

BOARD OF TRUSTEES

Minutes of the hybrid meeting held on 29 June 2022 at 1.00pm

Present physically at ASFC: C Higgins, Vice Chair (part) M Chatt (part)
E D'Souza, Chair (part) S Daley, Vice Chair (part)
N Savvas, CEO (part) S Healey Pearce

Present virtually: A Maltpress K Points
C Ridgeon M Whittingham
D Wildridge R Murray
J Wakelam (part) R Inman

In Attendance: J Raffel, CFO
S Gales, Governance Professional
S Graham, Chief People Officer

Apologies: S Clarke

The agenda items were discussed in the following order: 1, 4, 7, 2 then items 3, 5 and 6.

C Higgins, E D'Souza, J Wakelam, N Savvas, M Chatt, and S Daley (as Trustees involved in West Suffolk College's governance) left the meeting after agenda items 1, 4, 7, 2

R Inman (as Chair of the Audit and Risk Management Committee and a Trustee who is independent of West Suffolk College's governance) assumed the role of Chair for agenda items 3, 5 and 6 (the remainder of the Board meeting).

1 Declaration of Interests and Apologies for absence

C Higgins, E D'Souza, J Wakelam, M Chatt, N Savvas and S Daley declared their roles as Governors of West Suffolk College. R Inman declared his role as Partner of Stone King LLP which has, through the Pathfinder initiative, advised the Trust and its sponsor. No other conflicts of interest in relation to the items of the agenda were declared.

Apologies were received from S Clarke.

2 Introduction and context

The Chair of the Trust Board explained the agenda of the meeting and its purpose to consider a collaboration agreement to formalise the strategic alliance between the Trust and its sponsor (West Suffolk College), which has been in place since the Trust was established in 2015; to strengthen governance arrangements and to underpin future decision making about ways of working with the sponsor including the likely supply and procurement of services to and from the sponsor.

The CEO noted that the Trust's related party transactions for 2020/21 and 2021/22 were rejected which has resulted in regularity issues which have to be declared in our published financial accounts and reported to the ESFA. Following the rejection of the Trust's related party transactions for 2021/22, we have implemented significant changes to strengthen governance, conflict of interest management, decision making and reporting of related party transactions; and have worked closely with the ESFA's related party transactions teams and sought the independent advice of our external auditors and lawyers to reduce the risk of a further regularity issue and/or the rejection of the Trust's related party transactions for 2022/23.

The Board noted that whilst it would be ideal to merge the Trust with its sponsor, due to regulation the two need to remain separate legal entities. The Board noted that as part of the changes over the past 18 months the CEO and CFO are direct Trust employees; which means their services is no longer within the scope of the related party transactions.

Action

3 Eastern Colleges Group Collaboration Agreement

The Board considered the draft Eastern Colleges Group Collaboration Agreement provided (“the Master Collaboration Agreement”) which seeks to formalise the strategic alliance between the Trust and its sponsor (West Suffolk College), which has been in place since the Trust was established in 2015, to strengthen governance arrangements and to underpin future decision making about ways of working.

S Gales noted that the Trust and West Suffolk College recognise the substantive benefit of working in collaboration to achieve our common charitable object – the advancement of education for the public benefit, and have been operating as an education group – the Eastern College’s Group - to achieve the Group’s shared vision and strategy in a manner consistent with the independent statuses of the Trust and West Suffolk College and the distinct regulatory regimes to which they are subject (with appropriate conflict of interest management).

S Gales noted that the proposed collaboration agreement builds on the pre-existing unformalised strategic alliance between the two legal institutions/sovereign boards, established when the Trust was established, which currently operate with an aligned approach to governance and to the day-to-day operations led by the executive.

S Gales explained that the purpose of formalising the pre-existing strategic alliance between the two legal institutions/ sovereign boards, in the proposed collaboration agreement is to:

1. optimise mutual understanding of the pre-existing unformalised strategic alliance which forms the background of the agreement (refer to the notes of the Strategic Conference on 6 May 2022 here for further background information);
2. outline in practical and procedural terms how collaboration within the education group continue to be governed;
3. increase transparency in accordance with good governance practice;
4. highlight the education group’s commitment to effectively managing potential conflict of interests and the procedural practice which will be used to document robust governance and decision making, realising the public benefit coincidence of interest which is the basis of the Eastern Colleges Education Group (with appropriate conflict of interest management);
5. highlight the two legal institutions/sovereign boards respective decision-making powers with respect to the continuation of a strategic alliance, including how the agreement will be reviewed, varied, or potentially breached or terminated, and the intended process in the event of any difficult issues or disputes;
6. to complement the Trust’s procurement policy (within the Trust’s Financial Regulations) which recognises that “possible best value procurements from West Suffolk College, through the Eastern Colleges Collaboration Agreement stand properly and proportionately to be considered in that unique and/or quasi-in house (i.e. non-competitive market) context, which allows for the application of direct “Negotiated Procedure” procurement principles”;
7. thereby underpinning the Board’s position with regard to future decision making for any related party transactions with West Suffolk College.

