

Minutes of the Special Corporation Meeting Held virtually at 4pm on 26 January 2021

Present: Prue Amner, Claire Attika (staff governor), Stephen Burke, Max Craft, Ashley Cullen, Phoenix Dewhurst, Robin Dickens, Tim Jackson, Tim Mason, Rob Nitsch, Mark Pembleton, Paul Quigley and Penny Wycherley (Interim Principal).

Apologies: Lily Camacho (student governor), Vanessa Cooter (staff governor) & Lena Itangata.

In Attendance: Denise Cheng-Carter Interim Chief Finance Officer
 Paola Schweitzer Clerk to the Corporation
 Nicola Tomlinson Project Manager (minutes 3073 & 3074)

M i n u t e s

1 – Standing Items

3071 Attendance and Participation

Governors noted the election of Lily Camacho as Student Union President and Phoenix Dewhurst as student governor. Lily, Vanessa and Lena sent their apologies.

3072 Declarations of Interest

There were no declarations of interest.

3073 Chair's Report including Chair's Action

Paul provided an overview of the first Shadow Board (SB) meeting on 18 January 2021 and drew attention to the *Major Appointments* paper considered by the SB. The SB had unanimously agreed that Penny be appointed Chief Executive Officer (CEO) designate of the merged college and then, from 01 August 2021, CEO (and Accounting Officer) of the merged college until 31 December 2022. She would remain interim principal at Highbury College until the merged college came into being. The SB had also unanimously agreed that Simon Barrable be principal designate of the merged college and then, from 01 August 2021, principal of the merged college. Following the SB meeting and after seeking agreement from each independent governor, Paul had agreed on behalf of Corporation by Chair's Action that Penny be CEO designate and then CEO of the merged college in line with the SB agreement.

Paul updated governors on developments following the SB meeting, noting that the level of activity had stepped up considerably. Key issues were:

- Both colleges had signed the Non-Disclosure Agreement and Heads of Terms.
- Nicola Tomlinson had been appointed Project Manager to the merger. Nicola had extensive experience of managing mergers in the FE sector.
- Work was underway, led by Denise and with FEC support, on a budget and financial forecast for the merger and the merged college. Denise was already working closely with Portsmouth College and to ensure continuity, governors were asked to consider releasing her on a part-time basis to undertake the role of CFO for the merger.

Governors noted that the SB had no legal status and that as the surviving legal entity, at present only Highbury College could make legally binding decisions beyond the merger date of 30 July 2021. Paul clarified FEC's expectation that Simon could take up the role of CEO once Penny's fixed term contract ended on 31 December 2022, but that this appointment would be a decision for the board of the merged college. Penny stated that Simon was fully aware of the nature of his appointment as principal, reporting to the CEO but, as a senior postholder ultimately reporting to the board of the merged college. Tim J noted that the key responsibility was that of Chief Accounting Officer, which sat with the CEO role.

An early draft of the financial forecast (including a proposal for funding) had been sent to FEC and would be shared with governors shortly. Denise confirmed that the draft budget included a small contingency. Nicola would work closely with Denise to work up monthly budgets, to include spend to date and anticipated spend, as part of her plan and progress review standing item at the SB and that these would be considered by each board.

Paul recognised the importance of keeping governors closely informed and to this end would provide a monthly email update (more frequent if necessary). SB papers, minutes and other relevant documentation would also be made available by email and/or the SB data room. Given the next Corporation meeting was 16 March 2021, it was possible decisions would need to be made by Written Resolution.

Mark noted the importance of members making decisions in a timely fashion and noted this could be a challenge in a fast-moving situation. Penny expressed concern about seeking Corporation approval at every step given the negative impact this could have on the very short time frame for the merger. Paul stated that his monthly update to governors would indicate variations to the budget and, if necessary, he would ensure there was the opportunity for discussion. Max agreed, stating that Corporation should approve a broad brush approach, with exceptions referred to it as necessary thereby enabling decisions to be made quickly without being 'bureaucratically' swamped.

