

## **Terms of Reference for Independent Investigation**

### **Background**

1. A number of allegations have been made about the Arts Educational Schools London Ltd (**ArtsEd**) which include allegations of bullying and favouritism and which make particular reference to the Principal.
2. Given the nature of the allegations, the number of complaints received to date and the public attention the matter is now receiving, the Board has determined that an independent investigation into the allegations received be undertaken by a barrister of at least 10 years' call and with extensive experience of employment law issues; this should take place as soon as possible.

### **Purpose of Investigation**

3. The Board has appointed you to independently investigate the allegations.
4. These instructions for investigation come from Fieldfisher on behalf of ArtsEd; it is not intended that they will be privileged from disclosure to anyone who is the ultimate subject of this investigation (provided that they are treated confidentially, except as required by law). Your report, and any notes, minutes, records, and communications generated during it, will be generated on the same basis.
5. The purpose of your investigation is to enable the Board to understand the basis of the allegations and the nature and extent of any alleged misconduct by the Principal (or others) during their employment at ArtsEd.
6. You will note that certain allegations have been made regarding the Principal's previous employment. It will be a matter for you to determine whether investigating those allegations will assist you in determining the nature and extent of any misconduct at ArtsEd on the basis that they might be said to show a pattern of behaviour or for some other reason.
7. The content of the report you produce following your investigation will inform the Board's approach to whether any disciplinary action may need to be taken against the Principal (and/or others) as well as any remedial actions and safeguards which may need to be implemented going forward.
8. You may be asked to attend any ensuing disciplinary hearing(s) to provide evidence of your investigation to any disciplinary manager or panel.

### **Scope of Investigation**

9. Once you have formulated and particularised the allegations which will form the basis of your investigation (process set out below), your investigation report should focus on the following key questions:
  - (a) Is there sufficient evidence to substantiate each allegation on the balance of probabilities and taking into account the relative seriousness of each allegation?
  - (b) If any allegation is substantiated against the Principal (and/or another member of ArtsEd staff), do you consider there is a disciplinary case for them to answer?
  - (c) If any allegation is substantiated against the Principal (and/or another member of ArtsEd staff), do you consider this demonstrates areas for operational or reporting improvements in respect of ArtsEd?

10. The focus of your investigation should be on ensuring that a thorough, fair and impartial investigation is undertaken into the allegations which form part of your investigation.

## **Investigation Procedure**

### ***Step 1 – Review documentation and evidence***

11. As a starting point, you are requested to review:
  - (a) all relevant documents provided to you; and
  - (b) all email correspondence and associated evidence which you receive via the email account enquiries@independent-investigation.com (**Investigation Inbox**) to which you have sole access.
12. Depending on the information set out in the relevant documents and Investigation Inbox, it may be necessary for you to conduct initial interviews with individuals to gather further information and determine whether the allegations are relevant and sufficiently particularised to form part of your investigation.
13. A nominal deadline of **22 January 2024** shall be set for the receipt of information or allegations via the Investigation Inbox to enable you to commence Step 2 of the Investigation Procedure. If you receive information after this deadline which falls within the scope of your investigation and is pertinent to the allegations you are investigating, you will have discretion to take this information into account as you consider appropriate.

### ***Step 2 – Formulate and particularise allegations***

14. Once you have reviewed the documentation and evidence, you are requested to formulate and particularise the specific allegations which you consider should form the subject of your investigation.

### ***Step 3 – Investigation and preparation of report***

15. You will be required to undertake interviews with the relevant witnesses for the purposes of your investigation.
16. Following your interviews and any follow up investigations, you are tasked with producing a full written Report for the Board setting out:
  - (a) the allegations which formed part of your investigation and your findings in respect of each;
  - (b) your recommendation as to whether there is a disciplinary case to answer for the Principal (or others) if there are allegations against them which, in your opinion, have been substantiated; and
  - (c) your recommendations for any operational or reporting improvements in respect of ArtsEd, in response to any allegations which, in your opinion, have been substantiated.
17. The Board would also be interested in your opinion, should you feel able to give one, on the question of the Principal also holding the office of Trustee and whether this has or could create any conflicts or difficulties.

