

Coast and Vale Learning Trust

New Articles

Summary of the Key Changes

9 December 2021

The following summarises the key changes between the current articles of association for Coast and Vale Learning Trust (the “trust”) and the proposed new articles of association for the trust (the “articles”) that have been agreed with the Department for Education (“DfE”). In each case, the summary includes an analysis of the impact on the trust.

Governance Professional

Under the articles, the Clerk will be re-named as the Governance Professional. Since the definition of the Governance Professional includes any person appointed to perform the duties of the Governance Professional, the change in terminology will have a limited impact on the trust as it will enable the trust to retain the term Clerk or refer to the Governance Professional, depending on its current practice or preference.

Trading subsidiary

Where the trust has a trading subsidiary or creates one in due course, the articles will extend the member and trustee benefit provisions in the articles (which limit payments to members and trustees) to the trading subsidiary. As payments between the trust and connected companies or individuals are already heavily regulated (including under the Academy Trust Handbook) and scrutinised by the Education and Skills Funding Agency, we believe this change will have a limited impact on the trust.

Separation

The articles will require that a majority of the members are not also trustees. As this is consistent with established DfE policy and best practice around the need for separation, this may be of limited impact depending on any existing overlap between your members and trustees.

Employees

The articles will preclude any employee from being a member. We expect this reflects your current practice and so believe the provision will have a limited impact on the trust.

Disqualification (members)

The articles will extend the disqualification provisions for members to include where a member:

- as an individual, is bankrupt or has had their assets seized by creditors;
- as a corporate entity, ceases to exist or is wound up or enters into a voluntary arrangement with its creditors;
- is convicted of a serious criminal offence (i.e. any criminal offence except where spent or for which the maximum sentence is a fine or lesser sentence (excluding disqualification from acting as a charity trustee));
- has not provided the chair with an enhanced DBS certificate or the certificate discloses information that makes them unsuitable for the role;
- refuses to consent to checks required by the DfE, for which please see the section headed ‘Suitability’ below;
- is found to be unsuitable to be member under the Master Funding Agreement (“MFA”), for which please also see the section headed ‘Suitability’ below;
- is employed by the trust; or
- would be disqualified from being a trustee for any other reason.

As these provisions will mirror the disqualification provisions for trustees, which will be largely unchanged from your current articles, we believe their impact on the trust will be limited.

Fiduciary duty

The articles will record that the members shall:

- not do anything or take any action which would cause the trust to contravene its Objects; and
- act in a way which they decide, in good faith, will be most likely to further the Objects of the trust.

As these duties already apply to the members under company law, the provisions will therefore have no further impact on the trust.

Meetings (members)

The articles will change the quorum for members’ meetings (including an AGM) from 2 members to a majority. The impact of this change will be fairly negligible as we expect a majority of members already attend.

The articles will also allow members’ meetings to take place virtually, which we expect will be a welcome change to enable members to meet more easily.

Meetings (trustees)

The current articles already allow trustees to meet by phone or video conference, as well as in person. The articles will allow the trustees to meet in person and by phone or other suitable electronic means agreed by the trustees. While we believe this provision will have a limited impact on the trust, the trustees will need to agree a suitable electronic means for online meetings, if they've not already done so, having regard to the need for a platform which is not only stable but also secure from outside interference or hacking. As the trust will no doubt have been meeting online during the pandemic and is required by the Academy Trust Handbook to have controls in place to protect itself against cyber attack, we expect these issues will already have been addressed.

Electronic documents

The articles will confirm that documents can be produced and/or signed electronically. We expect this will be a welcome change as it will confirm the ability to circulate and approve documents more easily.

Term of office

The articles will entitle the members to appoint a trustee (except a parent trustee) for a term of office which is less than 4 years. As this will give members flexibility in the service and rotation of trustees, we believe this will have a limited impact on the trust.

Suspension (trustees)

The articles will omit the current entitlement for the trustees to suspend a trustee for a fixed period of up to six months where the trustee has acted in a way that is inconsistent with the professional ethos of the board (which includes a failure to undertake training appropriate to their role) and has brought or is likely to bring the trust, any academy or the office of the trustee into disrepute. As the behaviour of trustees can be managed in a number of other ways, including through the chair or a code of conduct which confirms the trustee will resign in these circumstances, we believe the omission will have a limited impact on the trust. Indeed, the trustee can ultimately be removed by the members or (in the case of a parent trustee) the trustees.

Disqualification (trustees)

Under the articles, a person will also be disqualified from acting as a trustee where they refuse to consent to checks required by the DfE or the DfE finds they are unsuitable for the role, for which please see the section headed 'Suitability' below. As the definition of what makes someone 'unsuitable' is already prescribed by the independent school regulations, enabling the DfE to bar someone from being a trustee, the articles will simply mirror the existing position and so have no further impact on the trust.

Suitability

Under the MFA, where a member or trustee refuses to consent to any checks required by the MFA or the DfE or the DfE considers they are unsuitable, the DfE can direct the trust to ensure the member or trustee resigns or is removed within 42 days, failing which the DfE is entitled to serve notice terminating the MFA (and thereby all SFAs). For this purpose, a member or trustee is unsuitable if they have:

- been convicted, cautioned, found not guilty by insanity, or found to have a disability and to have committed the act charged against them, in each case in respect of an offence that is relevant to their suitability to take part in the management of the academies; or
- engaged in conduct aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;
- been found to be in breach of professional standards by a professional body; or
- engaged in conduct that, in DfE's opinion, makes them unsuitable to take part in the management of the academies.

Notwithstanding these provisions, the DfE can issue a direction barring a member or trustee from (or restricting their) management of the academies under the independent school regulations where they are unsuitable. The Academy Trust Handbook also requires the trust to ensure its members are not subject to a direction. The articles will therefore reflect the existing position by disqualifying anyone from acting as a member or trustee where they refuse to consent to checks required by the DfE or the DfE finds they are unsuitable.

The above risks regarding the suitability and disqualification of member and trustees can be mitigated by ensuring the declaration of eligibility (which members and trustees are required to provide) confirms: their suitability (as defined above); they are not subject to a direction; their consent to checks required by the trust and the DfE; and they will resign where anything declared by them ceases to be true. Members and trustees should be asked to renew their declaration at the start of each academic year. A trustee may also be removed by the members or trustees depending on how they're appointed under your articles. In this way, the risk to the trust can be managed and mitigated.

Disqualification (governors)

The articles will apply the disqualification provisions for trustees to the governors on each local governing body ("LGB"). Since the Academy Trust Handbook must be

applied across the trust and best practice expects trustee disqualification provisions to be applied to local governors, we believe this will have a limited impact on the trust.

UTC LGB

The articles will require the trustees to establish an LGB for Scarborough UTC (“SUTC”) with more than one half of its members appointed by the University Sponsors (i.e. University of Hull) and the Employer Sponsors (i.e. Unison Ltd, McCain, Plaxton, Dale Power Solutions, Potash, Deep Sea Electronics, Schneider). The articles will also require the power of delegation to the LGB for SUTC to be exercised by way of a scheme of delegation. Given the nature of SUTC and the fact the trust will already operate a scheme of delegation, we believe these provisions will have a limited impact on the trust.

Rules and byelaws

Finally, the articles will require the trustees to consult with the Chief Executive of the Baker Dearing Educational Trust before they make rules or byelaws for the conduct or management of the trust (i.e. policies and procedures). Given that the requirement is to consult (and not obtain prior consent) and the trustees will already consult with others as appropriate, we believe this provision will have a limited impact on the trust.

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