



Background and Future Plans

All independent schools are private schools, and these terms are often used interchangeably, but technically independent schools are all overseen by a board of governors or trustees, whilst other private schools may be run by their owner with no governing body. The proprietors, governors and trustees of independent schools have considerable freedom to run establishments as they wish. However, in England they must ensure that the schools they are responsible for comply with the requirements of the Education (Independent School Standards) Regulations 2014.

The regulations set out the Independent School Standards to which independent schools are inspected under the Education and Skills Act 2008. They replaced the Education (Independent School Standards) (England) Regulations 2010 which were revoked from January 2015.

The governance arrangements for a **private or independent school** depend on how it was set up. **Some** are actually businesses owned by proprietors. Others are charities with various constitutions. Arun Court School has a sole proprietor, Beverley-Sarah White, and is run as a business. It does not require a governing body by law, but as the students are EHCP funded and Beverley-Sarah welcomes the input of external advisory opportunities, she has decided to implement a governance style structure referred to as The External Monitoring and Advisory Board (EMAT)

Beverley-Sarah has chosen to run the business in collaboration with Surrey SEND as an entity that is not profit driven, and therefore rather than taking a % profit or increasing shareholding, she currently takes a set 'proprietor & Executive Head Teacher salary' in exchange for the work, time and financial investment given to setting up the school, and for the on-going work, time and legal responsibilities she holds. This arrangement will last until 2022. However, the school is not a 'not for profit' company in its own right. In 2022 when the proprietorship may change, if it changes, this structure could also alter.

Ofsted (inspection November 2019) recognised that the External Advisory and Monitoring Board was transitioning to greater governor responsibilities and was satisfied that leadership at the school was at least 'good' overall, which included a judgement made through interview and extensive discussion with the Chair, Paul Phillips. In discussions with Beverley-Sarah she raised several areas of 'weakness' that she intended

to address, and the inspectorate was in agreement. Beverley-Sarah had set herself a timescale of 1.5 years (February 2021) to address 3 in particular:

1. She did not wish to be the daily operational head teacher of the school long term. This was an additional responsibility, for which she was not paid, and had agreed to carry out for the first 2 years of the school's existence. Having a **sole** CEO/Proprietor who is also the daily head teacher may raise difficulties in aspects such as the complaints procedure – as the HT is involved at one level and the CEO at a higher level. To recruit a suitable applicant it was necessary to strengthen the EMAT structure and ensure any new appointment was inheriting a strong governance model.
2. Having a CEO who is also the daily head teacher also raised challenges for the governance structure as a whole, as the sole proprietor (owner/CEO) sets the governance structure and has the power to dismiss the body as the school is effectively a private business; whereas the head teacher has oversight from the governing body.
3. Through an innovative Nordic style approach to recompense members for their time and move to a structure of paid expert governance over time – to coincide with her departure as head teacher. This requires members to commit to a long-term process of development, training and strategic involvement with the school.

In addition to the above, to help support the school's finances and to enable it to access a greater range of expertise and experiences Beverley-Sarah set herself the challenge that by November 2022 the school **may** change from sole proprietor to having a company proprietor.. This would mean a sharing of the legal responsibility across a board of directors rather than a single person. This change would coincide with the next inspection and would be part of a re-registration process. Surrey LEA have indicated that a change of ownership to Big Bear Bespoke Education Ltd, a company of which Beverley-Sarah is a lead share holder and director, and with whom they have several contracts, would not be an issue for them and that continued use of services in this scenario is likely.

Ensuring the school status is understood

Anyone working at Arun Court School is aware that Beverley-Sarah is a sole proprietor and what that sole proprietorship means. The school signage clearly states who the proprietor is, and all contracts make it clear that everyone is employed by an independent private school. This information is also clear within Ofsted reports and the schools registered status as recorded via the Department of Education.

Those working within EMAT (governance) are also aware of the structure and need to ensure that they are **comfortable and confident** in what that means for their role, including exposure to legal challenge. The Guide to the Law for Governors is clear:

"Although legal action against teachers and schools for breaches of professional duty is still rare, claims (for example, for 'failure to educate') are becoming more frequent."

The Guide to Law continues: "The governing body may also wish to consider obtaining insurance protecting members of its committees against personal liability arising from their office. However, personal claims against school governors are very rare indeed. This type of insurance cover is unlikely to represent good value for money because governors acting **honestly, reasonably and within their powers will not incur personal liability**. However, it should be recognised that it may be difficult to persuade good people to serve in this capacity unless they are made completely secure against personal liability."

