions for the financial management of the Trust;
- setting standards of conduct and values, monitoring performance and the achievement of objectives, and ensuring that plans for improvement are acted upon;
- risk management, that is identifying, quantifying and devising systems to minimise the major risks affecting the Trust; and
- ensuring the Trust and APSoL are conducted in compliance with the general law.

## **5 Constitution of the Board of Trustees**

The minimum number of Trustees is three although the number of Trustees is not subject to any maximum.

The Board of Trustees is constituted as follows:

- up to 10 Trustees appointed by Members
- at least two Parent Trustees elected/ appointed under Articles 53 - 56; and
- co-opted Trustees (appointed by Trustees who are not themselves co-opted Trustees).

The Trustees shall elect a Chair and Vice-Chair from among their number each academic year.

## **6 The appointment and recruitment of Trustees**

### **6.1 Recruitment of Trustees**

It is essential that the Board has a proper mix of skills and experience. The Trustees, together with the Members, must therefore be able to identify potential new Trustees in order to plan for succession, which combines continuity of experience and expertise with new ideas and energy.

The Board as a whole is responsible for ensuring that:

- the skills of any new Trustee fit in with the Trust's requirements in the short, medium and longer term;
- each new Trustee is not disqualified from acting as a Trustee by any provision of the Trust's Articles (including the requirement that they are not disqualified as a company director or charity trustee);
- there is a system in place which ensures that all relevant checks, including an enhanced DBS check prior to their appointment taking effect (countersigned by the Secretary of State in the case of a new Chair), are completed before a Trustee takes up position; and
- the new Trustee understands the responsibility they are taking on and consents to act as a Trustee.

### **6.2 Appointment of Trustees**

On appointment, all Trustees shall be required to:

- undergo an enhanced DBS check prior to their appointment (as per Article 78) (countersigned by the Secretary of State in the case of a new Chair of Trustees) and a section 128 check;
- complete a Trustee declaration (attached at Appendix 3);
- complete an AP01 form for submission by the Company Secretary to Companies House (either in paper form or electronically); and
- complete a declaration of business and pecuniary interests form.

The Governance Professional (or the Company Secretary if appointed) shall update the register of Trustees in the statutory books. The Handbook requires the appointment of any new Trustee to be notified to the DfE (in practice via the government "Get information about schools" system) within 14 days of appointment to enable an assessment of their suitability.

## **7 Trustee inductions**

Each new Trustee will be properly inducted to ensure that they understand the nature and extent of their role and responsibilities. It is the duty of a new Trustee to ensure that they are familiar with the objects of the Trust; its history, ethos and values; the nature and extent of its activities; and the content of the Trust's Articles.

The Governance Professional will provide each new Trustee with:

- the Trust's Articles
- these terms of reference
- the scheme of delegation (including the Roles and Functions matrix)
- the Trustee Code of Conduct
- [the conflicts of interest policy]
- the accounts, audit management letter and Trustee report for the previous three years (where available)
- the Trust's vision and values
- the Trust's development plan / improvement plan
- a list of Trust policies and where to access them
- a list of other Trustees
- a calendar of meetings
- the minutes of the two most recent board meetings
- details of their fellow mentor Trustee (if applicable) and
- details of any upcoming training sessions available.

## **8 Training and development of Trustees**

- The Trustees shall ensure that the Trust Board has the skills and experience needed to perform its functions effectively (and shall refer to the DfE's Competency Framework for Governance in doing so). Trustees shall also be kept up to date with developments in the legal and regulatory framework in which the Trust operates.

- The Trustees must have in place a system for evaluating Trustees, with a view to identifying potential gaps in their skills and any requirements for training and assessing its own effectiveness. Such evaluation shall be carried out annually.

## 9 **Accountability of Trustees**

The Trustees are chiefly accountable to:

- The beneficiaries of the Trust (i.e the pupils at APSoL and their parents) and the local community) for the quality of education and pastoral care at APSoL, for matters of health and safety and for safeguarding and promoting the welfare of the pupils;
- the DfE, the Education & Skills Funding Agency (**ESFA**) and specifically the Secretary of State under the terms of the Funding Agreement;
- the Secretary of State (in their role as principal regulator in respect of charity matters) for operating the Trust for the public benefit, for the prudent management of the Trust and its financial efficiency, and for compliance with legislation including charities legislation;
- the employees of the Trust for their working environment, and for compliance with the contract of employment and employment law requirements and matters of health and safety;
- the Members of the Trust for the effective governance of the Trust; and
- other regulatory authorities for compliance with regulated responsibilities to which the Trust and APSoL is subject.