18. You are directed to apply the legal principle of "Maxwellisation" to your investigation process whereby anyone who may be criticised in your Report will, where reasonably possible, have the opportunity to respond to any criticism prior to your Report being finalised.
19. You are asked to draft a Public Statement – being a summary of the conclusions from your Report capable of being published without contravening data protection law. The Board would envisage seeing a draft of the Public Statement before it is finalised with an opportunity to comment on the draft before you produce the final version.
20. The Board would like you to be able to say in the Report and Public Statement that:
  - (a) you received full cooperation from the Board;
  - (b) the Report is yours and yours alone; and
  - (c) you are entirely independent of the Board/ArtsEd,and these principles should therefore be embedded in your investigation and your interactions with your points of contact so that those statements can be freely made.

### **Timelines**

21. It is anticipated that Step 1 and Step 2 of the Investigation Procedure will be completed by **Friday 2 February 2024**.
22. It is anticipated that Step 3 of the Investigation Procedure will be completed by **Thursday 29 February 2024**. The Board would like to issue any recommendations and public statements by **Friday 29 March 2024**.
23. You are requested to keep your points of contact apprised of your progress during the course of the investigation and any anticipated delays.

### **Confidentiality**

24. We understand that witnesses may wish to share information with you anonymously. We request the following in this regard:
  - (a) Any relevant individual who contacts you and wishes to remain anonymous should have their wishes respected and their accounts listened to and considered. However, you may use your discretion to determine whether their specific evidence should be accepted and form part of your investigations or conclusions if provided anonymously.
  - (b) If you choose to rely on information provided to you anonymously then identifying information will be redacted in the Public Statement. However, the individual should be advised that this may limit ArtsEd's ability to take any further action in respect of their complaint.
  - (c) Anyone who contacts you with accounts that you decide to consider as part of your investigation and whose identity is revealed to the Principal for the purpose of your investigation can be assured that they will not be named in the Public Statement. They can also be assured that ArtsEd has informed you that it will do everything it reasonably can to ensure that they suffer no detriment for having come forward.

## **Documents**

25. ArtsEd will provide you with access to all relevant documentation in its possession. You may wish to seek documentation from witnesses or individuals that contact you directly or otherwise.
26. You may request further documentation (including, for example, employment documentation relating to witnesses) as the investigation progresses.

## **Data Protection**

27. You will be responsible for complying with the requirements of the United Kingdom General Data Protection Regulation and the Data Protection Act 2018 as they apply to the information you will receive and share as part of your investigation.

## **Points of Contact**

28. Your points of contact for the purposes of your investigation will be the following individuals:
  - (a) Stephen Denyer, Trustee of ArtsEd
  - (b) Ben Gudgeon, Trustee of ArtsEd
  - (c) Anthony Campbell, Head of HR at ArtsEd
  - (d) Richard Kenyon, Partner at Fieldfisher LLP
  - (e) Mini Chandramouli, Senior Associate at Fieldfisher LLP
29. The role of the ArtsEd representatives is to provide input and guidance on substantive matters as may be relevant on behalf of the Board and as requested by the investigator and to brief the Board on logistical progress.
30. The role of the Fieldfisher representatives is to ensure you have the facilities and assistance necessary to conduct the investigation and to engage and advise ArtsEd throughout this process.
31. In the event that it becomes apparent during the course of your investigation that the Trustees acting as your point of contact on behalf of ArtsEd places them or may place them in a position of conflict, an alternative point of contact will be nominated. Please notify Richard Kenyon as soon as the conflict or potential conflict comes to your attention.

**Fieldfisher LLP for and on behalf of ArtsEd**

8 January 2024