



# **Trust Board Terms of Reference**

Autumn 2022

## **1. Core values**

The Board of Mercia will at all times:

- Observe the highest standards of impartiality, integrity and objectivity;
- Be accountable to its stakeholders and regulatory bodies for its activities; engage in a partnership with the Executive Team;
- Remain true to the published vision of the Trust.

## **2. Expectations of Trustees**

All Trustees are required to:

- Follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life (referred to as "the Nolan Principles" and set out in Annex 1);
- Comply with:
  - The Articles of association
  - Master Funding agreements
  - These terms of reference
  - Scheme of Delegation
  - Academy Trust Handbook
  - Trust policies and statutory guidance
- Ensure they understand their duties, rights and responsibilities, and that they are familiar with the function and role of Mercia;
- Not misuse information gained in the course of their Trusteeship for personal gain, nor seek to use the opportunity of service to promote their private interests or those of connected persons, firms, businesses or other organisations;
- Participate actively in the induction process and any relevant training.

## **3. Powers, functions and responsibilities of Trustees**

- The Trustees are responsible for the governance and supervision of the Mercia Learning Trust (MLT).
- The Trustees have a number of duties and responsibilities relating to the governance of MLT and its finances. In summary, the Trustees are responsible for:
  - Establishing the vision, mission and values for the Trust;
  - Operate the Trust in accordance with the objects as set out in the Articles of Association and safeguarding the assets of the Trust;
  - Monitor the strategy and structure for the operation of the Trust;
  - Determine the delegation of the running of the Trust schools and the direction of the education, pastoral care, financial and other policies of the Trust schools to the Executive Team reviewing this annually or as required;
  - Ensuring sound management and administration of the entire Trust by the Executive Team, and ensuring that the Executive Team is equipped with the relevant skills and guidance;

- Financial controls and the financial management of the Trust in accordance with the provisions of the Academy Trust Handbook, which sets out in detail provisions for the financial management of the Trust;
- Setting standards of conduct and values, monitoring performance and the achievement of objectives, and ensuring that plans for improvement are realised;
- Risk management, that is identifying, quantifying and devising systems to minimise the major risks affecting the Trust; and
- Ensuring the Trust and its schools are conducted in compliance with the general law.
- Hold Executive Leaders to account for the educational performance of the organisation and its pupils, and the effective and efficient performance management of staff.
- Establish regular Trustee visits to the schools.
- Provide support and challenge to Local Governing Bodies.

#### **4. Accountability of Trustees**

The Trustees are chiefly accountable to:

- The beneficiaries of the Trust (pupils/students at the, their parents and the local community) for the quality of education and pastoral care, for matters of health and safety and for safeguarding and promoting the welfare of the pupils;
- The Members, DfE, the Education and Skills Funding Agency (ESFA) and specifically the Secretary of State under the terms of the Funding Agreement;
- The Secretary of State (in his or her role as Principal regulator in respect of charity matters) for operating the Trust for the public benefit, for the prudent management of the Trust and its financial efficiency, and for compliance with legislation including charities legislation;
- The employees of the Trust for their working environment, and for compliance with the contract of employment and employment law requirements, matters of health and safety and data control; and
- Other regulatory authorities for compliance with regulated responsibilities to which the Trust and its schools are subject.

#### **5. Conducting Trustees' business**

The Trustees are required to:

- Act together and in person and not delegate responsibility of the Trust to others (other than under Section 7 below);
- Act strictly in accordance with the Articles;
- Act in the Trust's interests only and without regard to their own private interests;
- Manage the Trust's affairs prudently;
- Not take personal benefit from the Trust unless expressly authorised by the Articles or the Charity Commission; and
- Take proper professional advice on matters on which they are not themselves competent.

The Trustees should also hold the Executive Team to account. They should offer support, constructive advice, be a sounding board for ideas, a second opinion on proposals and help where needed, but will also challenge, ask questions, seek information and improve proposals where appropriate and at all times act in the best interests of the Trust.

The Trustees shall have regard to the framework for inspecting schools in England under section 5 of the Education Act 2005 (as amended) and for the inspection of further education and skills providers under section 8 of the Education and Inspections Act 2006 (as amended) issued by the Office for Standards in Education, Children's Services and Skills (Ofsted).

The duties and responsibilities of Trustees are explained in further detail in The DfE Competency Framework for Governance (including Multi-Academy Trusts), and in abbreviated form in the Trust Governance Application Form.

The Trustees shall have regard to the Academy Trust Handbook and Trust Governance Handbook, which shall be circulated to all Trustees.

