

Edsential Board Composition and Non-Executive Director Succession Planning

1. The arrangements for the composition of the Board of Edsential and the retirement and replacement of NEDs are set out in:

- The Articles of Association (dated October 2015)
- The Shareholders' Agreement (dated December 2015)

Composition of the Board

2. Sections 6.1 to 6.3 of the Shareholders' Agreement set out the role of the Shareholders in the appointment, removal, and indemnification of company directors.

3. Section 6.4 sets out the composition of the Board, as follows:

6.4	The Shareholders agree that the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):	
	6.4.1	at least two, but no more than three Executive Directors who shall not be employed by, or an elected member of, any Shareholder; and
	6.4.2	two Executive Directors (in total), one such Executive Director being employed by CW&C and one being employed by WMBC; and
	6.4.3	three Non-Executive Directors who shall be head or deputy head teachers employed as such in the administrative area of each of the Shareholders; and
	6.4.4	one Non-Executive Director who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher
6.5	The Shareholders agree that the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into the Board decisions and that the Chair of the Board shall be the Non-Executive Director appointed in accordance with clause 6.4.4 unless resolved otherwise by the majority of the Shareholders	

4. The current composition of the Board is broadly compliant with the above but there have been some exceptions, approved by the Board and by the Shareholders. The current composition is set out as follows:

6.4.1	This position is undertaken by IMc
6.4.2	These positions are filled by: <ul style="list-style-type: none"> • HB (CW&C) • JB (Wirral)
6.4.3	These positions are filled by: <ul style="list-style-type: none"> • EMc (Wirral Primary Head) • NW (CW&C Primary Head) • AW (Wirral Secondary Head) • AA (Special School Head, originally employed in CW&C) • SS (drawn from an Independent School)
6.4.4	This position is filled by: <ul style="list-style-type: none"> • JO (Wirral)
6.5	The Chair is filled by: <ul style="list-style-type: none"> • MP (previously Director of Education in CW&C)

- As can be seen from the above, the composition of the Board has changed over the years to better reflect the changing nature of the business and to better reflect the customer base that Edsential now serves.
- 6.4.1 indicates that there should be at least two executive directors. Currently there is only one. Given the current size of the company and the structure of the management of the company there is no plan to increase the number of executive directors. Being an executive director carries significant risk and responsibilities. This would have to be carried out by another member of the management team which would then require some restructure and changes to responsibilities. This cannot be justified or afforded at this time. This situation may change in the future; for example, if the company were to expand significantly. It is proposed that 6.4.2 should be amended to say that there should be between 1 and 3 executive directors.
- 6.4.2 refers to two executive directors, one from each of the shareholder councils. It was always the intention that there should be a director on the Board from each Council drawn from the education or children's services of each Council. The purpose for this was (and remains) to ensure that there is cohesion between the priorities and activities of Edsential and each of the Councils. Through the attendance of these directors, we ensure that we support each Council, and each Council can support and advocate for Edsential both internally and, especially, with head teachers and governors who buy our services. The reference to executive directors should be amended to reflect the more appropriate non-executive status.
- There are now five NEDs included under provision 6.4.3. Two primary head teachers reflect the size of the primary customer base. One secondary head, one special school head and one NED drawn from the independent sector, reflect the other types of school that Edsential serves. **It should be noted that the appointment of the additional two NEDs were both approved by the Shareholders.** It is proposed that section 6 of the Shareholders' Agreement be amended to better reflect the range and nature of the customer base that Edsential serves.

9. The governance of schools has changed a lot since the Shareholder’s Agreement was first drafted and enacted. In particular, the number of academies and Academy Trusts has increased significantly. Increasingly, Edsential is engaging with Trusts rather than with individual schools. The current composition of the Board, as set out in section 6, does not provide the flexibility to add an additional NED to be drawn from a Trust or equivalent. It is proposed that section 6 be amended to include provision for the appointment of a NED who is the CEO or Chair or equivalent of an Academy Trust within the administrative area of each of the Shareholders.
10. There is no proposed change to section 6.4.4.
11. The Chair position was originally filled by the governor director. Since 2020 this has been filled by the ex-Director of Education from CW&C. This variation is compliant with the last clause of paragraph 6.5 and was approved by both Shareholders. However, given the changed nature of leadership and governance in schools and in the councils’ children’s services, the original intention that the chair be the governor NED is restrictive. It would not be appropriate for the chair to be a currently serving head or deputy head teacher, or employed by, or an elected member of, any Shareholder. It is proposed that section 6 be amended to provide better flexibility for the appointment of a Chair with recent and relevant skills and experience.
12. The requirement for the NEDs to be drawn from the administrative area of each of the Shareholders should be noted.
13. Section 6.5 refers to NEDS having suitable experience and skills to provide independent challenge and input into the Board decisions. The improved selection, appointment and induction processes introduced by the Board will enable this to take place.
14. In accordance with the above analysis, **it is proposed that section 6.4 and 6.5 of the Shareholders’ Agreement be amended as follows:**

