

Halesowen College Enterprises Ltd

Memorandum of Understanding 2022/23

Mission

Halesowen College Enterprises Limited (hereafter referred to as HCE or the Company) operates all commercial and for profit activities at Halesowen College (hereafter referred to as the College or the Corporation). The Company purpose supports that of Halesowen College as defined in its strategic plan; to provide the exceptional educational, training and support that will transform life changes and equip our community to flourish in a changing world. Whilst the Company is a commercial entity it supports the College vision to be the first choice College in our region for learners, parents, businesses and staff working with partners to achieve remarkable things.

Halesowen College Enterprises provides and promotes College retail outlets, The Bistro @B63, The Nursery@B63 plus other profit making activities including room hire, non-funded bespoke training and the sale of study aids and other retail goods. The Company employs retail, catering, nursery, commercial and cleaning staff to provide high quality ancillary and enterprise services to the College. Moreover, in its support of the College the company provides realistic work experience for students at all levels.

Legal Status

Halesowen College Enterprises is a company limited by shares and was incorporated on 16 February 1993. The Company's registration number is 2790416. The memorandum of association is included in the Memorandum and Articles of Association.

Halesowen College Enterprises' registered address is Halesowen College, Whittingham Road, Halesowen, West Midlands B63 3NA. This address, company name and registration number will be displayed on all correspondence whether hard copy or electronic.

The Company has issued share capital of £2 – all owned by Halesowen College. As the ultimate parent, Halesowen College has right of access to all HCE documentation.

The Company is registered for the purposes of VAT and shares a joint VAT registration with Halesowen College. The VAT registration number is 632120884. There is an agency VAT agreement in place with the College for catering/retail activities.

Principal Activities of the Company

Although a for profit entity, all activities of the company are in support of Halesowen College's strategic plan. The company encapsulates:

- Retail /Catering outlets for students
- Bistro@B63
- Nursery@B63
- Cleaning, janitorial and grounds
- Sales and enterprise

The College provides contemporary food outlet retail facilities which are responsive to student needs. The College retail outlets offer a range of 'grab and go' based hot foods plus pre-packed

sandwiches, salads, fruit pots etc and a range of drinks, snacks and confectionery. Starbucks Cafés sell a range of drinks at competitive prices compared to the High Street. All of the retail outlets are marketed through the Munch or Elliott's branding. Goods connected with the provision of education; for example, art materials, stationery, IT and catering equipment are also sold together with logo products through the online store Halazon. The retail outlets participate in the Free FE Meals, 16-18 Discretionary Award and 19+ Learner Support Fund meal schemes. The Company adheres to the College values, and a policy of not selling chewing gum, tobacco, lottery or alcohol products is in place. Whilst the retail facilities offer a range of food influenced by the student voice, it always stocks and promotes healthy alternatives such as low fat snacks, yoghurts and fruit. It is a priority to offer students healthy options and make them 'treat aware'. The retail outlets provide goods to suit a range of dietary, cultural and religious requirements including gluten free, halal and vegetarian/vegan ranges. In supporting the College as a Leader in Diversity the retail outlets support the celebration of cultural diversity through displays and promotional offers.

The Bistro@B63 offered an alternative student catering facility during the day and then extends to a community dining experience in the evenings and weekends which is available to the general public. A range of Bistro evenings and special events such as Murder Mystery, Burns night and Caribbean themed dinners provide an excellent resource to the local community and most importantly an opportunity for hospitality and catering students to learn within a realistic working environment. During the pandemic the Bistro operated a takeaway and delivery service which was overwhelmingly appreciated by the community and raised the profile of the College. The Bistro also links with other curriculum areas to develop commercial training events such as pottery and cooking school. This enables local people to engage with the College for a leisure based learning experience which then may progress to accredited learning. Our full time and part time offer is also marketing through events for example, animal experience lunches.

The Company provides a full cleaning and janitorial service to Halesowen College. Staff work across all three sites to ensure a clean environment for learning and attractive grounds.

Commercial work may also have a broader scope in assisting in providing opportunities to work with a wider range of companies. College staff are involved in local forums and employer focus groups continue to be organised by Halesowen College. Much proactive work is ongoing to strengthen links with the local business community in order to determine the future educational and development needs of such organisations and provide relevant training on an ongoing basis. This links with the College's development of higher apprenticeships. The College is focusing on the delivery of apprenticeships in areas where there is a shortage of higher level skills; business and finance, digital and health care science, in accordance with government and local WMCA priorities. Engaging with employers to discuss delivery of training via these models may lead to companies also requesting bespoke training. The staff are relocating to our Skills Shop in the Cornbow Centre Halesowen to continue to forge the community ethos and promote the work of the College and how it can educate and train young people and adults. Through skills development the conditions can be created for enterprise to flourish resulting in greater prosperity for the area. Training will increase the skill level of the local workforce and Halesowen College aims to provide courses to match the needs of the sector in priority areas.

