Catholic Education Service
Since 1847

The Role of Members in Catholic Academy Companies

Introduction

The purpose of this note is to provide guidance to dioceses on the role of members in their academy companies. Members play an important role in the oversight of academy companies from a company law perspective, but their role is often confused in a Catholic academy company context with the role of the Bishop as the Bishop, and the exercise of his canonical oversight by his education officers. Any questions which relate to action which might be taken by the Bishop as a member of an academy company, must first be considered through the lens of his canonical oversight.

The CES is available to provide further guidance and support as required.

The Role of Members in the Catholic context

The structures and institutions that exist to implement the Church's mission in education are governed by canon law. Canon law envisages that these structures and institutions are established within the parameters of the local civil laws in such a way that ensures all the relevant canonical requirements can be implemented validly. Catholic academy company structures have been established and designed primarily to enable the existing ecclesial structures to operate efficiently and legally, and the roles of members and directors within these structures has also been designed with our unique context in mind. All Catholic schools operate under the governance of their Bishop (or Religious Superior) and are subject to the canonical oversight of the Bishop. The Catholic Model Articles,[1] and the roles of members and directors described therein exist to facilitate this. Accordingly, the Catholic Model Articles do not impose any duties on members to act, but leave them with all the powers which would enable them to step in should the existing canonical mechanisms fail.

Members, company law and the company's constitution

A company is a corporation: a fictional person to which the law attributes a collective legal identity separate from the individual legal identities of its members. The members of a company are the 'owners' of the company and the guardians of its constitution. In a charitable company, this 'ownership' is carried out for the benefit of the public as set out in the Company's objects (which in the case of a Catholic academy company are for the advancement of the Catholic religion by such means as the Bishop may think fit and proper). The primary constitutional provisions governing the company are its articles of association which, as well as the company's objects, contain specific provisions which are designed to protect its Catholic character and ensure it is governed in accordance with canon law. The articles of association can only be

[1] *Academy articles of association: For use by Catholic academies*; DfE, current version February 2019. Any academy companies whose articles are based on Model Articles older than February 2019 should adopt new articles based on the 2019 Model as a matter of urgency. The CES has provided advice on making the necessary changes.

amended under the Companies Act 2006 ("CA 2006") if a special resolution of the members is passed.[2]

Each director of a company has a set of statutory duties towards the company, represented by its members as a whole.[3] Every director must act in accordance with the company's constitution, and must act in the way he or she considers, in good faith, would be most likely to achieve the purposes set out in the objects.[4] Conversely, members have rights to ensure that the directors discharge these duties.[5]

The members therefore have certain rights under company law to act if the directors of the company are acting in a way that they do not approve of, or if they are failing to take any action that is required by the members. For example, the members can require the directors to call a general meeting to discuss a specific issue and they can provide the wording of any resolution to be moved at that meeting.[6] The members are also able, by ordinary resolution, to remove any director - this is in addition to the Bishop's (or Religious Superior's) power of removal set out in the articles.[7]

In the context of a Catholic academy company however, there are specific provisions included in the Catholic Model Articles that enhance the CA 2006 provisions set out above, allowing the Bishop, (and the Religious Superior where there is one), to act in those capacities rather than having to act as a member. Below are some examples.

Article 10 provides that before any alteration or addition can be made to the articles, the company must have received from each of the Trustees, the Bishop (and the Religious Superior where there is one), either their consent, or a certificate stating that the alteration would not affect their interests. In practical terms however, the expectation is that any amendment to the articles would be driven by the Bishop (or Religious Superior), and would be made by the members at his request.

Article 66 provides that a director shall cease to hold office if he is removed by the person who appointed him, *or otherwise* by ordinary resolution of the members. Therefore, in the context of a Catholic academy company, the removal of, for example, a foundation director would normally be by the Bishop or Religious Superior acting as the appointor, rather than the members needing to pass an ordinary resolution following the CA 2006 process.