## 10 **Conducting Trustees' business**

The Trustees are required to:

- act together and in person and not delegate responsibility of the Trust to others;
- act strictly in accordance with the Articles;
- act in the Trust's interests only and without regard to their own private interests;
- manage the Trust's affairs prudently;
- not take personal benefit from the Trust unless expressly authorised by the Articles or the Charity Commission; and
- take proper professional advice on matters on which they are not themselves competent.

The Trustees should also hold the Leadership Team to account. They should offer support, constructive advice, be a sounding board for ideas, a second opinion on proposals and help where needed, but will also challenge, ask questions, seek information and improve proposals where appropriate and at all times act in the best interests of the Trust.

The Trustees shall have regard to the framework for inspecting schools in England under section 5 of the Education Act 2005 (as amended) issued by the Office for Standards in Education, Children's Services and Skills (**Ofsted**).

The duties and responsibilities of Trustees are explained in further detail in *The essential trustee: what you need to know, what you need to do (CC3)* (Charity Commission, May 2018).

The Trustees shall have regard to the Academy Trust Handbook, which shall be circulated to all Trustees.

## 11 Personal interests of Trustees

The Companies Act 2006 imposes a statutory duty on the Trustees to avoid situations in which they have or could have an interest, which conflicts (or could conflict) with the interests of the Trust. The duty is to:

- a) declare the nature and extent of any interest in any matter relating to the Trust; and
- b) avoid any conflict of interest between that interest and the interests of the Trust.

In addition, charity law and guidance issued by the Charity Commission confers obligations on the Trustees to manage any conflict between a Trustee's duty to the Trust and their own personal interests or for a Trustee to be influenced by conflicting duties to the Trust and a third party.

Trustees are required to comply with the Articles as regards the management of conflicts of interest.

All Trustees are required to complete a declaration of business interests form on appointment and on an annual basis (including a nil return). Such declarations shall include:

- all business and financial interests such as directorships, shareholdings, and other appointments of influence within a business or other organisation; and
- interests of related persons including, but not limited to, parents, spouses, children, personal and business partners.

The Governance Professional shall be responsible for maintaining a register of business interests including nil returns.

Each meeting of the Trustees shall include a standing agenda item for those attending to declare any changes to their declarations of interest and thereafter, each Trustee will be responsible for updating their declarations which the Governance Professional will monitor.

No Trustee shall receive any payment for their work as a Trustee, other than payment of reasonable out of pocket travel, accommodation and other expenses which shall be subject to the prior written approval from the Chief Financial Officer.

[Further details are set out in the Conflicts of Interest Policy with which the Trustees are obliged to comply. ]

## 12 Chair of Trustees

The Board shall appoint an individual from among their number to act as Chair. The terms of the Chair's appointment are set out in Article 81. A change of Chair will require a notification to be made to the DfE, including a DBS and section 128 check to be submitted via the DfE.

The main role of the Chair is to chair meetings of the Board of Trustees. They also provide leadership to the Trustees and act as the main point of contact between the Trustees and the Leadership Team.

Subject to "Chair's Action" (described below) and apart from any special responsibilities or powers given to the Chair in the Articles (e.g. the right to chair meetings of the Board of Trustees and to have a second or casting vote in any case of an equality of votes at a meeting of the Board of Trustees), the Chair has no special powers or rights over any other Trustee. If the Chair is to carry out certain specific functions (for example, the power to approve an overspend in a certain area of the budget or the Principal's appraisal) then this must be expressly delegated to them by the Board in accordance with an appropriate power of delegation in the Trust's Articles.

### Co-Chairs of Governors

If it is desirable for the purposes of succession planning and ordinarily as an interim arrangement, the Trustees may elect co-chairs to the position of 'Chair' under the Articles. The Trustees may make rules to determine the arrangements including which co-chair shall chair the meeting and have the casting vote where applicable under Article 121. In the absence of such rules, the co-chairs shall determine which co-chair shall chair a given meeting (and have the corresponding casting vote) and in the absence of agreement, the matter shall be determined by the Trustees in attendance at the relevant meeting.

The DfE (via GIAS) shall be notified of the appointment of Co-Chairs and the relevant Secretary of State checks carried out as required.

Either of the Co-Chairs shall be entitled to exercise the right of Chair's Action referred to above but wherever practicable, the decision shall be taken by the co-chairs acting in agreement. In the event of disagreement between the co-chairs, the Principal shall have the casting vote (or if the matter pertains to the Principal, [the chair of the [ ] Committee or a Trustee nominated by the chair of the [ ] Committee]).

