

**Honiton Community College
Academy Trust**



Terms of Reference 2021-22 adopted by the
Governing Body of
Honiton Community College Academy Trust
on the 14th July 2021
To be reviewed annually.

GOVERNING BODY TERMS OF REFERENCE 2021-22

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Honiton Community College
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Dated

1 Introduction

1.1 Honiton Community College Academy Trust (the "**Academy**") is a company limited by guarantee with registered number 07665387. The Academy has exempt charity status, which means that it is not required to register with the Charity Commission.

1.2 The Academy's charitable object is set out in Article 4 of its Articles of Association (the "**Articles**") as being:

"to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing, by establishing, maintaining, carrying on, managing and developing a school offering a broad and balanced curriculum".

1.3 It is important to understand that the Governors of the Academy, as they are referred to in its Articles, fulfil three different, but overlapping roles. In the context of a company, the Governors are the *directors* of the Academy and, as such, have certain duties under the Companies Act 2006. In the context of a charity, the Governors are also *charity trustees* since, in accordance with Section 177 Charities Act 2011, they are the individuals "having the general control and management of the administration" of the Academy. Finally, in the context of being an academy, the Governors are *school governors*.

1.4 It is the duty of the Academy's Governing Body (the "**Governing Body**" or "**Governors**" as applicable) to direct the Academy's affairs in such a way as to promote its charitable object.

1.5 Articles 94 to 97 (inclusive) of the Articles of the Academy set out the powers of the Governing Body. These powers include a right to delegate its powers to committees in accordance with Articles 102 and 103 of the Articles. The purpose of this document is to clarify the role of the Governing Body and the basis on which it is to operate.

1.6 It is important to distinguish the Governors of the Academy from its company members ("**Members**"). Articles 21 – 16 deal with the admission of the Academy's Members, who are normally a smaller number of individuals (some of whom may also be Governors). Under company law, the Members have some residual controls over the Academy and are broadly equivalent to the shareholders of a plc. The Members do not, however, have any role in the day to day running of the Academy.

2 Governing Body

Membership

2.1 In accordance with Article 46, membership of the Governing Body shall comprise:

- (a) up to 6 Governors appointed by the company members of the Academy;
- (b) up to 3 employees appointed by the company members pursuant to Article 50A of the Articles ("**Staff Governors**"), provided that no more than one third of the Governors (including the Principal) are employees of the Academy. In making these appointments the company members shall ensure that, of the 3 Staff Governors, 2 are from the teaching staff and one is from the non-teaching staff unless there are not 2 members of the teaching staff who are willing to be Staff Governors in which case 2 of the Staff Governors may be from the non-teaching staff;
- (c) a minimum of 2 and up to 6 Parent Governors elected in accordance with Articles 53 – 38;
- (d) the Principal of the Academy as elected by the Governors pursuant to Article 104 of the Articles (the "**Principal**"), who is treated for all purposes as an ex officio Governor;

- (e) up to 3 Governors co-opted by the Governors in accordance with Article 59; and
- (f) any Further and / or Additional Governors appointed by the Secretary of State in accordance with Articles 60 – 64 (in practise this power will only be exercised where the performance of the Academy is inadequate).

Eligibility

2.2 Articles 69 to 81 summarise the situations in which an individual may not act as a Governor. For example:-

- (a) governors must be aged 18 or over at the date of his election or appointment;
- (b) current pupils of the Academy cannot be Governors;
- (c) an individual who is disqualified from acting as a company director or a charity trustee cannot be a Governor; and
- (d) an undischarged bankrupt cannot be a Governor.

Parent Governors

2.3 The Parent Governors are elected by parents of registered pupils at the Academy. A Parent Governor must be a parent of a pupil at the Academy at the time when he is elected.

2.4 Any election of a Parent Governor which is contested shall be held by secret ballot.

2.5 Elections of Parent Governors shall be made in accordance with the process set out in Articles 55 to 58 of the Articles.

Co-opted Governors

2.6 The Governors may appoint up to 3 persons co-opted by Governors who have not themselves been so appointed (each a "Co-opted Governor").

2.7 The Governors may not co-opt an employee of the Academy as a Co-opted Governor if the number of Staff Governors would exceed one third of the total number of Governors (including the Principal).

Term of office

2.8 The term of office for any Governor shall be 4 years (in accordance with Article 65), save that this term shall not apply to:

- (a) the Principal; or
- (b) any individual who was serving as a governor of Honiton Community College immediately prior to its conversion to academy status,

whose term of office shall be specified at the time of their appointment.

