

# **TERMS OF REFERENCE**

## **FOR**

### **Esher Church of England High School**

#### **LOCAL GOVERNING BODY**

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## **1. INTERPRETATION**

### **1.1 In this document:-**

"Academy"	means [Esher Church of England High School];
"Articles"	means the Articles of Association of the Trust;
["Chief Executive"	means the person appointed by the Trustees as an employee to oversee and co-ordinate all Trust activities;]
"DfE"	Means the Department for Education or such other successor body as shall replace it;
"Principal Finance Officer"	means the person appointed by the Trustees as an employee, under the overall direction of the Chief Executive, to oversee the financial aspects of the Trust;
"Governor"	means a member of the Local Governing Body;
"Incumbent"	Means the Rector of Christ Church;
"LA"	means Surrey County Council;
"Local Governing Body"	means the local governing body for the Academy constituted as provided by Clause 4 of this document;
"Memorandum"	means the Memorandum of Association of the Trust;
Support Staff Member	means a member elected to the Local Governing Body by members of support staff of the Academy;
"one per cent shareholding"	means an interest in a company which represents no more than one per cent of the issued shares of the relevant class;
"Parent Member"	means a member elected to the Local Governing Body by the parents of pupils at the Academy;
"Personal Financial Interest"	means any interest in the employment or remuneration of, or the provision of any other benefit to, a Governor;
"Headteacher"	means the member of staff at the Academy who has been appointed (in accordance with this document) to have overall day to day control of and responsibility of the Academy;
"Secretary"	means the Secretary of the Trust or any other person appointed to perform the duties of Secretary to the Trust;
"Teaching Staff Member"	means a member elected to the Local Governing Body by members of teaching staff of the Academy;

“this document”	means these Terms of Reference;
“the Trust”	means Esher Learning Trust, a company limited by guarantee having registered number 08812257]
“the Trustees”	means those persons appointed as directors and trustees of the Trust, one of whom is appointed by the Diocese of Guildford as their representative

1.2 Unless the context requires otherwise, a reference to:-

1.2.1 a numbered clause is a reference to the clause so numbered in this document, and

1.2.2 a numbered paragraph is a reference to the paragraph so numbered in the clause in which the reference appears; and

1.2.3 words importing one gender shall include any other gender, the singular number shall include the plural and vice versa and the headings are included for convenience only and shall not affect the construction of this document.

1.3 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.

## **2. RESPONSIBILITIES OF TRUSTEES AND LOCAL GOVERNING BODY**

2.1 The Trust is a charitable company limited by guarantee. It has entered into a Master Funding Agreement dated 1<sup>st</sup> March 2014 and a Supplemental Funding Agreement dated 1<sup>st</sup> March 2014 (together the “**Funding Agreements**”).

2.2 The Trustees are the charity trustees (within the terms of section 177 of the Charities Act 2011) and responsible for the general control and management of the administration of the Trust in accordance with the provisions set out in the Memorandum and Articles.

2.3 The Local Governing Body shall be a Committee of the Trustees established pursuant to articles 100 to 104 of the Articles.

2.4 The Trustees retain authority and responsibility for the following:-

2.4.1 compliance with the provisions of the Funding Agreements;

2.4.2 preparation and approval of these Terms of Reference under which the Academy is governed and subsequent amendments,

2.4.3 agreement of the Academy’s annual funding in consultation with the Local Governing Body;

2.4.4 compliance with the Academies Financial Handbook including, but without limitation, determination of procurement policies for the Trust;

- 2.4.5 oversight with regard to the finances of the Trust and the Academy, including, but without limitation, responsibility for compliance with the financial and accounting requirements detailed within the Funding Agreements;
  - 2.4.6 determination of the corporate planning and strategy for the Academy and the Trust in consultation with the Local Governing Body;
  - 2.4.7 set targets each financial year as further detailed in the Master Funding Agreement;
  - 2.4.8 determining any additional financial and reporting targets for the Academy;
  - 2.4.9 as the legal employer of all staff, responsibility for human resource policies and procedures and terms and conditions of service;
  - 2.4.10 compliance with all statutory regulations and Acts of Parliament governing the operation of the Academy,
  - 2.4.11 in consultation with the Local Governing Body determination of the admissions policy and arrangements for the Academy in accordance with admissions law and DfE codes of practice; and
  - 2.4.12 determination of the educational vision of the Academy in consultation with the Local Governing Body,
- 2.5 Subject to the limitations set out above, the Trustees delegate the running of the Academy to the Local Governing Body and specifically the following duties:
- 2.5.1 implementation of actions required to comply with statutory regulations and the Funding Agreements,
  - 2.5.2 implementation of the policies agreed by the Trustees
  - 2.5.3 implementation of the agreed the educational vision of the Academy, including, but without limitation, the Academy's School Development Plan;
  - 2.5.4 oversight of the Academy's activities;
  - 2.5.5 consideration of the Academy's required funding and support to the Trustees in connection with the agreement with the DfE of the Academy's budget;
  - 2.5.6 assist the Trustees in complying with the provisions of the Funding Agreements where requested from time to time;
  - 2.5.7 maintenance of the Academy estate in accordance with the guidelines established by the Trust;
  - 2.5.8 implementation of Trust's procurement policies insofar as they impact on the Academy;