Halesowen College Enterprises actively advertises room hire through the website and targeted marketing in the community. Much income is through repeat business as customers have high levels of satisfaction. There are stringent controls in place for room hire to ensure that the College's responsibilities for safeguarding, including Prevent anti-radicalisation, are not compromised. Room hire is again part of the College's engagement with local groups in order to develop as the cornerstone of the community.

The company generates income from sales of hair and beauty products and dog grooming products.

The Company operates The Nursery@ B63 which offers childcare from 0 to 5 years. Whilst this is an excellent on site facility for students for whom childcare may otherwise be a barrier to learning, it is also utilised by staff and members of the public. The nursery is regulated by Ofsted and is

currently ungraded and awaiting inspection. The nursery transferred from College to Company ownership and changed its name in 2021. Hence it can no longer promote the previous Ofsted “good”. Again, the nursery offers Early Years Education students the opportunity for work placement.

Halesowen College Enterprises encompasses any other business activities which the College may undertake from time to time within the constraints of agency and statutory guidelines. The College reviews regularly that its activities are in the public benefit and meet the conditions of grant funding. Activities outside of this scope but central to the College’s strategic plan may be operated by Halesowen College Enterprises Limited.

Constitution of the Board

Halesowen College Enterprises has a Board of Directors comprising a chair who is the Chief Operating Officer of the College plus three executive directors: Principal and Chief Executive and HR Business Partner (who is also Company Secretary) of the College alongside two non-executive directors.

The Board currently comprises:

- Jacquie Carman (Chair)
- Andrew Hanson (non-executive director)
- Ian Jewkes (non-executive director)
- Andy Dobson (executive director)
- Lynn Pass (executive director)
- Rachael Charles (company secretary)

College employees would automatically resign from the Board if they resigned from their post at Halesowen College.

The HCE Board make recommendations on appointments to the Corporation who endorse all appointments. The Corporation will consider such appointments on the grounds of principal activities of the company and best interest of the College as sole shareholder. The Corporation may delegate this to the Search Committee and would not withhold consent unless there was a major conflict of interest/impairment to the operation of the Company.

The Board must comprise at least one College governor. No member of the College Audit Committee shall be a member of the HCE Board. In accordance with the Articles of Association the directors may recommend for appointment a person who is willing to act to be a director either to fill a vacancy or as an additional director. There is no maximum number of directors specified.

Company Directors have no automatic right to remuneration from the Company. Each year the directors must consider if a dividend is payable. To date no dividends have been paid.

The College requires that the Board meets regularly (usually termly) and monthly financial information be produced and distributed to Company Directors (details on the frequency and content of financial information is stated in this Memorandum of Understanding).

The Company should have an appropriately qualified Company Secretary who may also be a director.

The Role of Company Directors

The College requires that directors fulfil their responsibilities as defined in law. The Companies Act 2006 defines the responsibilities of Company Directors.

Directors are legally responsible for running the company and have a responsibility to Companies House which includes ensuring information is lodged in a timely manner

Directors are in a fiduciary position and must act bona fide in the interests of the Company. The Directors who are in office on the date of approval of the financial statements have to confirm, as far as they are aware, that there is no relevant audit information of which the auditors are unaware. Each of the Directors must confirm that they have taken all the steps that they ought to have taken as Directors in order to make themselves aware of any relevant audit information and to establish that it has been communicated to the auditor.

The College requires that all Directors make a written statutory declaration of interests annually which includes disclosure regarding Directors' emoluments, share options, long term incentive schemes and loans and disclosable guarantees. The rules governing Directors' duties have been codified in the Companies Act 2006. The Act also introduces a new statutory right for shareholders to exercise derivative action against the Directors. Previously Directors were subject to a variety of duties embodied in common law rules and equitable principles. The Act now provides a statutory statement of Directors' duties in the form of a checklist. General duties covered by a director of HCE are as follows:

- to act within one's own powers and in accordance with the company's constitution
- to promote the success of the Company
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in proposed transactions or arrangements

This is to ensure responsible business practice and transparency in the manner in which a business is run.