Article 93 sets out that the business of the company shall be managed by the directors, subject to the provisions of the CA 2006, the articles, and to any directions given by special resolution of the members. The members have the power to direct the business of the company by special resolution, and this article simply reflects the provisions of company law.[8]

Members, the Academy Trust Handbook (ATH)

Over recent years, the DfE has made attempts to highlight the importance of the role of academy company members. Paragraph 1.7 of the ATH provides that members should be kept informed about the business of the academy company so that the members can be assured that the board

[2] A special resolution must be passed by a majority of at least 75%: see CA 2006, section 21.
[3] CA 2006, Part 10, Chapter 2: *General duties of directors*, sections.170-177.
[4] CA 2006, sections171 & 172.
[5] See, e.g. CA 2006, Part 9: *Exercise of member's rights*, sections 145-153.
[6] CA 2006, sections 303-304.
[7] CA 2006, section168.
[8] CA 2006, sections 303-304.

is exercising effective governance, and they can use their powers to step in if governance is failing. Members are also responsible for ensuring that the directors are acting in accordance with the academy company's charitable objects.

These provisions make more sense in relation to the two-thirds of academies which are not voluntary academies and therefore do not have Trustees to be accountable to - in such academies the only accountability is to the members – and therefore the members in these companies play a very different role. However, in the context of a Catholic academy company, the change in emphasis on the role of members from the DfE was largely unnecessary, because the members are usually the Bishop, the Trustees and other Diocesan Officers, and these individuals, regardless of their role as members, will have a role to play in overseeing the effectiveness of governance on behalf of the Bishop.

Who should the members of a Catholic academy company be?[9]

The CES advises that Catholic academy companies should have at least three members, and the Catholic model articles provide the option for there to be a minimum of five. The members are listed in Article 12 of the Catholic model articles.

As can be seen from Article 12, all of the members listed are ex officio positions within the diocesan curia. In addition, the Bishop has the power to appoint and remove other individuals as members (the members collectively also have these powers under Articles 15 and 16, but the expectation is that these powers will not be used). The Bishop and the corporate trustee of the diocese are foundation members which means that they cannot be removed as members.

The membership of Catholic academy companies has been designed to reflect the internal ordering of the diocesan curia, particularly in relation to education. The Bishop's power to add additional members is intended to give him flexibility so that he can appoint other officers should the need arise without needing to amend the articles.

The CES advises that only relevant officers of the curia should be appointed as members.

Members have considerable powers pursuant to company law and the articles and these are normally exercised collectively rather than individually. In the vast majority of circumstances there will be no need for the members to exercise their powers collectively because the Bishop's canonical oversight will be carried out effectively.

The Bishop as a Member

As a member, the Bishop has the same powers as other members, and he is therefore able to participate in the collective decision making of the members.

As described above, as a member, the Bishop's primary responsibility is to satisfy himself that the directors are running the company appropriately. In the event that he had concerns about the management of the company, he would be entitled to ask questions, receive information and, together with the other members, ask that action be taken. In the event that the directors were not acting appropriately, the Bishop as a member can join with the other members to require the

[9] In the interests of simplicity, the following sections deal with the position in diocesan academy companies. Where there is religious order or mixed trusteeship, the same principles apply, but adapted accordingly (e.g. for the position of the Religious Superior). The CES can advise further if required.

directors to call a general meeting to enable specific action to be voted on by the members and/or they can remove the directors using the powers available in the CA 2006.[10]

However, in most cases, it should not be necessary for the Bishop or the members to exercise their powers as members, because the Bishop has much broader powers as the Diocesan Bishop as is set out below.

The Bishop as Diocesan Bishop

The powers of the Bishop as the Bishop of the Diocese in which the academy company is situated are far wider than any power that the Bishop might have under company law as a member.

Reference should always be made to the articles to establish if the Bishop has a specific power conferred on him in that document (i.e. the right to appoint and remove foundation directors), but outside of anything specific in the articles, the Bishop has a general right of oversight and supervision which is conferred to him under canon law.

