

Minutes of the Special Corporation Meeting

Held at 4pm on 20 July 2021

Present: Prue Amner, Claire Attika (staff governor), Lily Camacho (student), Vanessa Cooter (staff governor), Max Craft, Ashley Cullen, Tim Jackson (via video link), Tim Mason, Paul Quigley and Penny Wycherley (CEO designate).

Apologies: Mark Cooper, Phoenix Dewhurst (student), Robin Dickens, Adele Hodgson, Rob Nitsch & Mark Pembleton

In Attendance: Paola Schweitzer Clerk to the Corporation
Nicola Tomlinson Merger project manager

Minutes

1 – Standing Items

3143 Attendance and Participation

Paul welcomed everyone to the first face to face meeting since 16 March 2020, in particular Lily and Nicola. Mark Cooper, Phoenix Dewhurst (student), Robin Dickens, Adele Hodgson, Rob Nitsch & Mark Pembleton sent their apologies.

3144 Declarations of Interest

With the exception of Paola's interest in the clerking item (minute 3153), there were no declarations of interest.

3145 Chair's Report including Chair's Action

Paul noted that since his Chair's Report No. 16 circulated on 14 July 2021, there had been some developments: the Shadow Board had met the previous day (updates would be reported as appropriate during the meeting) and the Chief Finance Officer recruitment process had successfully concluded (a paper, circulated earlier in the day, would be considered later at the meeting). In response to Paul's question, governors confirmed that they found the format of the Chair's Report helpful and user friendly, particularly retaining all updates with the most recent in bold.

Paul had authorised, using a Chair's Action, expenditure of £25 for a bunch of flowers for Helen Brennan who had recently retired. He thanked Penny for organising the recent staff party, which he and Tim M had attended.

3146 Merger Overview & Update

Paola presented paper 2878/21/C providing an overview and update on the merger, in particular a summary of Corporation's responsibilities and powers including its principal powers and duties under charity law as well as key decisions and milestones during the merger process with Portsmouth College. The Shadow Board Progress Update Report and Merger Risk Register were appended to the paper.

Corporation's core functions included setting the college's educational character, strategy and goals, holding executive leaders to account for the college's educational performance and quality and for the performance of staff and exercising effective control to ensure funds and assets are protected and legal obligations met. Under charity law, governors were expected, amongst other things, to ensure Corporation carried out its purpose for the public benefit, act in Corporation's best interests, manage Corporation's resources responsibly and act with reasonable care and skill. Key decisions and milestones in the merger process included the creation of a Shadow Board, the appointment of senior leaders including the CEO (designate), financial and legal due diligence exercise and public consultation.

Nicola gave a brief overview of the Progress Update Report considered by the Shadow Board the previous day, noting that the merger was on track for 01 August 2021. She drew governors' attention to a number of key points:

- The merger documentation, including the pensions deed, had been finalised and would be considered later at the meeting
- Staff had voted for the names of the college campuses: Highbury Campus, Tangier Road, Northarbour Training Centre and Arundel Centre.
- Some workstreams had finished as they had progressed as far as possible and further work would now be within the merged college. Workstreams such as MIS, marketing and HR continued.
- TUPE consultations were continuing and, subject to agreement on the merger being reached by both boards, staff would shortly receive a letter confirming their transfer from 01 August 2021.
- Some policies such as Health & Safety had been agreed by the Corporation and others would follow in the autumn.

Tim J asked if, assuming the merger went ahead, the Chair would continue to provide reports to governors or if activity would take place through committees. Paul confirmed it would go through committees, once a committee structure had been established. Penny suggested she continue to circulate her All Staff emails to governors or a monthly principal's report if that wasn't sufficient, as well as a balanced scorecard to ensure that governors were kept informed of the rapidly changing picture of the new college particularly during the first six weeks. Governors welcomed the suggestion of a monthly balanced scorecard and were happy to continue receiving the All Staff updates, supplemented by additional information as appropriate. They did not wish to overload Penny with additional work.

The merger risk register including due diligence risks contained only three amber risks, with the remainder green. It had not been possible to resolve the Nigerian litigation against Cross River State Government within the timeframe, the Tower's EWS1 certificate was awaited and discussions concerning Tier 4 status were ongoing. A finalised copy of the pension deed had been received and this risk was now green.