The Board shall appoint an individual from among their number to act as Chair. A change of Chair will require a notification to be made to the ESFA within 14 days of the change and provided through Get Information About School (GIAS) <https://www.get-information-schools.service.gov.uk> In respect of the Chair a Disclosure and Barring Service (DBS) disclosure form must be submitted via the DfE for approval (contact should be made with DBS in order to obtain the appropriate form).

The main role of the Chair is to chair meetings of the Trust Board. He/she also provides leadership to the Trustees and acts as the main point of contact between the Trustees and the Executive Team.

Apart from any special responsibilities or powers given to the Chair in the Articles of Association (e.g. the right to chair meetings of the Trust Board and to have a second or casting vote in any case of an equality of votes at a meeting of the Trust Board), the Chair has no special powers or rights over any other Trustee. If the Chair is to carry out certain specific functions (for example, the power to approve an over spend in a certain area of the budget or the CEO's appraisal) then this must be expressly delegated to him or her by the Board.

## **6. Meetings of Trustees**

There will be a minimum of three meetings of the Trustees each academic year. These are supplemented by the standards, risk and audit and remuneration sub-committees who meet three times, three times and twice each year respectively. Meetings of the Trustees shall be convened and conducted as provided by the Articles. In determining the agenda for Board meetings and committee meetings, the Trustees will have regard to the requirement on them to:

- Monitor the educational performance of schools and the Trust as a whole;
- Ensure good financial management and effective internal controls;
- Comply with the Funding Agreement and the current version of the Academy Trust Handbook (or successor documents);

- Receive and consider information on financial performance at least three times a year; and take appropriate action to ensure ongoing viability against agreed budgets.

The Chair shall prepare an annual plan for the meetings of the Trustees in consultation with the CEO – this is to cover the fact that school/colleges term dates, data publication dates and examination dates may influence the choice schedule.

## **7. Delegation of powers of Trustees**

Trusteeship (and directorship which necessarily follows) is a personal office of trust and responsibility and this cannot be transferred to another individual. However, in order to ensure the proper management of the Trust, the Trustees are able to delegate specific tasks to assist them in carrying out their duties and obligations.

It is for the Trust Board to determine what decisions it will take for itself, what will be delegated to committees, working groups or individual Trustees (e.g. the Chair) and what will be delegated to the Executive Team. The Trustees must also consider when and from whom they should take professional advice.

In determining whether delegation is appropriate, the Trustees will have regard to the following principles:

- Non-executive powers must be exercised by the Trustees personally and may not be delegated;
- Except when it is impracticable to do so, executive powers should be delegated to the Chief Executive Officer and Director of Finance, who may authorise further delegation; and
- Every act of delegation is only a delegation of powers and does not relieve the Trustees of responsibility.

The Trustees must not delegate any of their powers listed in Annex 3 ("the Reserved Matters").

Delegation can be made to:

- Board committees (if established);
- the LGBs;
- any individual Trustee;
- The Executive Team (which in turn may delegate to further individuals).

## **8. Stakeholder voices**

Trustees are asked to have regard to the voices of their various stakeholders and to put in place arrangements to receive feedback and to respond appropriately. This shall include the following, as they are involved in other elements/tiers of trust governance and more broadly:

- a) Pupils/students
- b) Parents/carers
- c) Staff
- d) Employers
- e) Local Governors

## **9. Risk management**

The charities statements of recommended practice ("the SORP") set out requirements for reporting on the risks to a charity.

The Trustees' report therefore must include a description of the principal risks and uncertainties facing the Trust and any subsidiary undertakings, as identified by the Trustees. The report must also include a summary of the Trustees' plans and strategies for managing these risks. The Trustees must identify specific risks and describe ways to combat each one, rather than making general statements regarding risk management.

The Trustees are therefore responsible for:

- 1) Identifying the major risks that apply to the Trust, including:
  - a. Operational risks (employment issues, health and safety, fraud, service quality and development etc.);
  - b. Financial risks (accuracy of financial information, cash flow, reserves, over-reliance on funding sources etc.);
  - c. External risks (changes in government policy, economic factors, demographic changes, adverse publicity etc.); and
  - d. Regulatory risks (compliance with legislation, changes in policies of the regulators etc.)
- 2) Making decisions (based where appropriate on advice from professional advisors) as to how to respond to those risks; and
- 3) Making appropriate statements regarding the management of risks in the annual report.

The Finance, Risk and Audit Committee, supported by the Executive Team, shall prepare a risk register for approval by the Trustees, along with a procedure by which the risk register shall be subject to regular review. The risk register shall have named individuals assigned to manage each area.