The Bishop's ordinary jurisdiction under canon law derives from his office as Bishop. The Bishop's ordinary jurisdiction consists of legislative, executive and judicial power. In relation to academies, he will largely be using his executive powers, and these can be exercised vicariously in his name by other Ordinaries in his diocese (i.e. by Vicars General and Episcopal Vicars).

The Bishop is the Visitor of all persons, Catholic associations, institutes, schools, sacred things and places in his diocese and the purpose of a Canonical visitation is to ensure that Canon law is observed and the institution is well-governed. Under Charity law, the Bishop is also the founder of a charity, and as such he has a right of visitation to ensure that the domestic law of his foundation is observed and the charity is well governed.

As Visitor, the Bishop is able to conduct diligent official enquiry into the governance of an institution, the conduct of its officers, and the administration of property.

The Bishop's role as a Visitor in canon law is reflected in Article 5D of the model articles as follows:

(a) *The Diocesan Bishop is the Visitor of the Company.*

(b) *The Visitor shall be entitled to exercise all the rights exercisable by a visitor either under charity law or Canon Law, including the right of general visitation from time to time and in such manner as he shall think fit.*

(c) *The power of the Visitor is without prejudice to:*

(i) *the High Court's charitable jurisdiction over the Company; and*

(ii) *any other Ordinary's rights of canonical visitation in relation to any of the Academies.*

Therefore, in most cases, the Bishop will be able to exert greater influence through his officers exercising his general canonical oversight than he will be able to exert purely in his role as a member.

The CES is always happy to provide advice where specific circumstances arise.

[10] CA 2006, sections 303-304 & 168.

What role should the members take more generally?

In a Catholic academy company, members should not have to act as members unless the usual mechanisms of diocesan governance and episcopal oversight have failed. However, that does not prevent dioceses from using the members (in their capacity as members) as part of the diocesan mechanisms for ensuring that directors are fulfilling their legal obligations towards the company. Diocesan officers therefore need to decide what mechanisms they wish to put in place in order to exercise oversight of the operations of Catholic academy companies and their directors.

The current Catholic Model Articles do not impose on the members any legal obligation to hold an annual general meeting of the members, for the reasons stated above and to provide maximum flexibility for dioceses to decide what oversight mechanisms they will use. Many dioceses have found an annual general meeting to be a useful format as part of a programme of activity of oversight by the diocese, and the CES supports this approach. The holding of an annual meeting of the members (to which some or all of the directors are invited) can demonstrate clearly that oversight is taking place, and the members can receive and discuss the directors' report and audited accounts.[11] The annual meeting will be a general meeting of the company, and it will therefore need to be called by the directors[12] and an agenda will need to be set.

The purpose of an annual meeting could be to review:

- a report from the board in relation to the achievements and challenges experienced by the academy company over the year;
- a report from the CEO about their main areas of focus for the previous year and the impact of any interventions, and their priorities for the following year;
- a summary of the Catholic life of the academy company and the priorities for the coming year relating to Catholic life; and
- a brief report of the financial status of the academy company and the condition of the assets of the Trustees.

The holding of annual meetings may also provide an opportunity for the spiritual formation of directors, and it may provide an opportunity for the Bishop and/or the Trustees to build relationships with Directors and thank them for their work as volunteers.

Depending on the size of the diocese and the number of academy companies, it may be possible to hold the general meetings for more than one academy company on the same day and some peer-to-peer support may also be built in.

The annual general meeting is not the mechanism through which to provide detailed canonical oversight on behalf of the Bishop, this oversight should be carried out by his officers in their role as his officers on an ongoing basis and/or at regular points during the year.

Catholic Education Service

February 2025

[11] CA 2006, sections 415 & 423.

[12] CA 2006, sections 301-335; see Catholic Model Articles 21-22 for notice requirements, and 23-44 for information about quorum and voting requirements.