Governors **Noted** merger activity to date.

3147 Trade Union Update

Nicola presented paper 2884/21/C providing an update on the Trade Unions positions on terms and conditions for new members of staff employed by the City of Portsmouth College from 01 August 2021.

Consultations had been ongoing with the recognised trade unions on proposed terms and conditions for newly appointed staff from 01 August 2021. Nine formal meetings had been held since the week commencing 19th April 2021 and had culminated in the final positions:

- UCU and GMB had responded and agreed to the proposed terms and conditions for management, business support and academic.
- No response had been received from NASUWT, UNITE and Unison. The original correspondence stated that no response would be interpreted as agreement with the terms and conditions. Reminder emails had been sent.
- The NEU had rejected the proposals and formally withdrawn from any further negotiations on this issue.

Governors were asked whether to proceed with the implementation of the proposed terms and conditions for management, academic and business support staff from 01 August 2021 or not proceed and instead offer the current Highbury College terms and condition. At its meeting the previous day, the Shadow Board had supported proceeding with implementing the proposed terms and conditions. Paola relayed an email from Jeanette Smith, Portsmouth College governor, Shadow Board member and full-time Unison official, in which she supported implementing the terms and conditions as she didn't believe all unions were acting in their members' best interests.

Penny noted that the proposed terms and conditions would not disadvantage any current member of staff. There would be further discussions about implementing the new contract with the additional leave for all staff, and two additional pay scale points for teaching staff to the existing Highbury College staff. Prue asked about the weighting of the unions and Penny responded that the NEU had 57 members, representing 10% of the workforce. The NEU had not declared a trade dispute and there had been no press enquiries to date.

Governors **Agreed** to proceed with the implementation of the proposed terms and conditions for management, academic and business support staff from 01 August 2021.

3148 Review of Instrument & Articles of Government including Outcome of Public Consultation

Paola presented paper 2879/21/C concerning the review of the College's Instrument & Articles of Government (I&A), including the recent public consultation.

At its previous meeting, Corporation had agreed to consult on proposed changes to Corporation's I&A to allow for up to 18 independent governors on the City of

Portsmouth College Corporation for a transitional period of three years and that there be provision for one or two Vice-Chairs of Corporation at the Chair of Corporation's discretion. A consultation had been carried out with the proposed amendments published on the College's merger webpages and Paola had advised the Portsmouth College clerk of the consultation. There had not been any responses to the consultation by the deadline of 19 July 2021. Paola noted that the change in job title from Clerk to the Corporation to Director of Governance would necessitate further minor amendments to the I&A.

After a brief discussion, governors **Noted** the outcome of the public consultation and **Agreed** the proposed revisions to the I&A namely up to 18 independent governors for a transitional period of three years and one or two Vice-Chairs of Corporation. Governors also **Agreed** that the I&A be amended to reflect the Director of Governance (formerly Clerk to the Corporation) job title.

3149 City of Portsmouth College Corporation Members

Paola presented paper 2880/21/C concerning board composition of the City of Portsmouth College as well as initiating the process to elect a Chair of Corporation.

The City of Portsmouth College board would comprise up to 18 independent governors, two staff governors, two student governors and the CEO, with both Highbury College and Portsmouth College boards nominating seven independent governors. The seven governors from Highbury would be: Prue, Ashley, Tim J, Tim M, Rob, Mark and Paul. Max and Robin would stand down on 31 July 2021. The seven governors from Portsmouth College would be: Jafor Ahmed, Shahalam Ali, Bernie Collins, Mark Cooper, Adele Hodgson, Jeanette Smith and Paul Walton.

Paul thanked Max and Robin for their contribution to the College over the years. Max thanked everyone, noting that it had been an interesting and stimulating time. He believed the new college had a great future ahead of it. He recalled Howard Slidel, a former member of staff and subsequently a governor, who had been instrumental in initiating changes at the College and expressed sadness that he had passed away before seeing these changes culminating in the merger.

Paola proposed that the process for appointing a new Chair of Corporation was initiated so that an appointment could be made at the City of Portsmouth College's first board meeting on 17 August 2021. The deadline for nominations would be 06 August 2021.