Those working within EMAT do have some protection via the comprehensive school insurance that is taken out, however they should be aware that by taking the role should they behave in a way that causes a loss of finances or reputational damage to the sole proprietor, Beverley-Sarah White, she may have the right take legal action against individuals, in addition to requesting their departure from the governance board.

EMAT members should also be aware that as Sole Proprietor she has the right to remove individual EMAT body members or disband the entire group. If this were to occur she would be required to lay out her reasons clearly as to why, and this may be scrutinised by external bodies – however OFSTED would view this as a favourable decision in the case of significant weaknesses in performance, especially in relation to understanding around safeguarding for example.

Prospective EMAT members should read this constitution and terms of reference carefully before deciding to be part of the team.

Terms of Reference

Independent school proprietors and governors must:

- act with integrity, objectivity and honesty in the best interests of the school
- act within their powers and obligations
- be open about their decisions and actions
- be prepared to explain their decisions and actions to those with a legitimate interest in them.

However, the law recognises that the governing body may decide for certain matters to remain confidential, such as material containing the names of staff or pupils.

EMAT Governing Instrument or Constitution

The governing instrument or constitution is the document (or documents) that set out the school's objects, powers and administration provisions.

The governing body (EMAT) must work within the requirements of this documents at all times and also abide by all Acts of Parliament and statutory regulations that affect independent schools.

This document will set out:

1. the name and objects of the school
2. the powers and obligations of the governing body
3. the membership of the governing body and method of appointment
4. committee terms of reference

Objects of the school

- Arun Court school provides progressive education blended with therapeutic approaches.
- It aims to support young people in their mental-health recovery and rapid re-engagement with learning
- When students are well, It aims to support learners to achieve their life goals through re-integration into other academic settings or through completion of a work-directive curriculum at our setting
- Arun Court School is a very small setting of just 20 young people and aims to retain a small, nurturing and unique family atmosphere – akin to a hospital school setting, but with longer term placements

- Big Bear Bespoke Education Ltd leases the main premises and is at the time of writing in possession of a ten-year lease agreement, which it passes to the school without any financial remuneration. Beverley-Sarah as sole proprietor also holds personal liability for the lease agreement.
- Arun Court School does not hold any material assets of note with the contents of the school falling under usual insurance policies
- As the building is leased and there is no agreement for sub-letting only the activities of Arun Court School itself, or those of the lease holders (Big Bear Bespoke Education Ltd) may occur on site. The building therefore does not provide opportunity for additional revenue to the school budget.

Powers and Limitations and obligations

Independent school proprietors and governing bodies may do anything considered essential or advantageous to the conduct of the school, for the benefit of the pupils and the advancements of its objects and purpose, provided that all actions are within the law and in accordance with regulatory requirements.

Actions will, however, be limited by the terms of the governing instrument or constitution of the school.

In our context, with the school effectively being a business owned and run by the sole proprietor, the constitution gives the governing body (EMAT) powers to:

- enter into contracts, including contracts of employment for teachers and other staff in collaboration with the Proprietor and Head Teacher

It categorically does not give the governing body (EMAT) powers to

- borrow money and grant security
- acquire and dispose of land and property
- accept gifts of money, land or other property and administer them for the benefit of the school.

Liabilities

Governing bodies may be unincorporated or corporate bodies and the liability of individual governors will vary according to the governing instrument or constitution of the school. At Arun Court EMAT is an **unincorporated body** but has a degree of protection via the legal set-aside and the school insurance.

Within EMAT governors who act prudently and in accordance with their governing documents will not be personally liable for any liabilities at the school.

Liability may arise, however, if a governor acts wilfully or recklessly in breach of trust or in other wrongdoings.

Liability may also arise in the areas of:

- employment tribunals*
- compensation and legal costs
- sex and race discrimination
- functions delegated to committees
- health and safety
- other liability issues

Governors of unincorporated schools also risk being personally liable if the assets of the school are not sufficient to meet its debts. The most common areas for personal liability to occur is within employment and grievance proceedings.

Employment tribunals / Grievance and Disciplinary proceedings

The person who would be the respondent to any application to an employment tribunal arising from actions, or omissions, in the exercise of staffing powers will depend on how the school is constituted. Where a school is unincorporated, individual governors risk being named personally in proceedings.