Rob expressed concern about the tight timescales for the merger and asked what the triggers were. Penny believed the timescale was tight but doable. Actions had

been prioritised, with less critical ones scheduled for decision after the merger for example the management structure (a transitional management structure would be in place to ensure the smooth start to the new academic year). Nicola agreed that it was doable, noting that the consultation and due diligence processes would take place concurrently. She would work closely with the due diligence organisations to ensure the timescale was adhered to. Penny, Simon and Nicola would monitor progress against the timeline weekly and report any slippage to the SB and boards.

Nicola stated that from a legal perspective only Portsmouth College, as the dissolving organisation, needed to undertake a public consultation but as this was a merger of equals it would be undertaken jointly. The consultation would seek views on the vision, purpose and benefits of a merged organisation, its proposed name as well as the statutory notice and a high-level timeline. Work was already underway. The consultation had to be published four months before the proposed merger and had to run for one month. Nicola would collate consultation responses for consideration by the SB and boards. Penny confirmed that the Secretary of State had approved the merger and FEC would shortly confirm this in writing.

Governors **Noted** progress to date, including decisions made by the SB and **Agreed**:

- Penny be appointed CEO designate to lead the merger (and continue as interim principal at Highbury College) and from 01 August 2021 to 31 December 2022 be CEO of the merged college;
- Simon Barrable be appointed principal designate of the merged college (and continue as principal at Portsmouth College) and from 01 August 2021 be principal of the merged college;
- That Denise be released part-time from her role at the College to be CFO for the merged college (with Portsmouth College billed accordingly).

3074 Due Diligence (paper 2779/21/C)

Nicola presented arrangements for the due diligence processes to be undertaken in preparation for the merger. Due diligence was required by good governance as much as financial and general prudence and sought to ascertain a complete picture of the partner's fitness as a potential partner, identifying areas of concern and risk. There were two main aspects of due diligence: financial and legal. Financial due diligence included evaluating the current organisational position (historic) and reviewing the financial projects and underpinning assumptions of the merged entity (forward). The ESFA placed particular importance on the latter as it provided a level of comfort that the plan was robust.

Both colleges believed there were advantages of undertaking joint financial due diligence, including reduced costs. A full tender process was proposed and the report included a tender specification and list of organisations to be invited to tender. Colleges would carry out their own legal due diligence. The report included a tender specification for Highbury College's legal due diligence and organisations to be invited to tender. Portsmouth College had already appointed Bates Wells.

Costs were approximately £40k for legal diligence and £70k for financial due diligence excluding VAT and expenses. The outcomes of the processes would be reported to the individual boards and the SB. Denise noted that financial due diligence costs had been included in the College's request for pre-merger financial support.

Governors **Noted** the report and **Agreed**:

- The companies to approach for financial due diligence
- The companies to approach for legal due diligence
- The process to be undertaken to appoint a company including the panel members
- The due diligence specification.

Nicola left the meeting.

3075 Balanced Scorecard

Penny presented paper 2773/21/C setting out the latest balanced scorecard. The scorecard identified monthly performance in the following areas: funding, cash days in hand, expenditure, attendance, achievement rates, retention and staffing. The College was underperforming in 16-18 apprenticeships, HE tuition fees, full cost courses and other income. Attendance was down by 1.6% for learners aged 16-18 and in maths and English (16-18 and 19+) which was not unexpected. There had been a significant drop in staff turnover and short-term absence had also decreased.

Penny stated that she had taken the decision to temporarily close the nursery this week due to a number of positive tests for Covid-19 and asked that governors agree to implement the furlough scheme within the same parameters as previously agreed. Governors **Noted** the balanced scorecard and **Agreed** to continue the furlough scheme uplift.

3076 Staff Pay Rise

Denise presented paper 2774/21/C recommending a pay rise for staff from 01 February 2021.