## **10. The management of conflicts of interest**

The Companies Act 2006 imposes a statutory duty on the Trustees to avoid situations in which they have or could have an interest, which conflicts (or could conflict) with the interests of the Academy Trust. The duty is to:

- a) Declare the nature and extent of any interest in any matter relating to the Trust; and
- b) Avoid any conflict of interest between that interest and the interests of the Trust.

In addition, charity law and guidance issued by the Charity Commission confers obligations on the Trustees to manage any conflict between a Trustee's duty to the Trust and their own personal interests or for a Trustee to be influenced by conflicting duties to the Trust and a third party.

Further details are set out in the Conflicts of Interest Policy with which the Trustees are obliged to comply.

## **11. Recruitment of Trustees**

It is essential that the Trust Board in conjunction with the Members has a proper mix of skills and experience. The Trustees must therefore be able to identify potential new Trustees and recommend new trustees to the Members in order to plan for succession, which combines continuity of experience and expertise with new ideas and energy.

The Board as a whole is responsible for ensuring that:

- The skills of any new Trustee fit in with the Trust's requirements in the short, medium and longer term;
- Each new Trustee is not disqualified from acting as a Trustee by any provision of the Academy Trust's Articles of Association (including the requirement that he is not disqualified as a company director or charity trustee);
- There is a system in place which ensures that all relevant checks, including an enhanced DBS check (countersigned by the Secretary of State in the case of a new Chair), are completed before or as soon as practicable after a Trustee takes up position; and
- The new Trustee understands the responsibility he/she is taking on and consents to act as a Trustee.

Each new Trustee will be properly inducted to ensure that he/she understands the nature and extent of the role and responsibilities. It is the duty of a new Trustee to ensure that he/she is familiar with the Objects of the Trust; its history and ethos and the nature and extent of its activities; and the content of the Academy Trust's Articles of Association.

The Trustees shall provide each new Trustee with:

- The Mercia Learning Trust's Articles of Association
- The Mercia Governance Handbook
- The Academy Trust Handbook
- These terms of reference
- The scheme of delegation
- The conflicts of interest policy.

New Trustees shall be required to complete and sign the Trust Application Form. The Clerk to the Trustees shall ensure that any appointment of a new Trustee is notified to the EFSA (via the Information Exchange) within 14 days of the appointment (as required under the Academies Financial Handbook).

## **12. Training and development of Trustees**

The Trustees shall ensure that the Board has the skills and experience needed to perform its functions effectively. Trustees shall also be kept up to date with developments in the legal and regulatory framework in which the Trust operates.

The Chair (and members) will complete an annual evaluation of the effectiveness of Trustees and gaps in their skills will be filled through targeted training.

## **Annex 1 - The Seven Principles of Public Life set out by the Committee on Standards in Public Life ("the Nolan Principles")**

### **1. Selflessness**

Holders of public office should act solely in terms of the public interest.

### **2. Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **3. Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **4. Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **5. Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **6. Honesty**

Holders of public office should be truthful.

### **7. Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



## **Annex 2 Trustees' code of practice**

### **1 Introduction**

This code of practice is designed to set out the conduct required of trustees in order to ensure the highest standards of integrity and stewardship.

### **2 General responsibilities**

*"Trustees must act reasonably and prudently in all matters relating to the Charity and must always bear in mind the interests of the Charity. They should not let their personal views or prejudices affect their conduct as trustees."*

*"The primary duty of a trustee is to carry out the function of his or her office with the utmost good faith. He or she must be impartial and mindful of the interests of the beneficiaries of the Charity and of the objects for which the Charity is established".* (Governance and management of charities, Andrew Hind, NCVO Publications, 1995)

Trustees should listen to the view of other trustees, staff, volunteers or external advisers respectfully, taking cognisance of differences of opinion. Trustees should not cause offence to others or undermine the standing of their colleagues as a member of the Trust Board.

### **3 Board papers**

While the board aims to conduct its business openly, it is inevitable that some matters must be confidential either for a time or always.

All matters discussed at board meetings (save for items which are clearly neither confidential nor of a sensitive nature either legally, commercially, financially or personally) should be treated as strictly confidential and should not be discussed with anyone other than: those present at the meeting when the matter in question was discussed unless authorised by the board to do so. If in any doubt, trustees should contact the chair.

### **4 Board meetings**

Open discussion and debate is actively encouraged, in which every spectrum of objective opinion is welcomed.

As Trustees must act with probity, the Board should take and consider professional advice from internal and/or from external advisers in all decision-making.