Finally, Paola noted that with Max's departure, a new lead governor for safeguarding was required and that Prue had kindly agreed to take on this role. Prue stated that she was happy to do so and had extensive experience in this area as she was currently safeguarding lead at a primary school and had been an Ofsted inspector.

Governors **Agreed** that the following independent governors form the City of Portsmouth College Corporation: Jafor Ahmed, Shahalam Ali, Prue Amner, Bernie Collins, Mark Cooper, Ashley Cullen, Adele Hodgson, Tim Jackson, Tim Mason, Rob Nitsch, Mark Pembleton, Paul Quigley, Jeanette Smith and Paul Walton. Governors also **Agreed** that the process for the election of a Chair of Corporation be initiated so an appointment could be made at the board's first meeting on 17 August 2021.

Finally, governors **Agreed** that Prue was the new college's lead governor on safeguarding.

3150 Agreement & Execution of Merger and Related Documents

Paul presented paper 2882/21/C setting out the documentation requiring approval and executive for the merger with Portsmouth College on 01 August 2021.

Corporation was required to agree three merger documents: transfer deed, TR1 (HM Land Registry Transfer) and pensions agreement (the final version had been circulated prior to the meeting. There were no substantive changes to the draft version previously circulated). In addition, a draft minute provided by Eversheds was appended to the paper and would be used as the official record of the meeting.

Paul noted that governors had reviewed the documents at the previous meeting and drew their attention to the resolutions in the draft minute. Governors confirmed they had an understanding of the decision they were taking and the documentation involved and there were no further questions.

Governors **Agreed** the following merger documents for signature:

- Transfer deed
- TR1 (HM Land Registry Transfer)
- Pensions agreement.

Governors **Agreed** that Paul Quigley (chair), Mark Pembleton (vice-chair), Tim Mason (vice-chair) and Penny Wycherley (CEO designate) were authorised signatories to any subsequent merger documentation requiring signature prior to 01 August 2021. Governors also **Agreed** the Eversheds minute appended to this set of minutes.

The transfer deed, TR1 and pensions agreement were signed by the authorised signatories and the College Seal applied.

Nicola thanked governors and noted that she would go through a similar process with Portsmouth College Corporation meeting the following day.

3151 Merger Resolution: Change of Name

Paul presented paper 2883/21/C concerning the name change from Highbury College to City of Portsmouth College.

Paul reminded governors that on 25 May 2021, Corporation had noted the outcome of the public consultation on the name change and agreed to proceed with the name change from Highbury College Corporation to the City of Portsmouth College Corporation. An application for the name change had subsequently been made and on 24 June 2021 Jane Hubbuck, Deputy Director Careers and Further Education Directorate at the Department for Education confirmed, under delegated authority from the Secretary of State, the name change with effect from 01 August 2021. The letter was appended to the paper.

Governors **Agreed** to change Corporation's name from Highbury College to City of Portsmouth College with effect from 00:02 on 01 August 2021 and to amend its Instrument & Articles of Government accordingly.

Paul thanked Claire and Vanessa, staff governors, who would stand down on 31 July 2021 and encouraged them both to stand for re-election in the autumn term. Paul stated that it had been a pleasure to serve the board. He noted that although at the start of his tenure he hadn't thought it advisable to carry out a merger during a recession and global pandemic, he was happy the College had reached this point. He had outlined the early merger discussions with Nick Wynne, Portsmouth College chair and highlighted Simon Perryman's, National Leader of Governance, contribution during the merger process. Simon had been asked to give a presentation to the FE Commissioner's team on the Highbury/Portsmouth merger process as it was being held up as a model merger. Paul thanked everyone involved in the merger process, in particular Penny and Nicola. Tim M thanked Paul for chairing the board so effectively.

The student and staff governors left the meeting.

Minutes 3152 & 3153 were confidential.

Highbury College (“Corporation”)

Extract of the minutes of a meeting of the members of the Corporation held at the offices of Highbury College on 20 July 2021 commencing at 5pm.

