



## Guidance for Trust Boards: Setting Executive Pay

*The Confederation of School Trusts (CST) is the national organisation and sector body for schools and school trusts, advocating for, connecting and supporting executive and governance leaders. More information about membership of CST can be found [here](#).*

*Browne Jacobson is one of CST's platinum partners. Browne Jacobson is an award-winning law firm offering a unique range of education, legal and HR support to schools and academies from its five office network. More information about Browne Jacobson can be found [here](#).*

*This guidance is intended to support trust boards with an evidence-based process to set executive pay and should be read in conjunction with the CST Code: Principles for Setting Executive Pay and the [Academy Trust Handbook](#).*

### Regulatory requirements

The Academy Trust Handbook 2021 requires Trust boards to ensure decisions about levels of executive pay follow a robust evidence-based process and are reflective of the individual's role and responsibilities. No individual executive can be involved in deciding their remuneration.

The Academy Trust Handbook 2021 states that the Trust board must discharge its responsibilities effectively, ensuring its approach to pay and benefits is transparent, proportionate and justifiable, including:

- **Process** – that the procedure for determining executive pay and benefits, and keeping them proportionate, is agreed by the board in advance and documented
- **Independence** – decisions about executive pay and benefits reflect independent and objective scrutiny by the board and that conflicts of interest are avoided
- **Robust decision-making** – factors in determining pay and benefits are clear, including whether educational and financial performance considerations, and the degree of challenge in the role, have been taken into account
- **Proportionality** – pay and benefits represent good value for money and are defensible relative to the public sector market
- **Commercial interests** – ensuring the board is sighted on broader business interests held by senior executives, and is satisfied that any payments made by the Trust to executives in relation to such interests do not undermine the transparency requirements for disclosing pay in accordance with the Academies Accounts Direction

- **Documentation** – the rationale behind the decision-making process, including whether the level of pay and benefits reflects value for money, is recorded and retained
- A basic presumption that executive pay and benefits should not increase at a faster rate than that of teachers, in individual years and over the longer term
- Understanding that inappropriate pay and benefits can be challenged by ESFA, particularly in instances of poor financial management of the Trust.

Trusts showing payments over certain thresholds in accounts may have received [letters](#) from the Education and Skills Funding Agency (ESFA) asking for greater detail and rationale for pay awards over

- £100,000 per annum. Detail requested includes:
- Details on roles and responsibilities;
- Other benefits (emoluments) paid in addition to the base salary;
- Length of notice provision;
- Annual leave entitlement;
- Pension entitlement;
- How much time is spent teaching if still afforded teaching terms and conditions;
- Number of academies and pupils including age range of provision;
- Challenges Trust faces (for example, educational, financial, geographical);

And information on the Trust's pay policy, including:

- How pay decisions are made and documented;
- How value for money is achieved;
- Whether performance-related factors (including Trust growth, broader sector reach) are taken into account;
- How discrimination is avoided;
- How appeals are handled;
- How often pay reviews are considered;
- How the Trust board ensures the workforce understands the Trust's approach to pay;
- Whether the policy is made available to all members of staff and Trustees; and
- If pay to any member of staff earning in excess of £150k per annum had increased at a faster rate than teachers' pay.

A key consideration for Trust boards must be the Trust's financial context and statutory duty to set a balanced budget.

The Trust board must ensure that its senior employees' payroll arrangements fully meet tax obligations and comply with HM Treasury's guidance about the employment and contract arrangements of individuals on the avoidance of tax. This is set out in [HM Treasury's Review of the Tax Arrangements of Public Sector Appointees](#). Failure to comply with these requirements can result in a fine by HM Treasury.

## Recommended Code: Principles for Setting Executive Pay

Trust boards may wish to adopt the CST Code: Principles for Setting Executive Pay. The following principles underpin decisions on executive pay:

- Decisions on executive pay are fair, proportionate and justifiable;
- There is a fair, evidence-based process for making those decisions; and
- The process is underpinned by probity, the ethos of public service, public sector values and the principles of public life.

### 1. *Decisions on executive pay are fair, proportionate and justifiable*

- Pay should take account of the context (Geographic, Educational and Financial) in which the trust operates.
- Pay should be linked to the value, based on a number of components, delivered by the executive leader or leaders.
- Pay decisions should ensure that there are no biases pertaining to gender or other protected characteristics within the pay structure.
- Pay is related to performance and non-achievement of an executive leader's objectives should have consequences.
- Executive pay and benefits should not increase at a faster rate than that of teachers, in individual years and over the longer term.
- Decisions made are fair and equitable and in line with employment law.

### 2. *A fair, robust evidence-based process for making those decisions*

- Executive pay should be part of the approach to rewarding all staff, and in particular, consideration should be given annually to the rate of increase of the average remuneration of all other staff.
- Remuneration Committees should have a clear Terms of Reference agreed by the Board.
- Remuneration Committees must be independent and competent and are accountable to the trust board.
- Remuneration Committees are encouraged to review the skills and experience required to complete the executive pay setting process and consider the use of an appropriately skilled and experienced external advisor if the skills and experience are not available within the Board or the HR function. Browne Jacobson link.
- It is advisable to use external benchmarking data which supports evidence-based decision-making. XpertHR link.
- Consideration is given to the pay-multiple of the CEO and the median earnings of the trust's whole workforce. It is also

- The executive pay decision making process and rationale for decisions should be detailed in writing, ideally in one document that can be stored confidentially and relied upon should decisions be challenged in the future.