In the event of involvement in an employment tribunal, consultation with legal advisors is essential. EMAT members should be clear that at Arun Court the head teacher and chair of governors are responsible for implementing grievance and disciplinary matters, in collaboration with the sole proprietor who will ensure that there are sufficient funds to obtain legal and specialist advice as to the level of ACAS proceedings to be followed.

Governors taking part in any panels should ensure they take the role very seriously, read the policy and ACAS guidance, and act within it.

They should delay making a decision until legal and expert advice has been sought if:

1. New information is presented that has not been submitted prior to the hearing
2. Accusations are made against other staff regarding coercion, bullying or safeguarding issues– these need to be investigated to ensure that the disciplinary process is fair, and that safeguarding is being maintained
3. If a union representative is not behaving in accordance with their agreed designated role

Obligations and Limitations

EMAT members (governors) are required to attend at least 4 meetings per annum in person or via technology link. Each term the school holds a main governing body meeting, and there are two committee meetings (EMAT members are usually on one committee). Combined with the annual 'setting of business' meeting this makes the usual meeting requirement 7 meetings per year.

In addition, EMAT members are expected to visit the school to ensure they are carrying out their monitoring duties – and to write and submit visiting reports to committees and main meetings

EMAT (governance) members are required to ensure they attend training and are up to date in their knowledge of the role. Membership of The Key is a useful tool in supporting this. Other useful organisations include the Surrey Governance Association and The Association of Governing Bodies of Independent Schools

Members are expected to carry out a regular audit of their skills

Duties in line with state schools:

- To form a stage three level, which is non-bias, within the complaints procedure for parents. Parents are still then able to take a complaint to stage 4 and involve the LEA or Ofsted.
- To ensure that staff have a trained, and non-bias, route for whistleblowing. In such cases the EMAT has a legal responsibility to refer such issues to the appropriate authorities for investigation. EMAT will also be directly involved in employment issues and appeals.
- To ensure that staff and parents, have the facility to report safeguarding concerns directly related to the proprietor, Directors or Senior Leadership Team. In such cases the EMAT are legally bound to report these to the LADO within the LEA, and after seeking advice the police or other authorities, without necessarily notifying the accused.
- To review annually, the policies contained in the Surrey County Council's Children Services Authority (CSA) Personnel Handbook including safeguarding, admissions and child protection

- Receive the annual report on child protection and safeguarding, which in the case of Arun Court school will also be sent to Surrey LEA directly for moderation and discussion.

Further responsibilities:

- To assist and advise on the performance of the school as viewed by visiting members from the two committee structure
- Through their suggestions, advice and auditing to help ensure that all young people using the school reach their full potential. As this work involves direct contact with students and parents, all members of the EMAT will hold a valid DBS. This is a **strategic** role, and members will not be expected to directly take part in staff performance management or to monitor or give advice on operational matters.
- To advise the Proprietor/ Directors on matters of legal obligation – such as buildings, insurance – providing a non-educational view.
- Linked to the above to play a **strategic role** within ensuring that the safeguarding policy is followed, and that as new risks are identified via the media or locally, we are at the forefront of designing programmes to tackle them and ensure students are safe. They would not write such policies themselves, but will bring a non-educational view, research and opinion to discussion.
- To support the school as a business via providing a view on expenditure, advertising, community relations, revenue streams in order to ensure that the school grows and succeeds, remaining solvent and able to take pupils at all times, remembering that as a business with a sole owner whilst advice is useful all financial decisions rest with the Proprietor.

Membership and Methods of Appointment

Constitution – 12 people. To quorate at least 8 must attend in person or vote via conference call.

1. A Chair who will hold relevant experience within Education / and or mental health
2. A Vice Chair with relevant corporate, education or medical background
3. A representative with an interest in safeguarding and relatable experience, to hold the post of Safeguarding Governor
4. A representative from the armed forces, police, fire brigade or equivalent service. They will take the role of health & safety governor
5. A parent, or ex parent, to express the parental viewpoint (may not hold the role of Chair. Ex-parents must have had a child at the school or within associated services within the last 3 years)
6. The Arun Court Principal (may not hold the role of Chair)
7. The School Proprietor / Executive Head Teacher
8. CEO of Big Bear Bespoke Education Ltd
9. A member of the school Senior Leadership Team (associate school principal)
10. A senior member of the school well-being team
11. Up to 2 professionals with company director or CEO level experience (or) relevant senior leadership experience in other schools

At **each meeting**, at an appropriate juncture, we may also invite a member of the LEA (Surrey) to attend to ensure they are satisfied that the EMAT provides sufficient scrutiny and challenge

At meetings members of the staff team, or other representatives, may be invited to present information or express a view, but they will not hold voting rights

EMAT has established 2 committees and working groups to keep under review key aspects of the school's performance.