### **Chair's Action**

If the Chair is of the opinion that an approval of the Trustees is needed and it is not practicable to arrange a meeting on short notice in the circumstances, either:

- after receiving a written report from the Principal which clearly states, amongst other things, why the item concerned could not be deferred to a future meeting and why it would qualify for urgent decision under this procedure; or
- as a result of other information that is brought to their attention and a delay in exercising the function would likely be detrimental to the interests of:
  - the Trust
  - a pupil/ student or their parent; or
  - a person who works at the Trust;

then, in consultation with the Principal (or another Trustee if the matter pertains to the Principal), they may exercise any function of the Trust which can be delegated to an individual (**Chair's Action**).

The Chair may decide, on receipt of a request for a decision under the Chair's Action that the matter should only be dealt with by a special Board meeting called on short notice, in which case a meeting shall be called promptly.

Any action under the Chair's Action should be reported in writing as soon as possible to the Trustees (together with a copy of any written report from the Principal). A record of the decisions taken shall also be included with the Trust Board's minutes.

## **13 Meetings of Trustees**

There will be at least three meetings of the Trustees and ordinarily six, in every academic year. Meetings will normally be held towards the end of each term and the dates will be published at the beginning of each academic year.

Meetings of the Trustees shall be convened and conducted in accordance with the Articles.

In determining the agenda for Board meetings and committee meetings, the Trustees will have regard to the requirement on them to:



- ensure good financial management and effective internal controls;
- comply with the Funding Agreement and the current version of the Academy Trust Handbook (or successor documents);
- receive and consider information on financial performance at least six times a year; and
- take appropriate action to ensure ongoing viability against agreed budgets.

In consultation with the Chair, the Governance Professional shall prepare an annual plan for the meetings of the Trustees.

Each meeting of the Trustees will ordinarily cover the following:

- a report on the financial position, including income and expenditure and financial commitments against agreed budgets;
- whether adequate financial monitoring of budgets and activities is being undertaken;
- progress on any action identified to improve financial arrangements;
- safeguarding matters;
- significant contracts proposed to be entered into; and
- details of any significant matters affecting
  - staff;
  - pupils' welfare or education; and
  - assets.

## 14 Risk management

The charities statements of recommended practice (*Charities SORP FRS102* and *Charities SORP FRSSE*) set out requirements for reporting on the risks to a charity. These requirements apply to all charities which meet the charity audit threshold, regardless of whether they are reporting under FRS102, which applies to larger charities, or FRSSE, which applies to smaller charities.

The Trustees' report must include a description of the principal risks and uncertainties facing the Trust and its subsidiary undertakings, as identified by the Trustees. The report must also include a summary of the Trustees' plans and strategies for managing these risks. The Trustees must identify specific risks and describe ways to combat each one, rather than making general statements regarding risk management.

The Trustees are therefore responsible for:

- identifying the major risks that apply to the Trust, including:
  - operational risks (employment issues, health and safety, fraud, service quality and development etc.);
  - financial risks (accuracy of financial information, cash flow, reserves, over-reliance on funding sources etc.);
  - external risks (changes in government policy, economic factors, demographic changes, adverse publicity etc.); and
  - regulatory risks (compliance with legislation, changes in policies of the regulators etc.);

- making decisions (based where appropriate on advice from professional advisors) as to how to respond to those risks; and
- making appropriate statements regarding the management of risks in the annual report.

The following policies shall be approved by the Trustees:

- a child protection and safeguarding policy;
- a risk management policy;
- a contingency and business continuity plan;
- a fraud policy; and
- a whistleblowing policy.

Noting that the overall responsibility for risk management and oversight of the risk register lies with the Trustees, the Finance and Audit (including estates and staffing) Committee, supported by nominated Trustees and the Chief Financial Officer, shall prepare a risk register for approval by the Trustees, along with a procedure by which the risk register shall be subject to review at least annually and made available to all staff. The risk register shall have named individuals assigned to manage each area.

## 15 Policy reviews

In addition to those policies referred to above, the Trustees shall ensure that a cycle of policy reviews is in place which shall include the review and adoption of the following policies/ arrangements by the Trust Board:

- Admissions arrangements
- Protection of biometric information of children
- Early careers teachers
- Child protection policy and procedures (which includes online safety)
- Children with health needs who cannot attend school
- Special educational needs and disability
- Behaviour principles written statement
- Health and safety
- First aid in schools
- Careers guidance.

They shall further ensure procedures are in place to review and adopt policies referred to in the DfE's guidance here: [Statutory policies for schools and academy trusts - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/statutory-policies-for-schools-and-academy-trusts) and otherwise as might be required by law.

## 16 Delegation of powers of Trustees

In accordance with the Scheme of Governance, the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations.

The Trustees have made the delegations to the Leadership Team as set out in the Roles and Functions Matrix.