2.9 Subject to remaining eligible, any Governor may be re-appointed or re-elected.

Resignation and removal

2.10 A Governor shall cease to hold office (in accordance with Articles 70 – 79) if:

- (a) he resigns his office by notice to the Academy (and at least three Governors will remain in office following his resignation);

- (b) he is removed by the person or persons who appointed him (unless that Governor is a Parent Governor, in which case this clause does not apply);
- (c) he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs;
- (d) he is absent without the permission of the Governors from all of their meetings held within a period of 6 months, and the Governors resolve that his office be vacated;
- (e) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced;
- (f) he is the subject of a bankruptcy restrictions order or an interim order;
- (g) 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) Insolvency Act 1986;
- (h) he ceases to be a Governor by virtue of any provision in the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993;
- (i) 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;
- (j) he is included in the list kept by the Secretary of State for Education under section 1 of the Protection of Children Act 1999;
- (k) he is disqualified from working with children in accordance with section 35 of the Criminal Justice and Court Services Act 2000;
- (l) he is barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006);
- (m) he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002 or is subject to any prohibition or restriction which takes effect as if contained in such a direction;
- (n) 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 an offence under section 72 of the Charities Act 1993; or
- (o) he has not provided to the chairman of the Governors a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997.

2.11 Upon resignation and/or removal, written notice must be given to the Secretary.

3 Avoiding Influenced Company Status

3.1 Articles 136 to 141 reflect provisions in Part V of the Local Government and Housing Act 1989 ("LGHA") which potentially affect the Academy.

3.2 In accordance with the LGHA, the number of Governors who are persons associated with any local authority ("Local Authority Associated Persons") must always be less than 20% of the total number of the Governors. As a result, no Local Authority Associated Person can be

a Governor if, once appointed, the number of Governors who are Local Authority Associated Persons would represent 20% or more of the total number of Governors.

- 3.3 No Local Authority Associated Person can be a Governor unless his appointment is authorised by the local authority to which he is associated.
- 3.4 The maximum aggregate number of votes by Governors who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Governors.
- 3.5 If a person becomes a Local Authority Associated Person during his tenure as a Governor, he shall be deemed to have immediately resigned from his office as a Governor.
- 3.6 If, at any time, the number of Governors who are also Local Authority Associated Persons would represent 20% or more of the total number of Governors then a sufficient number of them shall be deemed to have resigned as Governors immediately before the occurrence of such event. Such Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date, with the most recently appointed resigning first.

4 Role of the Governing Body

- 4.1 In accordance with Article 94, the Governing Body is responsible for managing the Academy and may exercise all the powers of the Academy to do so.
- 4.2 In addition to the general power in clause 4.1 above, the Governing Body has the following powers:
 - (a) to expend the funds of the Academy in such manner as they consider most beneficial for the achievement of the object in clause 1.2 above;
 - (b) to enter into contracts on behalf of the Academy; and
 - (c) to make such rules as it deems necessary, expedient or convenient for the proper conduct and management of the Academy (Article 134).
- 4.3 The Governing Body shall exercise its functions with a view to fulfilling a largely strategic role in the running of the Academy. A strategic role means the Governors decide what they want the Academy to achieve and set the strategic framework for getting there.
- 4.4 The School Evaluation Form, College Improvement Plan and Post-OFSTED Action Plan, along with agreed policies, will generally provide the strategic framework. The Governing Body will monitor and evaluate progress in the Academy towards achievement of the aims and objectives set and regularly review the strategic framework in the light of that progress. Working strategically, Governors will then use any monitoring evidence to review and evaluate progress against any targets set to see whether a policy is working or needs changing. The Governing Body is not responsible for collecting monitoring data themselves. Instead, they will agree arrangements with the Principal. The Governors will ensure that they have access to enough information to enable them to make informed decisions about the Academy's achievements and progress, over time and in comparison with similar schools. In exercising their functions the Governors:
 - (a) shall comply with the Articles; and
 - (b) pursuant to Article 96 of the Articles, may consider any advice given by the Principal and any other executive officer before making their own decision
- 4.5 The Governing Body shall act as a "critical friend" to the Principal; that is to say, they shall support the Principal in the performance of his functions and give him constructive criticism.
- 4.6 In exercising their functions, the Governors shall:

- (a) act with integrity, objectivity and honesty in the best interests of the Academy;
- (b) be open about the decisions they make and the actions they take and in particular shall be prepared to explain their decisions and actions to interested persons;
- (c) not disclose material relating to:-
 - (i) a named teacher or other person employed or engaged, or proposed to be employed or engaged, at the Academy;
 - (ii) a named pupil at, or candidate for admission to, the Academy; or
 - (iii) any matter which by reason of its nature, the Governors or a committee of the Governors are satisfied should remain confidential;
- (d) ensure the Academy offers a broad and balanced curriculum that best suits the needs, abilities and aspirations of all students including those with special educational needs from years 7-13;
- (e) support the Academy in developing the potential of every student so that "Success for All" is a guiding principle of all decisions that are made;
- (f) support the Academy to offer a holistic education recognising the importance and impact of extra-curricular activities both within the academic curriculum and beyond;
- (g) maintain and continue to develop the Academy through a strong pastoral system;
- (h) work with the families of its students to foster positive home, Academy and community relationships;
- (i) continue the Academy's development as an outward facing establishment through continuing to build on its links and partnerships within and beyond its local community;
- (j) ensure that teaching and learning is of the highest quality, delivered by skilled, well trained professionals who are committed to the Academy's inclusive ethos;
- (k) maintain and support a work force that is well motivated and committed to every student and staff member achieving their full potential. Priority will be given to ensuring that staff terms and conditions of service are at least commensurate with national policy and in the best interests of the staff;
- (l) appoint the most appropriate staff to each post and continue their professional development through training and sharing of good practice;
- (m) ensure that the Academy operates from a financially secure basis; raising funds where possible and ensuring best value is applied to all spending;
- (n) maintain and develop further the facilities of the Academy so that it can deliver education in a safe and secure environment which has regard to sustainability as a guiding principle in resource decisions; and
- (o) maintain good employment practices and seek to maintain positive relationships with the professional associations.

5 Duties of the Governors

5.1 The Governors shall at all times comply with the provisions of the Companies Act 2006, including those general duties of directors set out in Chapter 2, Part 10 of the Companies Act 2006, namely:-

- (a) a duty to act within the powers of the Academy. This means that Governors must act in accordance with the Articles and only exercise their powers for proper purposes;
- (b) a duty to promote the success of the Academy. A Governor must act in the way s/he considers, in good faith, would be most likely to promote the charitable purposes of the Academy. This duty applies not just to formal decisions made by the Governors but to any decision.
- (c) a duty to exercise independent judgement. A Governor must exercise his powers independently, without being influenced by others.
- (d) a duty to exercise reasonable care, skill and diligence. A Governor must exercise care, skill and diligence which would be exercised by a reasonably diligent person with both:-
 - (i) the general knowledge, skill and experience as may reasonably be expected of a person carrying out the functions of a Governor in relation to the Academy; and
 - (ii) the general knowledge, skill and experience that the Governor has.
- (e) a duty to avoid conflicts of interest (see section 8 below);
- (f) a duty not to accept benefits from third parties. A Governor must not accept a benefit from a third party which is conferred by reason of his being a Governor or s/he doing or not doing anything as a Governor; and
- (g) a duty to declare an interest in a proposed transaction or arrangement (see section 8 below).

5.2 As charity trustees, the Governors must also comply with additional duties, which are summarised in the Charity Commission's guidance CC3 (available on its website). In summary, the Governors must:-

- (a) ensure that the Academy complies with charity law, and with any requirements of the Charity Commission as regulator, in particular, that the Academy prepares an annual reports, annual returns and accounts as required by law;
- (b) ensure that the Academy does not breach any of the requirements or rules set out in its Articles and that it remains true to the charitable object;
- (c) comply with the requirements of other legislation and other regulators (if any) which govern the activities of the Academy;
- (d) act with integrity, and avoid any personal conflicts of interest or misuse of Academy funds or assets;
- (e) ensure that the Academy is and will remain solvent and use charitable funds and assets reasonably and only in furtherance of the Academy's charitable object.
- (f) avoid undertaking activities that might place the Academy's funds, assets or reputation at undue risk.

- (g) take special care when investing the funds of the Academy, or borrowing funds for the Academy to use;
- (h) use reasonable care and skill in their work as governors, using their personal skills and experience as needed to ensure that the Academy is well-run and efficient.
- (i) consider getting external professional advice on all matters where there may be material risk to the Academy, or where the Governors may be in breach of their duties.

5.3 The Governors shall at all times comply with the Academy's code of conduct, a copy of which can be obtained from the Clerk to Governors.

6 Delegation of the Governors' powers or functions

6.1 In accordance with Article 102 the Governing Body may delegate any of its powers to a Governor, Committee, the Principal or another executive officer of the Academy. Any such delegation may be revoked or altered at any time by the Governing Body. The individual or body to which the Governing Body delegates any power must be required to report back to the Governing Body promptly.