6.4	The Shareholders agree that the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):	
	6.4.1	between one and three Executive Directors who shall not be employed by, or an elected member of, any Shareholder; and
	6.4.2	two Non-Executive Directors (in total), one such Non-Executive Director being employed by CW&C and one being employed by WMBC; and
	6.4.3	four Non-Executive Directors who shall be head or deputy head teachers, drawn from primary, secondary and special schools and employed as such in the administrative area of each of the Shareholders; and
	6.4.4	one Non-Executive Director who shall be the CEO, Chair or equivalent of an Academy Trust and employed as such in the administrative area of each of the Shareholders; and
	6.4.5	one Non-Executive Director who shall be drawn from the Independent School Sector with recent and relevant skills and experience as a head teacher, deputy head teacher or business/finance manager; and
	6.4.6	one Non-Executive Director who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher

	6.4.7	the Chair of the Board shall be a Non-Executive Director with recent and relevant skills and experience within the administrative area of each of the Shareholders. They should not be a currently serving head or deputy head teacher, or employed by, or an elected member of, any Shareholder.
6.5		The Shareholders agree that the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into the Board decisions.

Succession Planning for Non-Executive Directors

15. The Articles of Association set out in detail:

- Directors; Powers and Responsibilities (sections 8-12)
- Decision-Making by Directors (sections 13-22)
- Appointment and Retirement of Directors (sections 23-26)

16. Section 24.2 and 24.3 set out the arrangements for the retirement, rotation and succession planning of Non-Executive Directors as follows:

24.2	One-third of the Non-Executive Directors appointed from time to time, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office at each annual general meeting. These provisions shall apply with effect from the second annual general meeting.
24.3	The Non-Executive Directors required to retire by rotation under Article 24.2 shall be those Non-Executive Directors who have been the longest in office since their last appointment. If any two or more Non-Executive Directors became or were appointed Non-Executive Directors on the same day, those required to retire by rotation shall (unless they otherwise agree among themselves) be determined by random selection in such manner as is determined by the shareholders acting by a majority.

17. We are not compliant with these articles. One of the reasons for this is that, in recent years, with Covid-19 and the challenges of the cost-of-living crisis, it was considered that the continuity of the Board with NEDs with their skills, experience and understanding of the needs of the company alongside the needs of customers, should take priority.

18. It is also worth noting that a report by CW&C in 2022 identified that usual good practice with companies is that NEDs should serve no more than 7 years.

19. Nevertheless, it is now time that a plan for the rotation and succession planning of NEDs be formulated and enacted. There are several NEDs that should retire and be replaced as their tenure is longer than three years. However, the retirement and replacement of a significant proportion of NEDs all at once, bringing in replacements who may have limited experience of being a NED, would not be in the best interests of the company or shareholders.

20. The following plan is therefore designed to bring the Board into compliance with Articles 24.2 and 24.3 within a reasonable timescale. The proposal is that the turnover of NEDs should coincide with the new financial year.

21. The plan also identifies that some NEDs might be drawn from either CW&C or Wirral. When deciding who to propose to the Shareholders, the Board will consider the need to ensure that there is a good balance of NEDs from each of the administrative areas of CW&C and Wirral.
22. Note that the Articles do not preclude the re-appointment of NEDs. However, given the length of service of some NEDs well beyond a three-year tenure, it would seem in the spirit of the Articles to seek as much as possible the replacement with a new NED.

By April 2024	<ul style="list-style-type: none"> • The current governor NED is replaced by another governor NED who could be from a school in CW&C or Wirral • The current Special School NED is replaced by another Special School NED who could be from a school in CW&C or Wirral. Note that whilst the currently serving Special School NED was only appointed in October 2021, she is no longer working in the administrative area of each of the shareholders and therefore replacement is required in accordance with section 6 of the Shareholders' Agreement • The Primary School NED for Wirral is replaced by another Primary School NED from Wirral • A CEO or Chair of an Academy Trust is appointed to the Board
By April 2025	<ul style="list-style-type: none"> • The Primary School NED for CW&C is replaced by another Primary School NED from CE&C • The Secondary School NED is replaced by another Secondary School NED who could be from a school in CW&C or Wirral • The Chair of the Board is replaced • The NED from the Independent Sector is replaced with another NED from the Independent Sector
By April 2026	<ul style="list-style-type: none"> • The Academy Trust NED is replaced or reappointed. This is to enable the turnover of NEDs to comply with a three-year cycle. This does mean that, initially, the Academy Trust NED doesn't serve a full two years; we could make this change in the autumn of 2026 to lessen the loss of tenure.
By April 2027	<p>From this point, the turnover of NEDs would be compliant with the Articles:</p> <ul style="list-style-type: none"> • Governor NED replaced • Special head NED replaced • CW&C Primary head replaced
By April 2028	<ul style="list-style-type: none"> • Wirral Primary head replaced • Secondary head replaced • Chair replaced
By April 2029	<ul style="list-style-type: none"> • Independent School NED replaced • Academy Trust NED replaced

Recommendation

Shareholders are asked to approve the proposals for the composition of the Board and the rotation of NEDs.

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