



GUIDANCE FOR TRUST BOARDS: SETTING EXECUTIVE PAY

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

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This guidance is intended to support trust boards with an evidence-based process to set executive pay.

REGULATORY REQUIREMENTS

The Academies Financial Handbook 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 can be involved in deciding his or her remuneration.

The Academies Financial Handbook states that the trust board **must** discharge its responsibilities effectively, ensuring its approach to pay is transparent, proportionate and justifiable, including:

- **process** - the procedure for determining executive pay is agreed by the board in advance and documented;
- **independence** - decisions about executive pay reflect independent and objective scrutiny by the board and that conflicts of interest are avoided;
- **decision-making** - factors in determining pay are clear, including whether performance considerations, and the degree of challenge in the role, have been taken into account;
- **proportionality** – pay is defensible relative to the public sector market;
- **documentation** - the rationale behind the decision-making process, including whether the level of pay reflects value for money, is recorded and retained;

- a basic presumption that executive pay should not increase at a faster rate than that of teachers, in individual years and over the longer term;
- understanding that inappropriate pay can be challenged by ESFA, particularly in any instance 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;
- 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.

In February 2018 Eileen Milner, Chief Executive of the ESFA wrote to chairs of trust boards that pay anyone in the trust over £150,000. In this letter, she said:

"We would expect the remuneration committee to minute its rationale for awarding any salaries exceeding £150k per annum. It should also show that it has scrutinised and approved all other emoluments such as eligibility to participate in the Teachers' Pension Scheme, travel, accommodation, bonuses, notice periods and holiday entitlement.

As I am sure you will appreciate, the person in receipt of a high salary is generally also the Accounting Officer. This therefore increases the need for independent scrutiny by the non-executive board members to ensure that a salary of this level is appropriate. As a rule, we would expect pay rises for non-teaching staff to mirror, not exceed, those awarded to teaching staff.

A key consideration for trust boards must be their financial context and statutory duty to set a balanced budget.

The trust board must ensure that its senior employees' payroll arrangements fully meet their 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 DETERMINING EXECUTIVE PAY

Trust boards may wish to adopt this code.¹

We believe the following principles should underpin decisions on executive pay:

1. Decisions on executive pay are fair, proportionate and justifiable;
2. There is a fair, evidence-based process for making those decisions; and
3. 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 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.
- Severance payments (where these are made) must be reasonable and justifiable.

2. A fair, 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 must be independent and competent and are accountable to the trust board.
- There should be an external benchmarking process which supports decision-making.
- Consideration is given to the pay-multiple of the CEO and the median earnings of the trust's whole workforce.

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

Selflessness	Pay decisions reflect the ethos of public service.
Integrity	Pay decisions are made independently (no individual can be involved in deciding his or her own remuneration), and with integrity and probity.
Objectivity	Pay decisions are taken impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	The trust board is comfortable submitting themselves to external scrutiny and challenge in relation to pay decisions.

¹ This approach reflects that used by the Committee of University Chairs, set out in [The Higher Education Senior Staff Remuneration Code](#)

Openness	Pay decisions are taken in a transparent manner.
Honesty	Decisions and reporting on pay are honest and truthful.
Leadership	The trust board demonstrates the highest standards of public life in executing the responsibility to set executive pay.

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. The CEO will need to attend on occasion to advise on broader matters relating to pay policy but this should be by invitation and the CEO/ executive leaders must not be involved in discussions about setting their own pay.

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.

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 £148,112.50 (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 NQT 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.

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

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. (The Companies (Miscellaneous Reporting) Regulations 2018 (SI 2018/860) due to come into force on 1 January 2019 will influence best practice in the UK.)

5. 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?
- Does the committee have access to external benchmarking data?
- Will the committee only source information from the education sector or from the wider public sector?
- Once the committee has the data, how will the committee interpret that data?
- 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?
- 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 Emma Hughes, Head of HR Services at Browne Jacobson LLP. The HR Services team at Browne Jacobson have supported over twenty multi academy trusts with setting executive pay, including salary benchmarking, contractual review and performance related pay.