PRESENT:	Prue Amner	External Governor
	Claire Attika	Staff Governor (business support)
	Lily Camacho	Student Governor
	Vanessa Cooter	Staff Governor (academic)
	Max Craft	External Governor
	Ashley Cullen	External Governor
	Tim Jackson	External Governor
	Tim Mason	External Governor
	Paul Quigley	External Governor
	Penny Wycherley	CEO (designate)

IN ATTENDANCE:	Paola Schweitzer	Clerk to the Corporation
	Nicola Tomlinson	Merger Project Manager

1. NOTICE AND QUORUM

The Chair reported that proper notice of the meeting had been given and a quorum being present in accordance with the Instrument of Government (“**Instrument**”) the Articles of Government of the Corporation (“**Articles**”), the Chair declared the meeting open.

2. DECLARATION OF INTERESTS

Each Member present had prior to the meeting confirmed that they had no interests which they were under a duty to disclose in accordance with clause 10 of the Instrument.

3. CHARITIES ACT 2011 AND FURTHER AND HIGHER EDUCATION 1992

The Chair reminded the members that all mergers must be to further the Corporation’s charitable purposes and be compliant with all obligations under applicable charity law, and the members of the Corporation have the powers under section 19 of the Further and Higher Education Act 1992 to enter into the Merger Documents (as defined in minute 6).

4. NO BREACH

4.1 The meeting reported that the authorisation of the execution and delivery of the Merger Documents by the Members would not be a breach of the powers delegated to the Members in accordance with the Articles.

4.2 It was also reported that neither the execution and delivery of the Merger Documents by the Corporation nor the performance of the Corporation’s obligations thereunder would breach or would result in any breach of any obligation or restriction imposed by the Articles or any other agreement or instrument to which the Corporation is a party or which is otherwise binding upon it.

5. **BACKGROUND**

5.1 The Chair reported that at the meeting of the Corporation held on 25 May 2021, the Corporation had agreed to move forward with a merger of the Corporation with Portsmouth College ("**Portsmouth**").

5.2 To give effect to the merger, the Corporation would in due course need to resolve on the property, rights and liabilities of Portsmouth being transferred to the Corporation immediately prior to 00:01 on 1 August 2021 (the "**Merger**") by giving effect to the following resolutions:

that, following:

- publication of the results of the statutory consultation exercise undertaken by Portsmouth (as required under the Sixth Form College Corporations (Publication of Proposals) (England) Regulations 2012 and the provisions of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011);
- the carrying out of legal and financial due diligence exercises in respect of Portsmouth; and
- subject to the passing, by Portsmouth, of a resolution to dissolve and provide for the transfer of its property, rights and liabilities, such transfer to take effect immediately prior to 00:01 on 1 August 2021;

the Corporation hereby RESOLVES to merge with Portsmouth and accepts the transfer of Portsmouth's property, rights and liabilities in accordance with section 33P of the Further and Higher Education Act 1992 with effect from 00:01 on 1 August 2021.

6. **PURPOSE OF MEETING**

6.1 The purpose of the meeting, if thought fit, was to approve the terms of, and the transactions contemplated by, the Merger.

6.2 The Chair further reported that the purpose of the meeting was also to consider the following documents to be entered into prior to the Merger (the "**Merger Documents**"):

6.2.1 a final draft transfer deed between (1) Portsmouth and (2) the Corporation to document the transfer of all property, rights and liabilities from Portsmouth to the Corporation;

6.2.2 a final draft TR1 to be entered into between (1) the Corporation and (2) Portsmouth in respect of, and effecting the transfer of, the property known as Portsmouth College;

6.2.3 a final draft pensions agreement between (1) the Corporation, (2) Portsmouth and (3) Hampshire County Council in respect of the transfer of certain of Portsmouth's obligations to Hampshire County Council as administering authority of the Hampshire Pension Fund, a pension fund in the Local Government Pension Scheme (the "**Fund**"), to the Corporation;

6.2.4 if thought fit:

6.2.4.1 approve the terms of, and the transactions contemplated by, the Merger Documents and resolving that it execute, deliver and perform the Merger Documents to which it is a party;

6.2.4.2 authorise specified persons to execute the Merger Documents to which it is a party on its behalf;

6.2.4.3 authorise a specified person or persons, on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Merger Documents to which it is a party or any other document

required to be entered into to give effect to the Merger and the Merger Documents.