6.2 In addition to the general power of delegation in clause 6.1 above, the Governing Body may delegate such powers and functions as they consider are required by the Principal for the internal organisation, management and control of the Academy.

6.3 In accordance with Article 101, the Governing Body may establish any Committee and must, when doing so, determine its constitution, quorum, membership and terms of reference (which are to be reviewed at least every twelve months). The membership of any Committee may include persons who are not Governors, provided that a majority of the Committee's members are Governors. The Governing Body may determine that some or all of a Committee's members who are not Governors shall be entitled to vote in any proceedings of the Committee but no vote on any matter may be taken at a meeting of a Committee unless the majority of members of the Committee present are Governors.

6.4 The Governing Body shall establish the following permanent Committees:-

- (a) Quality of Education Committee
- (b) Resources Committee
- (c) Performance and Pay Committee
- (d) Principal's Appraisal Panel

6.5 Please refer to the separate terms of reference for each permanent Committee.

6.6 The Governing Body may establish the following special committees:

- (a) First (Hearings) Committee – see separate terms of reference
- (b) Second (Appeals) Committee – see separate terms of reference
- (c) Complaints Committee – see separate terms of reference
- (d) Admissions Committee

7 Meetings of the Governors

7.1 Subject to Articles 106 to 123 and this clause 7, the Governing Body may regulate its proceedings as it thinks fit.

7.2 The Governing Body shall hold at least six meetings in every academic year, the dates of which are to be set before the end of the previous academic year. Any additional meetings shall be convened by the Secretary, who shall requisite a meeting of the Governing Body as soon as reasonably practicable upon receipt of written notice from at least three Governors.

7.3 Each Governor shall be given at least fourteen clear days before the date of a meeting, to include:

- (a) notice of the meeting; and
- (b) a copy of the agenda.

7.4 The convening of a meeting and its proceedings shall not be invalidated by reason of any individual not having received the notice described in clause 7.3 above.

Quorum

7.5 The quorum for a meeting of the Governing Body shall be any three Governors or, where greater, one third (rounded up to the nearest whole number) of the total number of Governors holding office at the date of the meeting.

7.6 If the Secretary of State for Education has appointed additional Governors then a majority of the quorum must be made up of those Governors appointed by him.

7.7 The quorum for the purposes of:

- (a) appointing a Parent Governor under Article 57 of the Articles;
- (b) any vote on the removal of a Governor in accordance with Article 67 of the Articles;
or
- (c) any vote on the removal of the chairman of Governors in accordance with Article 91 of the Articles;

shall be two thirds (rounded up to the nearest whole number) of the Governors who are at the time entitled to vote.

Format of meetings

7.8 A Governor shall be able to participate in meetings of the Governing Body by telephone or video conference provided s/he complies with the requirements in Article 123 of the Articles.

7.9 Pursuant to Article 120 of the Articles, a resolution in writing signed by all the Governors entitled to receive notice shall be valid and effective as if it had been passed at a meeting of the Governing Body 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.

Decision making by Governors

7.10 Every question to be decided at a meeting of the Governing Body shall be determined by a majority of votes. Every Governor shall have one vote.

7.11 Where there is an equal division of votes, the chairman shall have a casting vote, in addition to any other vote s/he may have.

7.12 The proceedings of Governors shall not be invalidated by:

- (a) any vacancy among their number; or

- (b) any defect in the election, appointment or nomination of any Governor.

Rescission or variation of resolutions

- 7.13 A resolution to rescind or vary a resolution carried at a previous meeting of the Governors shall not be proposed at a meeting unless the consideration of rescission or variation is a specific item of business on the agenda for that meeting.

Termination of meetings

- 7.14 A meeting of the Governing Body shall be terminated if:
 - (a) the Governors so resolve; or
 - (b) the number of Governors present ceases to constitute a quorum.
- 7.15 Where a meeting is not held or terminated in accordance with clause 7.14, a further meeting shall be convened by the Secretary as soon as reasonably practical but, in any event, within seven days of the date the meeting was originally held or was so terminated.
- 7.16 Where the Governors resolve to adjourn a meeting in accordance with clause 7.14 they shall determine the time and date at which a further meeting is to be held and direct the Secretary accordingly.

Minutes

- 7.17 In accordance with Article 100, the minutes of a meeting of the Governing Body shall be drawn up and entered into a book by the Secretary and shall be signed (subject to the approval of the Governors) at the same or next subsequent meeting by the person acting as the Chairman.
- 7.18 The minutes shall include a record of:
 - (a) all appointments of officers made by the Governors; and
 - (b) all proceedings at meetings of the Governing Body and Committees of the Governing Body, including the names of the Governors present at each such meeting.

