

**This brief note considers the circumstances in which academy governors or directors (Governors) may be paid by their Academy Trust (Academy).**

As a starting point, because an Academy is an exempt charity, Governors are also charity trustees and are therefore bound to comply with charity law. Charity law expects individuals and organisations to become involved with a charity purely for altruistic purposes. The law does not envisage, nor normally allow, a profit to be made by a Governor or member simply for acting in accordance with the role they have taken on.

This note considers the very limited circumstances of when and how Governors can be paid. Where we refer to the model DfE Articles of Association it will be important to check the specific provisions in an academy's own Articles of Association but the principles are likely to be very similar to those set out in the current model Articles of Association. In short, there are three circumstances in which Governors may be paid by the academy:

**reimbursement of reasonable expenses** properly incurred when acting on behalf of the Academy (note this is at the discretion of the Board)

**payment for services** provided outside the role of Governor (this is subject to very strict rules - see below)

**payment of salary** to staff Governors or the Principal in their capacity as an employee and not as a Governor.

## **Paying academy governors for another role**

Since an academy must ensure that all income and profits are applied towards its charitable objects, it will not be possible to pay the Governors in their capacity as Governors. However, under the Academy's governing document - its Articles of Association - it stipulates the circumstances an individual could receive payments from the academy, provided that they are being paid for something being provided outside the role of Governor or member.

The DfE's model Articles of Association for an academy state that members who are not also Governors may be paid reasonable and proper remuneration for any goods or services supplied to the Academy.

The model Articles also allow a Governor to be paid for services other than those a Governor would normally be expected to provide. A Governor can also take part in the normal trading and fundraising activities of the Academy on the same terms as members of the public. To rely on this, a Governor must adhere to certain conditions:

- the amount paid must be reasonable in all the circumstances and must comply with the Academies Financial Handbook (paragraph 2.6) which requires services to be provided at cost in certain circumstances where goods or services are provided by individuals or organisations connected to the Academy
- the Governor must be absent from any part of a meeting in which there is a discussion of the payment, not vote and is not counted in the quorum for that part of the meeting
- the other Governors must be satisfied that it is in the best interests of the Academy to contract with that Governor rather than someone who is not a Governor
- the reasons for their decision must be recorded in the minutes
- a majority of the Governors then in office have not received a benefit under the relevant provisions in the Articles

It would also be sensible to consider whether the arrangement presents any reputational risks to the Academy.

### Can it ever be possible to pay governors for carrying out their role?

To do so would require a change to the Articles of the Academy to explicitly permit such payments. In order to change the Articles it would be necessary to:

**obtain the Charity Commission's consent** (even though Academies are exempt charities payment of Governors is one of the few 'regulated changes' where exempt charities must obtain the Charities Commission consent) and

**obtain the DfE's agreement** - this would require a change to the DfE's current policy that Governors are unpaid volunteers. If this happens, it is likely to be addressed through the EFA's Academies Financial Handbook.

As an indication of the limited circumstances where the Charity Commission might consider providing consent to an application to pay a Governor, we set out below a list of the issues that they would be likely to consider:

#### the complexity of the role ...

is the work involved substantially greater in time and/or complexity than would normally be expected for that role?

### **ease of recruitment ...**

how likely is it that another qualified individual could be found to undertake the work without pay? What steps have been taken to source and recruit applicants? Evidence will be required to show what has been attempted, the responses (if any) and why these candidates were unsuitable

### **the effect payment would have on the reputation and financial position of the charity ...**

on a cost/benefit assessment, would the employment of a paid governor raise the profile and income of the charity or damage it's reputation in the community?

### **alternatives ...**

could the role be carried out by existing, unpaid employees?

### **proposed wage/benefits ...**

what is the proposed wage and/or benefits that will be offered and what evidence is there to show that these are reasonable and appropriate?

### **performance review ...**

what is the process by which performance will be reviewed and the procedure to be followed in case of poor performance and/or ending the contract?

### **consultation ...**

is consultation appropriate before making a decision and, if so, who would be consulted?

### **conflicts ...**

how can conflicts of interest be dealt with?

## **Conclusion**

Payment of Governors needs to be considered with care. We have only set out a brief summary of the issues in this note and it is not intended to be a substitute for detailed advice on the subject matter. We would be happy to discuss any queries you may have in your specific circumstances.

*talk to us...*

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