Company Directors have a responsibility to monitor the activities of the Company and take any necessary action to ensure that the Company fulfils its business objectives. Whilst exercising the duty to promote the success of the Company, Directors must, under the *Statutory Statement of Directors' Duties* set out in the Companies Act 2006, act in good faith and in a manner which he/she considers will be most likely to promote the success of the Company. Directors should consider:

- the wider impact of Company actions upon the interests of employees/staff engaged in Company activities and long term consequences of decisions.
- the need to build and preserve business relationships with suppliers, customers and others.
- the impact of actions upon the local community and the environment.
- the desirability of maintaining a reputation for high standards of business conduct.
- the need to act fairly between members.

The directors must ensure that there is compliance with the approved Anti-Bribery Policy.

Company Directors must consider the annual budget and business plan and approve the Annual Accounts and Directors Report.

Within the parameters of the approved budget directors must approve any major developments or capital projects.

Appoint auditors to review the financial statements and determine their remuneration (external auditors should usually be those used by Halesowen College).

There should be no issue of shares without the express permission of the Corporation. Similarly, the Corporation must endorse the payment of any dividends.

The Role of the Company Secretary

The College requires that the Company Secretary fulfil his/her responsibilities as defined in law. The Companies Act 2006 removes the legal obligation for the Company to have a Secretary. However, Halesowen College Enterprises will retain the role of Company Secretary.

A Director may act as the Secretary to the Company however a sole Director may not act as a Secretary.

The Secretary is the chief administrative officer and as such has authority to act on behalf of the Company.

The Secretary shall maintain all of the statutory registers as specified by the Companies Act. This includes a register of members, register of charges, minutes, accounting records, register of Directors and secretaries, and register of interests. Directors have a responsibility to prepare and deliver documents on behalf of the company to Companies House as and when required by the Companies Act. These include, in particular

- the confirmation statement
- the annual accounts
- notification of any change in the company's officers or in their personal details
- notification of a change to the company's registered office
- allotment of shares
- registration of charges
- Any change to people with significant control (PSC)

The legislation does not set out the role of the company secretary. However, the College requires that the company secretary undertake the following:

- maintaining the statutory registers including the Register of People with Significant Control
- ensuring that the company files statutory information promptly
- providing members and directors with notice of meetings
- providing members with proposed written resolutions and auditors with any resolution it has passed.
- delivering copies of resolutions and agreements to Companies House
- supplying a copy of the accounts to every member of the company and every person who is entitled to receive notice of general meetings
- keeping, or arranging for the keeping of copies of all members' resolutions (passed other than at general meetings), and minutes of all proceedings and general meetings
- ensuring that people entitled to do so can inspect company records
- be a co-signator for execution of a document by a company
- authenticating forms for submission to Companies House (note; the company secretary cannot authenticate the company's annual accounts)

The Secretary is responsible for attending all meetings and for the taking of minutes. He/she shall make all returns to the Registrar and conduct all correspondence with the shareholder regards transfers and forfeiture. The Secretary must ensure that all registers are correctly maintained and that they are kept at a specified location.

Issue under the direction of the Board all necessary notices to members and other.

The Company Secretary is responsible for filing the annual accounts with Companies House no later than nine months after the year end.

Arrangements for Board Meetings

- Meetings of the Directors of Halesowen College Enterprises Limited are usually held each term. All Directors are invited to every meeting.
- All meetings are minuted and a permanent copy of the minutes is signed by the Chair to confirm that they are a true record.
- Directors are asked to declare any interests at the start of every meeting.
- Although the Companies Act 2006 removes the requirement for private companies to hold an Annual General Meeting, the Company may hold an Annual General Meeting within nine months of the year end.
- All meetings must have a quorum of three Directors (one of which should be a non-executive director).
- Members may be informed of meetings and receive minutes by hard copy or electronic methods.

Procurement

The Company is required to adopt ethical procurement practices and subscribe to the College's approved policy on anti-modern day slavery.

Equality and Diversity

The Corporation is committed to the promotion of equality and diversity and the pursuance of non-discriminatory policies and practices. An ethos exists where all individuals are treated fairly and valued irrespective of any protected characteristic defined in the Equality Act 2010. HCE should adhere to the Equality and Diversity Policy of Halesowen College.

Borrowing

At present the Company has no external borrowing and there is no authorisation in place to enter into any external borrowing arrangements in the future. The Company must have a written resolution from the Corporation of Halesowen College to install any borrowing powers.

Type and Frequency of Financial Information

The Corporation requires that regular financial information is produced. Each month management accounts are prepared for the company and include:

- summary income and expenditure account
- balance sheet
- trading accounts

- Each month details of the trading activities are presented and discussed with the Company Managers.
- Annual Accounts and Directors Report are formally reported to the Company Directors, Audit Committee and Corporation. These are formally adopted at the Annual General Meeting.

E-Communication and Execution of Documents

- Halesowen College Enterprises will comply with relevant legislation regarding the e-communication.
- Members are allowed to request meetings and appoint proxies via email.
- The Company will execute documents in accordance with the Company's Act 2006.