- 2.5.9 manage the Academy's cash flow and monitor expenditure by the Academy in accordance with policies determined by the Trustees;
- 2.5.10 the appointment, job description, appraisal and dismissal of all members of staff of the Academy excluding the Headteacher but the remuneration of every member of staff and their terms of service shall be within the parameters from time to time established by the Trustees.
- 2.6 The scheme of delegation attached as Appendix 1 provides a detailed breakdown of the responsibilities of the Trustees and Local Governing Body. The Trust remains responsible for any decisions made under delegation. The scheme of delegation will be reviewed annually.
- 2.7 The policy schedule attached as Appendix 2 indicates delegated responsibility for the approval of Trust and Academy policies.
- 2.8 The Governors are not, and nothing within this document is intended to make them, charity trustees within the terms of section 177 of the Charities Act 2011.
- 2.9 Each Governor shall act in the best interests of the Academy at all times.
- 2.10 The Governors must keep confidential all information of a confidential nature obtained by them relating to the Academy.
- 2.11 The Trustees reserve the right to withdraw delegated powers from the Local Governing Body and disband it at any time.

### **3. COMPOSITION OF LOCAL GOVERNING BODY**

- 3.1 The membership of the Local Governing Body shall be determined in accordance with the following provisions:-
- 3.1.1 The total membership shall be not less than 3 and not more than 17.
- 3.1.2 The membership shall comprise:
- a. the Headteacher of the Academy;
  - b. the Incumbent plus three representatives of the Diocese;
  - c. at least two elected Parent Members;
  - d. at least two elected Staff Members; and
  - e. such other members as the Trustees decide.
- 3.2 The Local Governing Body may continue to act notwithstanding a temporary vacancy in its composition.

### **4. RESIGNATION & REMOVAL**

- 4.1 A Governor may at any time resign his office by giving notice in writing to the Clerk to the Local Governing Body.
- 4.2 A Governor shall cease to hold office if he is removed by the person or persons who appointed him. This provision does not apply in the case of

the Parent Member, Staff Member, Support staff Member or Teaching Staff Member.

- 4.3 The Trustees may terminate the appointment of any Governor whose presence or conduct is deemed by the Trustees not to be in the best interests of the Trust or the Academy.
- 4.4 Any Support or Teaching Staff Member shall automatically cease to hold office if he ceases to be employed at the Academy

## **5. PERSONS INELIGIBLE TO BE GOVERNORS**

- 5.1 No person shall be qualified to be a Governor unless he is aged 18 or over at the date of his election or appointment. No current pupil of the Academy shall be a Governor.
- 5.2 A Governor shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
- 5.3 A Governor shall cease to hold office if he is absent without the permission of the Governors from all their meetings, both committee and Full Governing Body meetings, held within a period of six months and the Governors resolve that this office be vacated.
- 5.4 A Governor shall cease to hold office if he ceases to be a Trustee by virtue of any provisions in the Companies Act 1985 or the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 178 of the Charities Act 2011.
- 5.5 A person shall be disqualified from holding or continuing to hold office as a Governor:-
  - 5.5.1 If:-
    - (a) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced;
    - (b) he is the subject of a bankruptcy restrictions order or an interim order.
  - 5.5.2 at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
  - 5.5.3 if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated.
  - 5.5.4 at any time when he is:-

- (a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999; or
  - (b) disqualified from working with children under section 28, 29, 29A and 29B of the Criminal Justice and Court Services Act 2000.
- 5.5.5 if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002.
- 5.5.6 where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 178 of the Charities Act 2011.
- 5.5.7 if he has not provided to the chairman of the Trustees a criminal record certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of the Chairman confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.
- 5.6 Where a person becomes disqualified from holding, or continuing to hold office as a Governor and he is, or is proposed, to become such a Governor, he shall upon becoming so disqualified give written notice of that fact to the Secretary.