### 3. *The process is underpinned by public sector values and the principles of public life*

<b>Selflessness</b>	Pay decisions reflect the ethos of public service.
<b>Integrity</b>	Pay decisions are made independently (no individual can be involved in deciding his or her own remuneration), and with integrity and probity.
<b>Objectivity</b>	Pay decisions are taken impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<b>Accountability</b>	The trust board is comfortable submitting themselves to external scrutiny and challenge in relation to pay decisions.
<b>Openness</b>	Pay decisions are taken in a transparent manner.
<b>Honesty</b>	Decisions and reporting on pay are honest and truthful.
<b>Leadership</b>	The trust board demonstrates the highest standards of public life in executing the responsibility to set executive pay.

This approach reflects that used by the Committee of University Chairs, set out in [The Higher Education Senior Staff Remuneration Code](#).

## Guidance on Establishing a Robust, Evidence-based Process

### 1. *Establish a remuneration committee*

We recommend three independent/non-executive trustees. The chair of the board could be a member but we suggest that that chair of the board does not chair the remuneration committee. Conflicts of interest will need to be managed carefully and avoided wherever possible. If a conflict arises, the Committee should take advice, make a record of the conflict, their approach to dealing with it and the ultimate decision.

The CEO will need to attend on occasion to advise on broader matters relating to pay policy but this should be by invitation only and the CEO/ executive leaders must not be involved in discussions about setting their own pay. If the executive leader for HR is supporting the committee with the process, they must also absent themselves from any discussions involving their own pay and reward. Any external advisory reports or data should also be kept confidential within the Committee only.

The terms of reference for the remuneration committee should include:

- Setting pay policy for CEO/senior executives;
- Keeping the policy under review for appropriateness and relevance;
- Approving the design of and determining performance targets for any performance related element of executive pay;
- Recommending and monitoring executive pay, including the entire remuneration package; and
- Determining and recommending the wider pay policy to the trust board.

Some Boards have other committee arrangements including a single committee that deals with performance appraisal and executive pay setting. If that is the case, it is important that this is well documented in the Terms of Reference.

### 2. *Be clear on whose pay are the trust board is setting*

We recommend that the remuneration committee determines the pay of the CEO/ executive leader and first layer of executive management below the CEO/ executive leader. This could also extend to head teachers given some head teacher pay could be as much as £156,372.50 (benchmarked against the School Teachers' Pay and Conditions Document, Inner London, Group 8 plus 25 percent). The remuneration committee should also determine and recommend to the trust board the wider pay policy within which pay decisions for all staff are taken.

### 3. *Have a clear pay policy*

Factors that may be relevant include:

- **Scope and context**

- **Aims**

The policy may want to set as an explicit aim that salaries remain competitive in the labour market through conducting an annual review in line with normal industry practice and standards and benchmarking salaries against other employers. Trustees are likely to want the policy to recognise individual performance and financial rewards through merit.

- **Performance**

The policy should state how performance will be measured. This is likely to be through robust, measurable outcome-based targets/objectives, based not only on inspection judgements, examination results and other performance data, but also broader sector reach and a wider set of objectives linked to public value.

- **Process**

The policy should outline the process for determining pay, including an appeal stage.

- **Risk and compliance**

The trust board may want to include trust obligations and responsibilities and the necessity to manage risk appropriately (this could include financial affordability).

- **Proportionality**

The trust board should consider including other best practice measures including:

- Executive pay by per pupil costs;
- Executive pay by per good/outstanding school;
- Executive pay ratio as per The Companies (Miscellaneous Reporting) Regulations;
- Executive pay ratio to Early Career Teacher (ECT) pay or consideration of the pay multiple of executive pay and the median earnings of the Trust's whole workforce; and
- The totality of leadership costs as an appropriate oversight figure.

- **Public value**

Education is more than results and league tables. The Trust board will want to consider the educational offer provided by the Trust in the broader sense, and how executive pay is linked to this and offers value for money.

- **Equality**

The Trust board will want to consider whether the gaps between the performance-related progression points on the pay scale for executive leaders is comparable to the percentage progression that teachers and other staff in the Trust receive to recognise their performance. If performance bonuses are being used, the Trust board should outline how these will be calculated.

It is recommended that that the process for setting executive pay and the pay scales (if relevant) are published within the Trust's wider pay policy so that the process is clear and transparent to all staff.

The Board should consider the terms and conditions afforded to the executive as a whole and question the appropriateness of continuing to offer teaching terms and conditions to roles that have less proximity to the work of a teacher.

**4. Be transparent and communicate how the Trust sets senior executive pay**

**5. We recommend that the Trust publishes the executive pay ratio as well as supporting information, including the methodology used to calculate the ratio and the reasons for any changes year on year. It should be referenced in the Trust accounts and be accessible on the Trust website.**

**6. Consider how the remuneration committee/ Trust board will validate decisions on executive pay**

Some questions to contemplate:

- Could/ should the remuneration committee/ Trust board consider using an external, experienced HR provider to support the process and offer independent advice?
- Is the committee using external salary benchmarking data?
- Will the committee only source information from the education sector or from the wider public sector and indeed other sectors?
- Once the committee has data, how will the committee interpret that data? Is it skilled and experience to interpret the data in order to make data-informed decisions?
- How will the committee compare the executive posts in the Trust to the benchmarking data?
- Has the committee considered if the wider terms and conditions for executives are appropriate?
- If executive leaders were previously head teachers, and their terms and conditions have not altered, is that appropriate?
- Is the Trust safeguarded against the risks that could emerge by not having sufficiently robust terms and conditions in place? For example, notice periods.
- Does the Trust have a robust system for performance related pay? Are the objectives/targets robust enough?

**For further advice and support with setting executive pay:**

Please contact Jennie Jakubowski, Survey Manager, XpertHR to explore access to the Education Salary Benchmarking Survey. This salary survey will give Boards access to salary benchmarking data that can be refined by geography, size of trust, educational phase and much more, therefore enable Boards to make evidence-based decisions.



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