The Board discussed the proposed collaboration agreement and **noted** that the Background (Clauses A to L) accurately record the close constitutional association and collaborative relationship between the Trust and West Suffolk College since the Trust was established in 2015.

The Board also **noted** that the strategic alliance and collaborative relationship has been integral to the success and development of the Trust (as reflected in the recent of Ofsted reports of the colleges within the Trust) and has enabled the Trust and West Suffolk College to establish and co-develop the Group as a highly successful integrated regional education group.

The Board **recognised** the coincidence of interest (public benefit) between the Trust and West Suffolk College, and **agreed** that it is appropriate and desirable to formalise

the established strategic alliance and basis of collaboration, to provide a clear, precise and strong governance and operational framework for the further development of the collaborative relationship and of the Group.

The Board **noted** that the collaboration agreement aids transparency and provides a precise and comprehensive process in relation to the Board's consideration and prior-approval of any related party transactions to both ensure and demonstrate the robust governance decision-making that any and all inter-Group decisions are solely made in the best public benefit interests of the Trust.

The Board **noted** that the collaboration agreement effectively sets out the framework terms and conditions and provide terms and conditions for a range of both specific *current* and *potential* inter-Group agreements (such as Group Governance; Group Conflict of Interest/Loyalty management; inter-Group Support Services; inter-Group grant and loan funding; inter-Group premises and personnel provision and sharing; inter-Group intellectual property and data sharing; shared business, financial, management and administration services; shared education services; and joint procurement).

The Board **noted** that Clause 21.2 stipulates how both sovereign boards should *individually* and *collaboratively* review the collaboration agreement (at least once every three years) and Clause 19.2(a) stipulates the right of either sovereign board to terminate the collaboration agreement (giving nine months' written notice up to 31 August in any year).

The Board **noted** that Trustees who are involved in the governance of West Suffolk College are considered 'conflicted' as these members have dual loyalties to manage. As such, and in accordance with the Trust's Code of Conduct, the Board **agreed** that these 'conflicted' Trustees should absent themselves from the (both this and all future) formal consideration of the approval of the collaboration agreement.

The Board (henceforth referring to the quorum of Trustees who are independent of the governance of West Suffolk College and are therefore able to vote) **agreed** that it considers entering into the proposed collaboration agreement to be in the best public benefit interests of the Trust, and **agreed to approve** the collaboration agreement as soon as practicable, on a convenient date to be agreed with West Suffolk College. The Board **agreed to delegate authority** to Roger Inman as Chair of the Audit and Risk Management Committee to act as the Trust's authorised representative in executing and formally completing the Master Collaboration Agreement. The Board also agreed to undertake and complete a first formal review of the Master Collaboration Agreement by 20 November 2025, allowing for the unlikely possibility of a termination notice being issued, under Clause 19.2(a) of the Master Collaboration Agreement, by 30 November 2025, to take effect on 31 August 2026.

R Inman

4 **Code of Conduct**

The Board considered the Code of Conduct which includes additional wording to the current versions approved by the Board on 16 December 2021 to strengthen governance transparency arrangements and prescribe how conflict of interests between the Trust and West Suffolk College will be managed.

The Board **approved** the Code of Conduct.

5 **2022/23 Related Party Transactions**

The Board considered the proposed provision of services *provided to* and the *procurement of* services from West Suffolk College for 2022/23 (noting that these constitute as Related Party Transactions in accordance with sections 5.35 to 5.59 of the Academy Trust Handbook 2021 and must be approved in advance, by the ESFA).

The Board considered the 2022/23 Related Party Transactions associated value for money assessments, to ensure it complied with the Trust's procurement policy (within the Trust's Financial Regulations).

The Board **noted** the 2022/23 Related Party Transactions close association with the Eastern Colleges Group “Master Collaboration Agreement” and acknowledged the benefit of this collaboration as described above (under agenda item 2) and under/within the Master Collaboration Agreement.