## **6. TERM OF OFFICE**

- 6.1 Any Governor shall hold and vacate office in accordance with the terms of his appointment but (except in the case of the Headteacher and the Incumbent) the length of his term of office shall not exceed four years.
- 6.2 Governors retiring at the end of their term of office shall be eligible for re-appointment at the discretion of the Trustees.

## **7. CONFLICTS OF INTEREST**

- 7.1 The income and property of the Academy must be applied solely towards the provision of the Objects as detailed in the Articles. The restrictions which apply to the Trustees with regard to having a Personal Financial Interest shall also apply to the Governors.
- 7.2 The procedure detailed at article 6 of the Articles shall apply to the Governing Body always provided that, in the case of a Personal Financial Interest for a Governor who is not also a Trustee, the Governing Body may meet to authorise the benefit.
- 7.3 Any Governor who has any duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Governor shall disclose that fact to the Governors as soon as he becomes aware of it. A Governor must absent himself from

any discussions of the Governors in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy and any duty or personal interest (including but not limited to any Personal Financial Interest).

## **8. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN**

- 8.1 The Chairman of the Local Governing Body shall be appointed by the Governors as a whole.
- 8.2 The Vice-Chairman of the Local Governing Body shall be appointed by the Governors as a whole.
- 8.3 If both the Chairman and the Vice-Chairman are absent from any meeting of the Local Governing Body, those Governors present shall appoint one of their number to chair the meeting.

## **9. MEETINGS OF LOCAL GOVERNING BODY**

- 9.1 The Local Governing Body shall meet at least once in every term, and shall hold such other meetings as may be necessary.
- 9.2 All meetings shall be convened by the Clerk to the Local Governing Body, who shall send to the Governors written notice of the meeting and a copy of the agenda at least seven clear days in advance of the meeting.
- 9.3 A special meeting of the Local Governing Body shall be called by the Clerk whenever requested by the Chairman or at the request in writing by any three Governors. Where there are matters demanding urgent consideration, the Chairman or, in his absence, the Vice-Chairman may waive the need for seven days' notice of the meeting and substitute such notice as he thinks fit.
- 9.4 The convening of a meeting and the proceedings conducted shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda.

## **10. QUORUM**

- 10.1 Meetings of the Local Governing Body shall be quorate if three or one-third of Governors are present (whichever is greater) of which at least one person must be a Governor who is also a Trustee.
- 10.2 If the number of Governors assembled for a meeting of the Local Governing Body does not constitute a quorum, the meeting shall not be held. If in the course of a meeting of the Local Governing Body the number of Governors present ceases to constitute a quorum, the meeting shall be terminated forthwith.
- 10.3 If, for lack of a quorum, a meeting cannot be held or, as the case may be, cannot continue, the Chairman shall, if he thinks fit, determine the time and date at which a further meeting shall be held and shall direct the Clerk to convene the meeting accordingly.



## **11. PROCEEDINGS OF MEETINGS**

- 11.1 Every question to be decided at a meeting of the Local Governing Body shall be determined by a majority of the votes of the Governors present and voting on the question. Every Governor shall have one vote. Where there is an equal division of votes the chairman of the meeting shall have a second or casting vote.
- 11.2 A Governor may not vote by proxy.
- 11.3 No resolution of the Governors may be rescinded or varied at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.
- 11.4 Any Governor who is also an employee of the Trust shall withdraw from that part of any meeting of the Local Governing Body at which his remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement are to be considered.
- 11.5 A resolution in writing, signed by all the Governors (or all of the members of a committee of the Governors), shall be valid and effective as if it had been passed at a meeting of the Governors or (as the case may be) a committee of Governors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governors (or the members of a committee, as the case may be).
- 11.6 Any Governor shall be able to participate in meetings of the Governors by telephone or video conference provided that he has given reasonable notice to the Clerk and that the Governors have access to the appropriate equipment.

## **12. MINUTES AND PUBLICATION**

- 12.1 At every meeting of the Local Governing Body the minutes of the last meeting shall be taken as the first agenda item after any apologies, except in cases where the Governors present decide otherwise, and, if agreed to be accurate, shall be signed as a true record.
- 12.2 The Clerk to the Local Governing Body shall ensure that a copy of the agenda for every meeting of the Governors, the draft minutes of every such meeting (if they have been approved by the chairman of that meeting), the signed minutes of every such meeting and any report, document or other paper considered at any such meeting are, as soon as is reasonably practicable, made available to the Secretary.