The Trustees' may delegate powers to the Committees and they have established the following standing committees ("the Committees"):

- Finance and Audit (including estates and staffing) Committee;
- Education Committee; and
- Pay Committee.

The Committees shall operate under separate terms of reference which shall be reviewed annually by the Trustees.

#### **17 Functions of the Board**

The key functions of the Trustees (which cannot be considered to be an exhaustive list) are as set out in the Roles and Function Matrix.

#### **18 Alterations**

This constitution and terms of reference may be altered by a majority resolution of the Trustees of the Trust.

#### **19 Circulation list**

This constitution and terms of reference shall be circulated all Governors, and others at the discretion of the Chair of the Trustees.

#### **20 Approval and review**

This constitution and terms of reference were approved and adopted by a resolution of the Trustees of the Trust passed at a meeting held on [• 00 month year] and take effect from [• 00 month year].

**Adopted by the Board:** [• date]

**Proposed date of review:** [• date]

## **Appendix 1: the Seven Principles of Public Life set out by the Committee on Standards in Public Life ("the Nolan Principles")**

### **1. Selflessness**

Holders of public office should act solely in terms of the public interest.

### **2. Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. 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 the scrutiny necessary to ensure this.

### **5. Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **6. Honesty**

Holders of public office should be truthful.

### **7. Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Appendix 2: Code of Conduct for Trustees

### Introduction

This Code of Conduct is designed to set out the conduct and commitment required of trustees in order to ensure the highest standards of integrity and stewardship.

### General responsibilities

*"Trustees must act reasonably and prudently in all matters relating to the Charity and must always bear in mind the interests of the Charity. They should not let their personal views or prejudices affect their conduct as trustees." (The Essential trustee: what you need to know (CC3), Charity Commission, February 2008).*

*"The primary duty of a trustee is to carry out the function of his or her office with the utmost good faith. He or she must be impartial and mindful of the interests of the beneficiaries of the Charity and of the objects for which the Charity is established" (Governance and management of charities, Andrew Hind, NCVO Publications, 1995).*

Trustees should listen to the view of other trustees, the governors, staff, volunteers or external advisers respectfully, taking cognisance of differences of opinion. Trustees should not cause offence to others or undermine the standing of their colleagues as a member of the Board of Trustees (the **Board**).

### Roles and responsibilities

- To understand the role of the Principal and the wider Leadership Team and the purpose of the Board
- To actively challenge and support the Principal
- To maintain and develop the values, ethos and reputation of the Trust
- To accept collective responsibility for all decisions made by the Board or to its delegated Trustees
- To act fairly and without prejudice
- To fulfil all that is expected of a good employer in circumstances where the Board has responsibility for staff; and
- To consider how the decisions of the Board may affect other schools and the community.

### Commitment

- To commit considerable amounts of time and energy to the Board in order for it to fulfil its functions and duties
- To become actively involved in the Board's work and accept a fair share of responsibilities
- To send apologies in advance of Board meetings to which the individual Trustee is unable to attend, but making full effort to attend all meetings of the Board
- To develop and maintain effective working relationships with the Principal and the wider Leadership Team, senior leadership team(s), staff and parents, volunteers, the community, the local authority and other relevant agencies
- To respond to opportunities and become actively involved in Trust activities
- To undertake relevant training and to identify and fulfil any skills gaps as and when determined by the Board; and

- To accept that relevant individual Trustee details shall be published on the Trust's website, Companies House and also logged on the Department for Education's national database ("Get information about schools").

### **Board papers**

While the Board aims to conduct its business openly, it is inevitable that some matters must be confidential either for a time or always.

All matters discussed at Board meetings (save for items which are clearly neither confidential nor of a sensitive nature either legally, commercially, financially or personally) shall be treated as strictly confidential and shall not be discussed with anyone other than those present at the meeting when the matter in question was discussed unless authorised by the Board to do so. If in any doubt, trustees should contact the Chair.

### **Board meetings**

Open discussion and debate is actively encouraged, in which every spectrum of objective opinion is welcomed. Views shall be expressed respectfully, openly and courteously in all communications to every member of the Board including Trustees and the Governance Professional .

As Trustees must act with probity, the Board should take and consider professional advice from internal and / or from external advisers in all decision-making.

Where consensus is not achieved, decisions will be taken during Board meetings by calling for a vote by those present. Trustees who abstain on, or vote against, any motion may request an appropriate note be made in the minutes.

The Board must be accountable but delegate authority on various matters on which it is entitled to full reports as necessary.

The Trustees of the Board have no legal authority to act individually, unless delegated authority has been provided by the Board to the individual Trustee; only in this circumstance will an individual Trustee speak on behalf of the Board collectively, after specific authority has been given.