Records of meetings to be made available

- 7.19 The Governors shall ensure that a copy of the following are, as soon as reasonably practicable after a meeting of the Governing Body or a Committee, made available at the Academy to persons wishing to inspect them:
 - (a) the agenda for every meeting;
 - (b) the draft minutes of every meeting as approved by the Chairman;
 - (c) the signed minutes of every meeting; and
 - (d) any report, document or other paper considered at that meeting,excluding any material relating to:
 - (e) a named teacher or other person employed or proposed to be employed by the Academy;
 - (f) a named pupil or candidate for admission to the Academy; and

- (g) any matter which, by reason of its nature, the Governors are satisfied should remain confidential.

8 Conflicts of interest for Governors

8.1 In accordance with Article 6 of the Articles, a Governor must not receive any benefit from the Academy subject to the following exceptions:

- (a) a Governor may benefit from any indemnity insurance purchased at the expense of the Academy (Article 6.3);
- (b) a company which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy (Article 6.4);
- (c) a Governor may at the discretion of the Governing Body be reimbursed for reasonable expenses properly incurred by him when acting on behalf of the Academy, but excluding expenses in connection with foreign travel (Article 6.5);
- (d) Article 6.7 allows a Governor to receive the following benefits provided that the conditions in Article 6.8 have been complied with:-
 - (i) receipt of a benefit in the capacity of a beneficiary of the Academy;
 - (ii) employment by the Academy, or entering into a contract for the supply of goods or services to the Academy, other than for acting as a Governor;
 - (iii) receipt of interest on money lent to the Academy at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Governors, or 0.5%, whichever is higher; or
 - (iv) receipt of rent for premises let by the Governor to the Academy if the amount of the rent and other terms of the lease are reasonable and proper.
- (e) a Governor may receive another benefit from the Academy provided that the Governing Body has obtained the prior written approval of the Charity Commission and fully comply with any procedures it prescribes (Article 6.6(d)(ii));

8.2 An individual who is an existing employee of the Academy when appointed as a Governor is permitted to receive remuneration from the Academy in his capacity as an employee provided that the provisions of Article 6.8(b) (i), (ii) and 6.8(c) are complied with.

8.3 In considering conflicts of interest the Governing Body must bear in mind that, in accordance with Article 6.9:-

- (a) a benefit received by a Governor from a subsidiary of the Academy is to be treated as a benefit from the Academy itself;
- (b) a benefit from the Academy to a close relation of a Governor is to be treated as a benefit to a Governor; and
- (c) the employment or remuneration of a firm or company with which a Governor is connected is to be treated as a benefit to a Governor.

8.4 Any Governor who has, or could have, any direct or indirect duty or personal interest (including but not limited to any personal financial interest) must disclose that fact to the Governors as soon as he becomes aware of it. Every Governor must complete, and keep up

to date, a Declaration of Interest. Declarations of interest should also be the first item on the agenda of every meeting of the Governing Body.

- 8.5 A Governor must absent himself from any discussions of the Governing Body 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.
- 8.6 The Governors must at all times comply with the Academy's conflict of interest policy.

9 Chairman and Vice-Chairman of the Governing Body

- 9.1 At the first meeting of each academic year, the Governors shall elect a chairman and vice-chairman.
- 9.2 A Governor employed by the Academy is not eligible for election as chairman or vice-chairman.
- 9.3 The chairman or vice-chairman shall cease to hold office if:
- (a) he resigns his office by giving notice in writing to the Secretary;
 - (b) he ceases to be a Governor;
 - (c) he is employed by the Academy;
 - (d) he is removed from office in accordance with the Articles; or
 - (e) in the case of a vice-chairman, he is elected in accordance with the articles to fill a vacancy in the office of chairman.
- 9.4 Removal and appointment of the chairman and vice-chairman is in accordance with Articles 86 to 93 (inclusive).

10 Secretary to the Governing Body

- 10.1 A secretary of the Academy ("**Secretary**") shall be appointed by the Governing Body for such term, at such remuneration and upon such conditions as it thinks fit, save that the Secretary shall not be a Governor or the Principal.
- 10.2 If the Secretary fails to attend a meeting of the Governors, the Governors may appoint any one of their number to act as Secretary for the purposes of that meeting.

11 Changes to these terms of reference

- 11.1 Any change to these terms of reference can only be made:-
- (a) provided that the terms of reference continue to comply with the Articles; and
 - (b) by a resolution in favour at a meeting of the Governing Body which has been properly convened in accordance with the Articles.