## **13. DELEGATION OF FUNCTIONS AND COMMITTEES**

- 13.1 The Local Governing Body is to establish a Provision Committee and such other committees as it considers desirable to carry out its responsibilities or as the Trustees require it to establish. The powers of any such committees, their terms of reference and membership shall be determined by the Local Governing Body in accordance with any guidance or policies of the Trust.
- 13.2 Membership of the Provision Committee is to include the Headteacher and Governor who is also a Trustee and responsible for financial governance.

- 13.3 Committees may include members who are not Governors, but each must include a majority who are Governors.
- 13.4 Except where it is otherwise constrained within its terms of reference, a committee may invite attendance by persons who are not Governors or committee members where such attendance is considered by the members of the committee to benefit its deliberations.
- 13.5 Copies of the minutes of Committee meetings are to be circulated to all Governors and those who are entitled to attend Local Governing Body meetings.

**14. FINANCIAL MATTERS**

- 14.1 Following Local Governing Body approval, the budget is to be submitted to the Trustees for approval and, for the avoidance of doubt, the Academy budget shall not be effective until such times it has been approved by the Trustees.
- 14.2 The Local Governing Body is required to work to cash limits as may be determined by the Trust and based on the approved budget. Under no circumstances has the Local Governing Body the authority to borrow money.
- 14.3 Except where prior permission has been obtained from the Trustees, the Academy budget is to be prepared to show break even or better.

**15. ACCOUNTS AND AUDIT**

- 15.1 The Local Governing Body shall:
  - 15.1.1 keep proper accounts and proper records in relation to the accounts; and
  - 15.1.2 prepare in respect of each financial year of the Academy a statement of accounts.
- 15.2 The statement shall give a true and fair account of the state of the Academy's affairs at the end of the financial year and of the Academy's income and expenditure in the financial year.
- 15.3 The accounts (including any statements prepared under this clause) shall be audited by persons appointed in respect of each financial year by the Trust.

**16. RESPONSIBILITIES OF HEADTEACHER**

- 16.1 Subject to responsibilities of the Local Governing Body and the policy statements of the Trust, the Headteacher shall be responsible to the Local Governing Body for:-
  - 16.1.1 implementing the agreed policies and procedures laid down by the Local Governing Body this includes the implementation of all statutory regulations;
  - 16.1.2 advising the Local Governing Body on strategic direction, forward planning and quality assurance;

- 16.1.3 the leadership and management of the Academy;
- 16.1.4 the admission of pupils;
- 16.1.5 managing the delegated budget and resources agreed by the Local Governing Body;
- 16.1.6 advising the Local Governing Body on the appointment of Deputy and Assistant Heads and such other senior posts as the Local Governing Body may determine;
- 16.1.7 the appointment of all other staff and (except to the extent directed otherwise by the Trustees and/or the Local Governing Body), the salary grading, allocation of duties, appraisal and discipline of all staff;
- 16.1.8 the maintenance of good order and discipline by the pupils including their suspension and/or exclusion within the framework laid down by the Local Governing Body; and
- 16.1.9 all such additional functions as may be assigned under the job description or contract of employment.

**17. CONDUCT OF STAFF**

- 17.1 The Trust is responsible for determining the human resource policies, procedures and terms and conditions of service for all employees including the setting of appropriate rules for the conduct of staff. Changes to such policies and procedures will be effected only after consultation with the Local Governing Body and staff groups where appropriate.

**18. RULES AND BYE-LAWS**

- 18.1 The Local Governing Body shall have power to make rules and bye-laws in respect of the government and conduct of the Academy as it shall think fit. Such rules and bye-laws shall be subject to the provisions of this document and to approval by the Trustees.

**19. AMENDMENT OF INSTRUMENT AND RULES OF GOVERNMENT**

- 19.1 This document has been approved by the Trustees at their meeting on 24<sup>th</sup> March 2015 and shall be subject to review at the first meeting of the Trustees after 1 September 2015 and at the first meeting of the Trustees in each academic year thereafter.
- 19.2 Notwithstanding clause 19.1, this document may be modified or replaced by the Trustees (after consultation with the Local Governing Body), as they may from time to time consider necessary.

**20. COPIES OF INSTRUMENT AND RULES OF GOVERNMENT**

- 20.1 A copy of this document, and of any rules and bye-laws, shall be given to every Governor and shall be available for inspection upon request by members of staff during normal office hours at the offices of the Academy and the Trust.

**21. EFFECTIVE DATE**

- 21.1 This Instrument and Rules of Government shall come into effect 24<sup>th</sup> March 2015