In accordance with Corporation's decision on 07 July 2020, an honorarium payment of £300 had been made to full-time staff (pro-rata for part time and sessional staff) who were employed on 01 December 2019 and still in post on 31 July 2020, subject to the College receiving dividends from its Saudi joint venture. This payment was made on 30 September 2020. Corporation had been minded to consider a consolidated pay award subject to 16-19 student recruitment in 2020/21 and affordability at the end of January 2021. Although it was hoped there would be exceptional funding for additional learners, this was uncertain and unlikely to be decided until the end of the year. 16-19 student recruitment was in line with the College's forecast and management accounts indicated that pay expenditure was

below forecast. The total cost of the proposed pay award was approximately £60k and had been included in the year end re-forecast. Staff had last had a pay increase in 2014 (0.7%).

Rob asked how this pay rise would position College staff in terms of the merged college, to which Denise responded it would position staff well. Portsmouth College were likely to award a 2.5% pay increase in line with national negotiations (the 6th Form College sector operated to different pay and conditions). Denise noted that consolidating two separate pay and conditions frameworks into a single framework was probably one of the largest pieces of work to be undertaken in the merger and that work was already underway, supported by an external consultant. It would take time and would not be completed by the merger date. Substantial costs had been included in the budget to accommodate this work. Governors **Agreed** to award a 1% pay award pro rata to staff with effect from 01 February 2021.

3077 Covid Testing

Penny presented paper 2777/21/C setting out that the College participate in a Covid-19 saliva testing programme being run on a pilot basis by Southampton University Hospital. This required the sharing of information about individuals.

Saliva testing offered a quick, reliable and easy form of testing for Covid-19 to enable organisations to take steps to minimise spread of the virus. Weekly tests would be provided to staff and students, with individuals and the College informed of the results. Participation in the programme was free and all Portsmouth schools were taking part. The programme would start in the College after half term. The programme required the sharing of data and Corporation approval was therefore required. The 2002 Education Act provided the lawful basis for participation in the programme and the DfE Data Protection Officer and the Information Commissioner's Office had sanctioned the programme for use in schools and colleges. Penny confirmed the programme was different to and less invasive than the existing lateral flow testing used within the College.

Governors **Noted** the DfE Data Protection Officer and Information Commissioner's Office had sanctioned Southampton University Hospital's Covid-19 saliva testing programme for use in schools and colleges and **Agreed** the College's participation on the basis that:

- The sharing of personal data was necessary to allow students and staff members to take part in a testing scheme at the college,
- In making such arrangements the governing body was discharging its functions in a way that safeguarded and promoted the welfare of the pupils and in particular would benefit the more vulnerable pupils.

3078 Audit Committee's Annual Report to Corporation (paper 2775/21/C) EXTRACT

Mark (Chair of Audit Committee) presented the Audit Committee's Annual Report to Corporation noting that the report had been agreed by the Committee at its meeting on 25 November 2020. Corporation was required to consider this report prior to the statement of corporate governance and internal control in the financial statements being signed.

The report summarised the Committee's activities from 01 August 2019 to 31 July 2020 and included a view of its own effectiveness and how it has fulfilled its Terms of Reference and its opinion on the adequacy and effectiveness of the College's audit arrangements, its framework of governance, risk management and control and its processes for securing economy, efficiency and effectiveness. The report concluded that, based on the Committee's work and reports received over the year, Corporation's assurance arrangements, framework of governance, risk management and control procedures for the effective and efficient use of resources, solvency and the safeguarding of assets were adequate and effective.

Denise noted that the College's relationship with the internal and external auditors had improved considerably. The 2019/20 audit had been challenging but the College had come through with an audit opinion. She noted the importance of audit offering value for money and an opportunity to improve systems and processes, as opposed to being a tick box exercise. Paola confirmed that in a recent conversation, the internal auditors welcomed the increased transparency and improved relationship with the College. Denise confirmed that some of the issues would come out in the historic element of the financial due diligence process. The internal audit reports had already been shared with Portsmouth College. Governors expressed satisfaction with the significant improvements made within the College, particularly given the number of high-level actions previously identified. They congratulated Penny, Denise and her team (and her predecessor John) and all staff on their hard work in effecting this change. Claire echoed the fact that the College had changed in the last year, stating that staff welcomed the open communication and increased transparency and as a result were working more effectively as a team and feeling much more optimistic. Governors **Noted** the Audit Committee's Annual Report to Corporation.