### **Outside board meetings**

Trustees shall act appropriately and exercise restraint outside a meeting in relation to particular comments made within the Board meeting by individual members. Trustees must accept that it is inappropriate for any private or public references to "who said what", except in dialogue with other Trustees.

Trustees shall accept the need for care and restraint, honouring the spirit as well as the letter of the Code of Conduct, when talking about board matters in any other forum.

### **Disagreements**

Where a Trustee has a disagreement on any matter, he or she should raise the matter informally with the Chair or through the normal procedures at a board meeting.

If not resolved, a Trustee may request the matter be taken further by the Chair (or the Vice Chair if the matter pertains to the Chair).

If a satisfactory conclusion is not reached, the Board may recommend the appointment of an independent mediator.

### **The Principal and the wider staff**

Staff and Trustees are expected to deal with each other with respect and courtesy.

Trustees must ensure there is a clear understanding of the scope of authority delegated to the Principal.

Having given the Principal delegated authority, Trustees should be careful, individually and collectively, not to undermine that authority either by word or action.

Trustees delegate the management to the Principal and the Leadership Teams, which includes the management of staff in accordance with the decision making matrix.

If a Trustee has concerns relating to the performance of a member of staff, he or she should contact the Chair, who will take up the matter with the Principal.

### **Breach of the Code of Conduct**

In the event of a breach of this Code of Conduct, the matter shall be raised with the Chair and an investigation shall take place.

In the event a breach of this Code of Conduct is believed to have been made by the Chair, another individual Trustee (such as the Vice Chair) shall conduct (or otherwise commission) the investigation. The relevant Trustee shall have the opportunity to make representations.

The Board understands that removal of an individual Trustee will be used only as a last resort, once all efforts have first been utilised to resolve the matter.

Where there is no other plausible option other than to remove the Trustee, the Chair or other appropriate Trustee shall refer the matter to the Members.

## Appendix 3: Trustee declaration on appointment

### Trustee declaration

Talent Education Trust **(the Trust)**

I confirm that I am willing to act as a trustee of the Trust (**Trustee**). I further confirm that I am not disqualified from so acting by virtue of any provisions of the Articles of Association of the Trust, including, but not limited to, the requirement that I am not subject to an order under section 181A of the Charities Act 2011 disqualifying me from acting as a charity trustee nor am I disqualified from acting as a charity trustee or director by virtue of sections 178 and 178A of the Charities Act 2011 (extract included below).

Signed .....

Full name .....

Address .....

.....

.....

.....

.....

Date .....

Please sign and retain the additional copy of this document with your records.

**Talent Education Trust:** a company limited by guarantee

**Company registration number:** 10036154

**Registered office:** C/O Mlg Education Services Limited Unit 7 Home Farm Courtyard, Meriden Road, Coventry, England, CV7 7SH



## **Extract from section 178 and 178A of the Charities Act 2011**

### **178 Persons disqualified from being charity trustees or trustees of a charity**

(1) A person ("P") is disqualified from being a charity trustee or trustee for a charity in the following cases—

#### **Case A**

P has been convicted of—

- (a) an offence specified in section 178A;
- (b) an offence, not specified in section 178A, that involves dishonesty or deception.

#### **Case B**

P has been made bankrupt or sequestration of P's estate has been awarded and (in either case)—

- (a) P has not been discharged, or
- (b) P is the subject of a bankruptcy restrictions order or an interim order.

#### **Case C**

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

#### **Case D**

P has been removed as a trustee, charity trustee, officer, agent or employee of a charity by an order made—

- (a) by the Commission under section 79(4) or by the Commission or the Commissioners under a relevant earlier enactment (as defined by section 179(5)), or
- (b) by the High Court,

on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or which P knew of and failed to take any reasonable step to oppose, or which P's conduct contributed to or facilitated.

#### **Case E**

P has been removed, under section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (powers of the Court of Session) or the relevant earlier legislation (as defined by section 179(6)), from being concerned in the management or control of any body.

#### **Case F**

P is subject to—

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/ 3150 (N.I.4)), or
- (b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).

#### **Case G**

P is subject to—

- (a) a moratorium period under a debt relief order under Part 7A of the Insolvency Act 1986; or
- (b) a debt relief restrictions order or interim order under Schedule 4ZB to that Act.

#### **Case H**

P has been found to be in contempt of court under Civil Procedure Rules for—

- (a) making a false disclosure statement, or causing one to be made, or
- (b) making a false statement in a document verified by a statement of truth, or causing one to be made.

#### **Case I**

P has been found guilty of disobedience to an order or direction of the Commission on an application to the High Court under section 336(1).