The Board considered the three proposed Service Level Agreements:

1. General recharges (for a net charge up to £19,999+VAT, which is below the threshold requiring for ESFA approval)
2. Curriculum (for a maximum charge from SAT to WSC of £150,000+VAT and a maximum charge from WSC to SAT of £300,000+VAT; and a net charge limit of £150,000+VAT)
3. Support Services (for a maximum recharge from SAT to WSC of £750,000+VAT and a maximum recharge from WSC to SAT of £1,000,000+VAT; and a net recharge limit of £250,000+VAT)

The Board considered the three Service Level Agreements and its value for money assessment (which includes reviews of the provision of services *provided to* and the *procurement of services* from West Suffolk College for 2022/23), alongside the Trust’s Procurement Policy and considered whether the assessment evidence compliance with the policy and whether due consideration was given as to whether all, some or any part of the services proposed, might more beneficially be provided by alternative third-party provision.

The Board **noted** that Trustees who are involved in the governance of West Suffolk College are considered ‘conflicted’ as these members have dual loyalties to manage. As such, and in accordance with the Trust’s Code of Conduct, the Board **agreed** that these ‘conflicted’ Trustees have (and continue to absent themselves from formal consideration and approval of related party transactions).

The Board (referring to the quorum of Trustees who are independent of the governance of West Suffolk College and are therefore able to vote) **agreed** that it considers the three Service Level Agreements, manifestly represents a unique offer of unmatched best value for the Trust, for a range of reasons outlined in the best value considerations paper and value for money assessment. The Board **agreed** that the services are most beneficially procured through the three Service Level Agreements and (in line with previous years) recognises that the “Negotiated Procedure” (referred to by the ESFA as the “Sole Trader” exception to a competitive process), is the proper, proportionate, fair and open application of the Trust’s Procurement Policy in relation to a manifestly unique offer of unmatched best value.

The Board **agreed to delegate authority** to the Executive to proceed, in accordance with the principles of the Negotiated Procedure, to finalise fair and reasonable specific terms and conditions in relation to the services within the three Service Level Agreements 2022/23 with the at-cost principle for Group services, or on a subsidising below-cost basis and **instructs** the Executive to promptly prepare and submit to the ESFA the required application for Related Party Consent in relation to the three Service Level Agreements. The Board **agreed to delegate authority** to Roger Inman as Chair of the Audit and Risk Management Committee to act as the Trust’s authorised representative in executing and formally completing the declarations of due process required as part of the Related Party Transaction application and to formalise the three Service Level Agreements, as appropriate.

6 Approach for Related Party Transactions after 2022/23

The Board noted the Executive’s plan, in spring/summer 2023, to seek approval for the maximum Related Party Transactions period of five-years; for services provided to and procured from West Suffolk College to lessen the administrative burden in preparing these agreements and to provide greater security to the Trust.

The Board agreed in principal with the approach to prepare a longer term agreement in future (either 3 or 5 years) and the proposal to include a reasonable amount of

contingency to enable the organisation to flex and remain agile, with set thresholds above which the agreements are *substantially different (or novel)* and therefore will require Trust Board and ESFA approval.

The Board noted that if we intend to consider longer arrangement terms, the business case for this must be clearly articulated and considered; and risks must be reduced wherever possible. As such the Board asked the CFO to include (within future Service Level Agreements) the consequences of early termination and the process for distributing costs associated with the run-off of provisions and risk analysis of the benefit of a longer-term contract (either 3 or 5 years) versus annual agreements. The Board also noted that it requires adequate time (in advance of the commencement date of future agreements) to consider and scrutinise the proposed agreements and value for money assessments to ensure sufficient time to implement an alternative procurement solution, if so decided. The CFO to note and action this for future.

CFO

7 **Any Other Business**

• **Annual election of the Chair and Vice Chairs of the Trust Board**

The Board discussed the recommendation of the Nominations and Governance Committee, to conduct the annual election of the Chair and Vice Chairs of the Trust Board in accordance with the process prescribed in our Articles of Association, rather than in the process in the Appointment and Term of Office policy. The Board noted that as there have been no additional nominations for these roles and the current Chair and Vice Chairs have indicated their desire to serve a further term, it is adequate to conduct a simple vote on the re-appointment of the current Chair and Vice Chairs at the next full Board meeting on 14 July 2022.

The meeting closed at 2.23pm