Annual Accounting Arrangements

In accordance with the Companies Act a Directors Report and annual financial statements must be prepared at the close of each financial year. The accounting date of the Company is 31 July.

The accounts must be prepared under the UK GAAP. The Company has adopted international accounting standards under FRS102.

The Company is required to report its financial performance to the Corporation by 31 December each year.

Accounts are subject to External Audit and are filed in accordance with the timescales outlined in the Companies Act at Companies House i.e. within nine months from the end of the financial period. Accounts are prepared in accordance with the accruals concept and adhere to all relevant standard statements of accounting practice, financial reporting standards and the requirements of the Companies Act. The final position as at the accounting date of Halesowen College Enterprises is incorporated into the set of consolidated accounts for Corporation as a whole.

The consolidated accounts are again subject to external audit and are filed with the Education & Skills Funding Agency in accordance with predetermined timescales.

Relationship with Halesowen College

The Company must recoup all of its costs and at least break-even year on year to ensure that no public funds are used to support the commercial operations of the Company. There is a business plan for the Company, which outlines the forecast, financial performance and cash flow. This plan is revised at least annually.

Profits of the Company may be transferred to Halesowen College by means of a deed of covenant. The profits of the Company are subject to taxation although this is not payable provided that the profits are covenant to the College under the terms of Gift Aid. Profits are therefore paid to the College gross. Under the provisions of accounting standards, the Gift Aid is accounted for in the year the funds were generated not the year it is paid across, subject to the approval of Company Directors and the Corporation.

The Company employ staff whose duties relate directly to the activities of the Company Halesowen Collee employs staff who as part of their role support Company activities. Their costs are proportionately recharged in full i.e. their salary plus employer's costs for National Insurance and Superannuation. Costs of staff who work for both College and Company functions are apportioned on an individual basis. When such staff are on long term sick, maternity or paternity leave costs are not charged. However, the costs of any replacement staff are charged in full. Should the Company

employ staff that are engaged in the activities of Halesowen College then the Company would make a full charge for these costs.

The Company purchases its own materials and equipment but should the Company trade with the College or vice versa then the costs are recorded and invoices raised in accordance with the procedures outlined in Financial Regulations.

The Company is invoiced monthly in arrears by the College in accordance with the recharge methodology for staffing and other charges. These invoices are subject to the normal College credit terms and the cash flow of the Company.

The Company is governed by its own set of financial regulations contained in its Finance Policy and Standing Orders Relating to Contracts, which are broadly similar to those of the College.

The Company owns no assets of property.

The College charges the Company for running costs covering utilities, business rates and management and administrative costs. Should the College invest in equipment/premises solely on behalf of HCE Ltd then the capital outlay must be repaid via the recharge methodology over a period not exceeding the useful life of the assets. For refurbishment projects this will be between 10 & 50 years and for standalone equipment six years. This charge is applied in accordance with the recharge methodology. Such charges will be paid annually to Halesowen College.

The Directors of the Company formally agree the annual recharge methodology.

Any commitments entered into by the Company, which span a period of greater than one year, must have the prior agreement of the Directors.

The Company must not embark upon projects, which represent a major liability without the prior consent of the Corporation. Should the College invest in facilities solely for HCE Ltd commercial purposes then payback patterns must be forecast, documented and incorporated into the recharge methodology as appropriate.

Audit of Activities

The Company is subject to assurance checks relating to its activities as defined in the assurance audit plan of Halesowen College.

The Company is also subject to an annual external audit, which will focus upon its Financial Statements and Directors Report.

Halesowen College Enterprises Ltd shall usually utilise the same external audit services as Halesowen College and appoint auditors annually at the General Meeting.

The external audit letter of engagement is presented annually to the directors for information.

Whenever an auditor leaves office they must deposit a statement outlining the circumstances for their departure. Should the auditor leave before the end of their tenure then Halesowen College Enterprises Ltd must file the notice to the Professional Oversight Board.

Risk Management

The Company must comply with the approved risk management policy and evaluates key risks as part of the business planning process. All risks are scored in terms of likelihood and impact with a risk appetite established.

Future Developments

The college will continue to review its activities to ensure that they meet the public benefit definition and are allowable under the conditions of grant funding. There may be need for the company to facilitate some of these activities following review.

Reviewed/Approved	By	Date
Updated by	Jacquie Carman	06.06.2022
Considered by	CLT	13.06.2022
Approved at	Finance and Resources Committee	21.06.2022
Approved at	HCE Board meeting	30.06.2022
Website	Yes / No	No
Next Review Date		01.06.2023