#### **Case J**

P is a designated person for the purposes of—

- (a) Part 1 of the Terrorist Asset-Freezing etc. Act 2010, or
- (b) the Al-Qaida (Asset-Freezing) Regulations 2011.

#### **Case K**

P is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.

- (2) Subsection (1) is subject to sections 179 to 181.
- (3) While a person is disqualified under this section in relation to a charity, the person is also disqualified from holding an office or employment in the charity with senior management functions.
- (4) A function of an office or employment held by a person "(A)" is a senior management function if—
  - (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
  - (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.

#### **178A Case A: specified offences**

(1) The following offences are specified for the purposes of Case A—

- 1 An offence to which Part 4 of the Counter-Terrorism Act 2008 applies (see sections 41 to 43 of that Act).
- 2 An offence under section 13 or 19 of the Terrorism Act 2000 (wearing of uniform etc, and failure to disclose information).
- 3 A money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002.

- 4 An offence under any of the following provisions of the Bribery Act 2010—
- (a) section 1 (bribing another person),
  - (b) section 2 (offences relating to being bribed),
  - (c) section 6 (bribery of foreign public officials),
  - (d) section 7 (failure of commercial organisations to prevent bribery).
- 5 An offence under section 77 of this Act.
- 6 An offence of—
- (a) misconduct in public office,
  - (b) perjury,
  - (c) perverting the course of justice.
- (2) An offence which has been superseded (directly or indirectly) by an offence specified in subsection (1) is also specified for the purposes of Case A.
- (3) In relation to an offence specified in subsection (1) or (2), the following offences are also specified for the purposes of Case A—
- (a) an offence of attempt, conspiracy or incitement to commit the offence;
  - (b) an offence of aiding, abetting, counselling or procuring the commission of the offence;
  - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence.
- (4) The Minister may amend this section by regulations to add or remove an offence.

## **Appendix 4: Duties and responsibilities of Trustees as charity trustees**

- 1 The Trustees (as charity trustees) must ensure that the Trust remains solvent, well run and meets the needs for which it was established.
- 2 Broadly, the main powers and duties are as follows.

### **To carry out the Objects of the Trust**

- 3 The Trustees will need to act in accordance with the Articles of the Trust and only exercise their powers for the purposes for which they are conferred. In practical terms, this means that the Trustees must ensure that all of the Trust's assets are applied for the charitable objects of the Trust.
- 4 The Trustees will also need to be satisfied that they have the requisite powers to pursue a particular activity. The powers which the Trustees have are set out in the Articles.

### **To manage any risks to the Trust, APSoL and their reputations**

- 5 The Trustees' Annual Report (contained with the accounts) must contain a statement confirming that "...the major risks to which the charity is exposed, as identified by the Trustees, have been reviewed and systems have been established to mitigate those risks." (See Charities (Accounts and Reports) Regulations 2008 (SI 2008/629)).
- 6 The Trustees will therefore need to identify the major risks to the Trust; those which have a high likelihood of occurring and if they did would have a severe impact on operational performance, achievement of the Trust's aims and objectives or which could damage the reputation of the Trust.
- 7 The Trustees will need to put systems in place to minimise these risks. This might include transferring a risk to a third party (e.g. via insurance), avoiding the activity which gives rise to the risk or accepting it and putting processes in place to manage it. The obligation to monitor and assess risk is ongoing.
- 8 Failure of insurance may also be a major risk. Failure can arise for a number of reasons such as non-disclosure of a material fact, non-compliance with claims conditions (e.g. late notification), under-insurance or omitting to pay premiums.

### **To comply with legislation**

- 9 The Trustees are responsible for ensuring that the Trust complies with relevant legislation, in particular:
  - 9.1 charity law and the requirements of the Charity Commission; and
  - 9.2 company law and the requirements of the Registrar of Companies at Companies House.

### **To observe the Trust's constitution**

- 10 For charities incorporated as a company limited by guarantee, such as the Trust, the constitution is the Articles of Association.
- 11 The Articles set out the charitable Objects of the Trust and the powers (acting through its Trustees) that it has to fulfil these Objects.

- 12 The Trustees must ensure that the activities of the Trust are within its charitable Objects and that the Trust has all necessary powers to perform those activities.
- 13 The Articles of Association also prescribe how the Trust is to be governed. It sets out the rules relating to the composition of the Board of Trustees, how meetings are called and convened and decisions made etc.