7. **DOCUMENTS TABLED**

A draft of each of the Merger Documents was tabled. It was noted that each of the Merger Documents was substantially in final form, subject to minor amendments. Each Member confirmed that they had had an opportunity to review, and was familiar with, the contents of each of the Merger Documents. Each member confirmed that they had been briefed on the purposes, overview and key issues of each document and had had the opportunity to raise queries on them.

8. **CONSIDERATION**

The meeting then noted in respect of the Merger:

- 8.1 that for the avoidance of doubt all the pension liabilities and assets in connection to Portsmouth's obligations to the Fund relating to actives, deferred and pensioner/dependant members will transfer to the Corporation, with the Corporation thereby accepting responsibility for the ongoing contributions and Portsmouth's liabilities on an ongoing basis;
- 8.2 the publication of the results of the statutory consultation exercise undertaken by Portsmouth (as required under the Sixth Form College Corporations (Publication of Proposals) (England) Regulations 2012 and the provisions of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011); and
- 8.3 that legal and financial due diligence exercises had been carried out in respect of Portsmouth.

9. **RESOLUTIONS**

9.1 **IT WAS UNANIMOUSLY RESOLVED** that following:

- 9.1.1 publication of the results of the statutory consultation exercise undertaken by the Portsmouth (as required under the Sixth Form College Corporations (Publication of Proposals) (England) Regulations 2012 and the provisions of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011);
- 9.1.2 the carrying out of legal and financial due diligence exercises in respect of Portsmouth;
- 9.1.3 subject to the passing, by Portsmouth, of a resolution to dissolve and provide for the transfer of its property, rights and liabilities, such transfer to take effect immediately prior to 00:01 on 1 August 2021,

the Corporation hereby **RESOLVES** to merge with Portsmouth and accepts the transfer of Portsmouth' property rights and liabilities in accordance with section 33P of the Further and Higher Education Act 1992 with effect from 00:01 on 1 August 2021.

9.2 **IT WAS UNANIMOUSLY RESOLVED** that with regards to the Merger Documents:

- 9.2.1 the Corporation, in good faith and for the purpose of carrying on its business, enter into the Merger and perform its obligations and exercise its rights in relation to the Merger;
- 9.2.2 the Merger Documents be approved (subject, in each case, to such amendments as any member may approve);
- 9.2.3 any member of the Corporation be authorised to sign on behalf of the Corporation such of the Merger Documents as are not required to be executed as deeds;

- 9.2.4 notwithstanding any standing order or regulation of the Corporation, any two members of the Corporation as listed at 9.2.6.1 below be authorised to authorise the use of the seal on behalf of the Corporation such of the Merger Documents as are required to be executed as deeds in accordance with clause 20 of the Instrument;
- 9.2.5 any two members of the Corporation as listed in 9.2.6.1 below be authorised to agree any amendment to the Merger Documents to which the Corporation is a party on the Corporation's behalf;
- 9.2.6 notwithstanding any standing order or regulation of the Corporation, any two members of the Corporation as listed in 9.2.6.1 below (each an "**Authorised Signatory**") be authorised to agree, affix and authorise the use of the seal of the Corporation to sign and despatch on behalf of the Corporation all such other documents, agreements, certificates, notices (including, if relevant, any Utilisation Request, selection notice or hedging agreements), communications or confirmations to be signed and/or despatched by it under or in connection with the Merger Documents to which it is a party ("**Ancillary Documents**") in accordance with clause 20 of the Instrument, and to do all such other things, as may be required, or as any member may approve, in connection with the Merger and the funding of the Corporation; and

Name of Authorised Signatories

Paul Quigley (Chair of Corporation)

Penny Wycherley (CEO designate)

Tim Mason (Governor)

Mark Pembleton (Governor)

- 9.2.7 any of the foregoing matters that have been done on or before the date of the meeting be and are hereby adopted, ratified, confirmed and approved.

9.3 **IT WAS UNANIMOUSLY RESOLVED THAT**, following receipt of approval from the Secretary of State by way of a letter dated 24 June 2021 and in accordance with clause 20 of the Instrument, the Corporation hereby unconditionally change its name to "**City of Portsmouth College**" with effect from 00:02 on 1 August 2021 and to amend its Instrument and Articles of Government to reflect the name change.

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Paola Schweitzer
Clerk to the Corporation