Where consensus is not achieved, decisions will be taken during board meetings by calling for a vote by those present. Trustees who abstain on, or vote against, any motion may request an appropriate note be made in the minutes.

The Board must be accountable but delegate authority on various matters on which it is entitled to full reports as necessary.

### **5 Outside board meetings**

Trustees should exercise restraint outside a meeting in relation to particular comments made within the Board meeting by individual members. Trustees must accept that it is inappropriate for any private or public references to "who said what", except in dialogue with other trustees.

Trustees should accept the need for care and restraint, honouring the spirit as well as the letter of the code of practice, when talking about board matters in any other forum.

## **6 Disagreements**

Where a Trustee has a disagreement on any matter, he or she should raise the matter informally with the chair or through the normal procedures at a board meeting.

If not resolved, a trustee may request the matter be taken further by the chair.

If a satisfactory conclusion is not reached, the board may recommend the appointment of an independent mediator.

## **7 The Executive Team and the wider staff**

Staff and Trustees are expected to deal with each other with respect and courtesy.

Trustees must ensure there is a clear understanding of the scope of authority delegated to the chief executive officer ("the **CEO**").

Having given the CEO delegated authority, trustees should be careful, individually and collectively, not to undermine that authority either by word or action.

Trustees delegate operational management to the CEO, which includes the management of staff.

If a Trustee has concerns relating to the performance of a member of staff, he or she should contact the chair, who will take up the matter with the CEO.

### Annex 3 Reserved matters

The Reserved Matters are:

<b>Members</b> (subject to such other consents/ requirements as might be required by law or the Funding Agreement)	
1	to change the name of the Trust
2	to change the Objects (which would require Charity Commission and Secretary of State consent)
3	to change the structure of the Trust Board
4	to amend the Articles of Association
5	to pass a resolution to wind up the Trust
6	to appoint the auditors (save to the extent that the Trustees may make a casual appointment)
<b>Trustees</b> (subject to such other consents/ requirements as might be required by law or the Funding Agreement)	
7	to change the name of the schools
8	to determine the educational character, mission or ethos of the schools
9	to adopt or alter the constitution and terms of reference of any committee of the Trust Board
10	to terminate a supplemental funding agreement for an individual school
11	to establish a trading company
12	to sell, purchase, mortgage or charge any land in which the Academy Trust has an interest
13	to approve the annual estimates of income and expenditure (budgets) and major projects;
14	to appoint investment advisors
15	to sign off the annual accounts;
16	to appoint or dismiss the Chief Executive Officer, the Finance Director, the Company Secretary or the Clerk to the Trustees;
17	to do any other act which the Funding Agreement expressly reserves to the Trust Board or to another body (including for the avoidance of doubt, terminating the Funding Agreement or any part of it);
18	to do any other act which the Articles expressly reserve to the Trust Board or to another body; or

19 to do any other act which the Trust Board determine to be a Reserved Matter from time to time.

## **Trust Board Terms of Reference**

The Board will meet at least 3 times each academic year. Finance, Risk and Audit (3 times a year), Standards Committee (3 times a year) and HR and Remuneration (twice a year) will function as separate committees with agenda items / reports feeding into the Board. Overall the following key areas will be covered.

1. Educational standards and performance.
2. Finance & Resources.
3. Human Resources.
4. Risk & Audit
5. Remuneration.

### **Membership**

The Trust Board will comprise no more than nine and no fewer than six Trustees.

The Trust Board will appoint one of the members as its chair (the **Chair**).

The Board will appoint a Clerk to the Board.

It is expected that the Chief Executive Officer and Finance Director will attend all Board meetings. The Board may also ask any other person (usually senior staff) whose attendance they consider necessary or desirable to attend any meeting either regularly or by invitation, to provide information.

### **Voting**

The quorum for each meeting shall be at least 3 Board members. Decisions of the Board shall be taken by a simple majority of those present and voting. The Chair will have a casting vote on an equality of votes.

### **Meetings**

The Board shall meet 6 times each year on such dates as shall be determined by the Board meeting calendar.

Unless otherwise agreed, notice of each meeting confirming the venue, date and time together with an agenda shall be sent to each member of the Board and any other person invited or required to attend no fewer than five working days prior to the date of the meeting. Trust Board meetings will be held at a Trust school, advised by the Governance Officer.

### **Minutes**

The Governance Officer will minute the proceedings and resolutions of the Board and ascertain, at the beginning of each meeting the apologies and whether these are accepted or not, the existence of any conflicts of interest and minute these accordingly.

Minutes of all Board meetings will be sent to all Trustees within seven working days of the meeting.