All members are sought by advertising and approaching, but roles are voted in by self-nomination, seconding and whole-body vote.

EMAT members (governors) can be on the board for up to 5 years. The Chair / Vice-Chair can hold office for up to 2 years. Members should give notice in writing to the proprietor, Chair and clerk if they wish to cease their role.

Committee Terms of reference

CURRICULUM & ACHIEVEMENT COMMITTEE

COMPOSITION At least 3 members of the governing body with voting rights.

This committee may, with the approval of the governing body, invite additional members to attend meetings at which particular items of business are to be considered. Such members, however, will not have voting rights.

QUORUM - The quorum for meetings of the committee shall be not less than three of the members with voting rights.

ROLE OF THE COMMITTEE

To plan (at a strategic level) monitor and review the academic and pastoral arrangements of the school in order to ensure that the school maintains and delivers a broad and balanced curriculum, in keeping with the aims of the school and the requirements of the National Curriculum

To monitor, review and evaluate pupil progress against negotiated targets, within both the academic curriculum but also in the wider context of well-being, therapy and life skills

To advise the governing body on curricular matters including the implementation of the National Curriculum, the school's unique blended approach and the progressive under-pinning of the ethos

To monitor the relevant parts of the School Development Plan and make recommendations for updating when required

To review and monitor the effectiveness of the school policies assigned to the committee and make representations to the full governing body for changes where appropriate

To consider and give advice on any matter involving the Committee referred to it by EMAT (the governing body)

FUNCTIONS RETAINED BY THE GOVERNING BODY

EMAT must ensure that religious education and Sex & Relationship education is provided and ensure adequate arrangements are made

Agree any general principles on pupil discipline

Take action to forbid political indoctrination in schools, and to secure balanced treatment of political issues

APPOINTMENT OF CHAIR, VICE CHAIR AND CLERK

The appointment of the Chair, Vice Chair and the Clerk shall be determined by the committee and reviewed at the first meeting of the school year.

MINUTES

A written record of the meetings of the committee will be submitted to the next full governing body meeting, through the Clerk to EMAT (the governing body)

CONVENING MEETINGS

A meeting shall be convened at the request of the Chair, the school principal, or any two of the members of the committee. Every member of the committee, the principal and (on request) the Executive Head Teacher, shall be given at least seven days' clear notice before the date of the committee meeting

PUPILS, FAMILIES AND COMMUNITY COMMITTEE

COMPOSITION At least 3 members of the governing body with voting rights.

This committee may, with the approval of the governing body, invite additional members to attend meetings at which particular items of business are to be considered. Such members, however, will not have voting rights.

QUORUM The quorum for meetings of the committee shall be not less than three of the members with voting rights.

ROLE OF THE COMMITTEE

To plan (at a strategic level) monitor and review the involvement of families and the community in the wider arrangements of the school in order to ensure that the school maintains and delivers a broad and balanced curriculum that meets the needs of the service users.

To monitor, review and evaluate pupil development against negotiated targets, within both the academic curriculum but also in the wider context of well-being, therapy and life skills

To advise EMAT on school community and wider matters including the implementation of the equalities act, health and safety, student and community voice

To monitor the relevant parts of the School Development Plan and make recommendations for updating when required.

To review and monitor the effectiveness of the school policies assigned to the committee and make representations to the full governing body for changes where appropriate.

To consider and give advice on any matter involving the Committee referred to it by EMAT (the governing body)

FUNCTIONS RETAINED BY EMAT

EMAT must ensure that safeguarding and child protection, including the annual return and all other legal responsibilities are fulfilled.

Agree any general principles on attendance, community involvement and student development priorities

APPOINTMENT OF CHAIR, VICE CHAIR AND CLERK

The appointment of the Chair, Vice Chair and the Clerk shall be determined by the committee and reviewed at the first meeting of the school year.

MINUTES

A written record of the meetings of the committee will be submitted to the next full governing body meeting, through the Clerk to the governing body.

CONVENING MEETINGS

A meeting shall be convened at the request of the Chair, the school principal, or any two of the members of the committee. Every member of the committee, the principal and (on request) the Executive Head Teacher, shall be given at least seven days' clear notice before the date of the committee meeting