Tim J noted that Lena had sent her apologies to today's meeting and that she would be unable to attend any meetings until May 2021 and asked if this was an issue for Audit Committee/the Board. Paola stated that she had raised the issue with Paul and Penny and the possibility of paying a qualified accountant (a former CFO) to attend the two remaining Audit Committee meetings in 2020/21 was being explored.

3079 Financial Statements 2019/20

Paul presented paper 2776/21/C setting out the financial statements 2019/20. He drew governors' attention to the Joint Audit Committee and Finance & Estates

Committee meeting minutes from 12 January 2021 at which the financial statements had been discussed and subsequently recommended to Corporation for approval.

The external auditors concluded that, in their opinion, the *'financial statements gave a true and fair view of the state of the Group's and College's affairs as at 31 July 2020 and of the Group's and College's deficit of expenditure over income for the year then ended; and had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice.'* The statements highlighted a number of areas:

Going Concern: In approving the financial statements, the Governing Body confirmed the going concern status of the College, meaning that it was assured that the College would continue in operational existence for the foreseeable future, and that there was no intention, or requirement to cease its operations. **Regularity Findings:** The Financial Statements Auditors had not identified any material findings from their work and as a result, they would issue an unqualified regularity opinion within the financial statements. **Reconciliation:** There were a number of reconciliations between the financial statements and management accounts to 31 July 2020. **Financial Performance:**

- The College Group made a deficit of £23k (2018/19: surplus £1,590k) net of FRS102 pension benefits adjustments. The deficit for the College is £1,841k (2018/19 surplus: £1,219k). The prior year's surplus was mainly due to the release of capital grants in relation to an asset disposal.
- Cash balances at the year-end increased to £1,549k (2018/19: £724k).
- The balance sheet shows net current liabilities of £4,580k (2018/19: £4,759k).
- The net pensions liability of the Local Government Pension Scheme had increased to £25,519k (2018/19: £17,140k).

Since the 12 January 2021 meeting at which the audit findings had been presented, Mazars had completed their work and no further significant changes were required. Denise outlined a number of minor changes which had been circulated prior to the meeting. Paul noted that the disclosure concerning the remuneration of the CEOs whilst legally permitted, could elicit questions. He therefore requested that in the event governors were asked questions, they be referred directly to the College for comment. Denise stated that the audit fees would be split over two years to reflect the historic nature of the issues raised, meaning this year's cost would be £45k. Tim J welcomed this, noting from the Joint Audit and Finance & Estates minutes that this was within the range of what could normally be expected.

Denise shared three letters for signature by the Chair on behalf of Corporation, with regards to the going concern of the College's three subsidiary companies. The College had only recently been notified by Mazars of this new requirement. Mazars had drawn up a template letter which was shared with governors. Governors **Agreed** the 2019/20 financial statements and three letters concerning the College's subsidiary companies. Governors thanked Denise and her team, noting that Mazars had been incredibly thorough in their audit and that it had taken a great deal of time and effort to put things right. Whilst it had been challenging, it was satisfying to get

a clean bill of health and they believed it put the College in a good position with the merger.

3080 Meeting without Staff & Students present

No issues concerning the meeting were raised. Paul informed governors that the FEC report from their last visit had been received and that there would be a follow up meeting shortly. He didn't anticipate any significant actions. Tim J welcomed Paul's commitment to keep governors informed of the merger and wondered if it might be possible for a regular informal, virtual gathering where governors could discuss the latest developments. They would not be decision-making meetings but could provide an opportunity to benefit from technology without overburdening Penny. Rob suggested these meetings could involve Portsmouth College governors.

The meeting ended 6pm.