#### **To observe fiduciary duties including the duty of care**

- 14 As charity trustees and directors, the Trustees must avoid taking any personal benefit from their position and should ensure that nothing arises from their own activities that gives rise to personal gain other than as authorised by the Trust's governing instruments.
- 15 The Trustees must exercise their powers for the benefit of the Trust, for the purposes for which they were given and with prudence and reasonable diligence. There are penalties for breach of these duties.
- 16 The Trustees must act in accordance with their duty of care, that is they must carry out their duties with such care and skill as is reasonable in the circumstances, having regard in particular:
  - 16.1 to any special knowledge or experience that a Trustee has or holds himself out as having; and
  - 16.2 if he or she acts as Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

#### **To act prudently**

- 17 The Trustees should act with the same degree of prudence as a reasonable person would act in the management of his or her own business affairs. In particular the Trustees:
  - 17.1 should ensure that the Trust is and will remain solvent;
  - 17.2 must not cause loss or risk to charity property or get into a conflict of interests; and
  - 17.3 are required to carry out effective risk management.
- 18 In cases of doubt or difficulty a Trustee should take legal and other expert advice. If the advice is wrong but it was reasonable for the Trustee to have relied and acted on it, he or she may be relieved of liability.

#### **To act impartially**

- 19 The Trustees must be free to make decisions untainted by any considerations of personal gain or other conflicts. Not only must the Articles of Association specifically permit a Trustee to take this benefit if offered, but the decision-making process behind any award must be fair and open.
- 20 If a conflict of interest arises, it should be handled with transparency and in accordance with the governing instruments.
- 21 Any nominated Trustee must act independently of his or her nominating body and act in the best interests of the Trust.

#### **To delegate**

- 22 Trusteeship is a personal office of trust and responsibility and this cannot be delegated or farmed out to another individual. The buck stops with the Trustee personally.
- 23 APSoL, like any good business, needs to be managed and the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations. An example is the formation of sub-committees of the Board to research certain aspects of trust work and report back for the decision making of the main Board on such issues as finance, states and buildings and curriculum.
- 24 The Trustees are entitled to trust persons in positions of responsibility until there is reason to distrust them. However, the Trustees must exercise reasonable supervision and ask questions that should be asked.
- 25 The Trustees may delegate the management of investments to expert third parties but must maintain regular checks and retain overall responsibility for those investments.
- 26 The overall test is whether a Trustee has behaved as a "prudent man or woman of business".

### **To protect and manage the property and assets of the Trust**

- 27 The Trustees must at all times act to protect the property and assets of the Trust and this extends to land, money and intellectual property. The following should be arranged:
- 27.1 full insurance cover including public and employer's liability and trustee indemnity insurance;
  - 27.2 full security measures to protect premises and access to sensitive and valuable documents;
  - 27.3 clear office procedures and in particular systems of financial control;
  - 27.4 reporting procedures for staff to report to the Board including the ability of an individual to report suspected irregularities directly to a Trustee in confidence if the occasion demands (whistleblowing);
  - 27.5 reviews of investments with or without a third party expert according to need; and
  - 27.6 land management.

### **To ensure adequacy of funds**

- 28 The Trustees must ensure the adequacy of funds for the Trust's immediate needs and for its development.
- 29 The Trustees must invest trust property wisely, acting as a prudent person when making investments.
- 30 However, the pursuit of funds should not distort the aims of the Trust. It is important to assess and justify why additional funds are being sought.

### **To hold and attend meetings**

- 31 The Trustees must ensure that:
- 31.1 notices go out in a timely fashion;
  - 31.2 accurate minutes are taken recounting precisely all decisions taken and the background reasoning;

- 31.3 they read all minutes (Trustees are responsible for all decisions whilst whether or not they were present at a meeting);
- 31.4 they maintain an up to date membership register;
- 31.5 they call an Annual General Meeting each year; and
- 31.6 they call General Meetings to conduct special business where necessary.

32 However, in practice most of these will be delegated to the Governance Professional.

#### **To satisfy information requirements**

- 33 These include requirements to keep information at the registered office and to file certain documents with Companies House and the Education and Skills Funding Agency (where relevant).
- 34 In practice, administrative functions will be delegated to the Governance Professional or Company Secretary.

#### **To keep proper accounts**

- 35 The Trustees must ensure that appropriately drawn and audited accounts and returns are filed with Companies House and the Education and Skills Funding Agency.
- 36 The Trustees must submit its annual summary report relating to its internal scrutiny programme of works to the Education and Skills Funding Agency with its audited accounts.

#### **To have regard to legal matters in general**

- 37 General legal matters include the following:
  - 37.1 equal opportunities;
  - 37.2 data protection;
  - 37.3 child protection and safer recruitment;
  - 37.4 employment law; and
  - 37.5 human rights and procedural fairness.

