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Members of academy trusts have fiduciary duties

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With the growing prominence of the role of members in academy trusts there is also growing interest in their duties. We are increasingly asked are there any limits on how members can exercise their powers.

The Charity Commission has for many years (see 2004 guidance RS7 – Membership Charities) expressed view in its guidance that members of charities are fiduciaries. Whilst the clarity provided by the Charity Commission was broadly welcomed at the time there has been a question as to whether a court would uphold this interpretation. It is surprising with the number of charitable companies registered at Companies House that the point has not been decided by the courts until now.

On 29 July the Supreme Court delivered its judgment in Letimaki and others (Respondents) v Cooper (Appellant) which amongst other issues considered whether or not members of charitable companies have fiduciary duties.

In the judgment the Supreme Court described a fiduciary as someone who owes a single minded duty of loyalty to their beneficiary. The Court found that members of charities are fiduciaries and that a member cannot use their powers otherwise than for the benefit of the charity.

This is an important and helpful clarification for academy trusts at a time when the role of members is becoming ever more important.

We recommend that academy trusts take the opportunity to clarify both the role and responsibilities of members to help aid the effective governance of the trust. One way of doing this is through putting in place a 'members handbook' providing a practical reference guide to support your members carry out the role effectively.

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