#### **Not to receive a benefit from the Trust unless authorised**

- 38 Trustees must not receive any personal benefit from the Trust in return for any service they provide to it unless they have express legal authority to do so. That legal authority can come either from the Trust governing instruments or from the Charity Commission.
- 39 The prohibition from receiving benefits is not limited to monetary payments and 'benefits' and also includes those to spouses, partners, relatives and other persons or businesses connected with the Trustee.
- 40 It is important that the Trustees do not receive any unauthorised benefits as the Commission's starting point is to require the repayment of any unauthorised benefits.

#### **To manage and minimise any liabilities**

- 41 As a distinct legal entity, a charitable company is liable for its own debts. However, the law allows a personal liability to be attributed to individual Trustees where the Trust fails to fulfil

its obligations and where that Trustee is held to be responsible for the loss caused by his or her negligence or deliberate fault.

### **Technical defaults**

- 42 The Trustees, as directors, can be liable for a fine for breaching company and charity law requirements.

### **Criminal liability**

- 43 A Trustee who knowingly and wilfully authorises or permits a company's criminal acts can become liable for those acts. These include not just financial or "white collar" crime, but also crimes such as corporate manslaughter.

### **Contractual liabilities**

- 44 The Trustees may incur personal liabilities if they personally contract with third parties in certain limited circumstances, including:
- 44.1 where they do not make it clear that they are a Trustee and contracting on behalf of the Trust;
  - 44.2 where the Trustee's authority is exceeded and the transaction is not ratified by the full Board of Trustees; and
  - 44.3 where a Trustee makes a fraudulent or negligent misrepresentation during negotiations; or where a Trustee guarantees the Trust's obligations, and the Trust defaults.

### **Insolvency**

- 45 Notwithstanding its existence as a charity with considerable assets, as a company, the Trust is subject to the insolvency legislation and the Trustees should be aware of the implications of this. In the unlikely event that the Trust becomes insolvent, the acts of the Trustees will be subject to scrutiny.
- 46 If it can be shown that a Trustee knew or ought to have known that there was no reasonable prospect of avoiding insolvent liquidation and he subsequently fails to take every step to minimise the potential loss to the Trust's creditors (**Wrongful Trading**), the Court can order that Trustee to make a personal contribution to the Trust's assets to meet the claims of its creditors to the extent that they have been put in worse position by his or her failure to act.
- 47 The Trustees can be made liable for the acts and omissions of their co-directors where they have proved to have failed to investigate or supervise activity.
- 48 Honesty and good faith alone will not avoid personal liability for Wrongful Trading. A Trustee's general knowledge, skill and experience are also taken into account.

### **Mitigation of the risk of personal liability**

- 49 As directors of an incorporated entity, the Trustees will generally have no personal liability for the debts or liabilities of the Trust. Trustees may in certain circumstances become personally liable if they act in breach of the duties and statutory / regulatory obligations referred to above, but the risk in relation to this for the Trustees can be mitigated to a significant extent:
- 49.1 Indemnity insurance can put in place to protect Trustees. Provided that the terms of the insurance policy are complied with (e.g. premiums are paid up and



circumstances which could give rise to a claim are notified to the insurer), this will protect Trustees unless the claim relates to:

- 49.1.1 any act or omission which the Trustees knew to be a breach of trust;
  - 49.1.2 a breach of duty which was committed by the Trustees in reckless disregard of whether it was a breach of trust or breach of duty or not; and / or
  - 49.1.3 if it relates to the costs of any unsuccessful defence to a criminal prosecution brought against the Trustees in their capacity as directors.
- 49.2 In addition to indemnity insurance, the Courts and the Charity Commission have a power to relieve a Trustee from personal liability where it is considered that a Trustee has acted honestly and reasonably and it is fair in the circumstances to do so, notwithstanding the consequences of his or her breach. Where, on the other hand, the Trustee has been involved in misconduct or mismanagement that was clearly intended or undertaken recklessly, the Court or Commission is unlikely to relieve him or her from personal liability.
- 49.3 The Articles expressly provide that the Trustees, officers and auditors of the Trust are entitled to be indemnified by the Trust if they incur any costs as a result of successfully defending legal proceedings or successfully making an application for relief from liability to the Court.

## Conclusion

- 50 Instances of personal liability for Trustees are rare. The key points for Trustees are to ensure that they understand their legal duties and obligations, to ensure that their powers are properly exercised and, if they are in any doubt, to take professional advice.
- 51 We do recommend that Trustees also read one of the Charity Commission's publications *CC3: the essential trustee: what you need to know, what you need to do* (Charity Commission, May 2018), which provides additional details on these matters. This guidance can be found on the following link:  
<http://www.charitycommission.gov.uk/publications/cc3.asp>.

