

Minutes of the meeting of the Board of Governors held on **17 December 2020**.

**Present:** Bob Harrison, Clive Macdonald, Yultan Mellor (Principal), Tim Thornton, Mike Bramhall, Colin Forrest, Liz Stanley, John Edwards, Neil James, Ken Richardson, Angus Morrison and Ann Corrigan.

**In attendance:** The Assistant Principal – Finance and Business Services (Joy Whistlecraft), the Assistant Principal – Student Experience (Diane Lawson), the Assistant Principal – Curriculum, Quality and Market Development (Emma Beal), the Head of Human Resources (Elin Longley), Tom Morrison – Stone King LLP (up to and including min B20/140) and the Clerk to the Governors (Sarah Johnson).

**Apologies:** Frank Lord.

## **PART ONE**

### **B20/129 DECLARATIONS OF INTEREST**

Each governor present declared any potential interests/conflicts of loyalty related to items to be considered at the meeting. With respect to his roles as Deputy Vice Chancellor at the University of Huddersfield and member of the Leeds City Region Employment and Skills Panel Prof Tim Thornton declared a potential conflict of loyalty in items relating to the College's higher education provision. It was agreed that no decisions to be taken at the meeting would be affected and it was not considered necessary for the member to withdraw.

### **B20/130 MINUTES AND MATTERS ARISING**

The minutes of the meetings held on 1 October 2020 were approved as an accurate record.

### **B20/131 FINANCIAL STATEMENTS 2019/20 (Document 1i)**

The Board considered a report which:

- set out the position with regards to the audit of the College's financial statements for 2019/20;
- provided an update in relation to the circumstances that had impacted on this and developments since the Board's last briefing in October 2020;
- included advice from the College's legal advisor;
- set out likely next steps as far as was possible at this stage.

### **B20/132** The Board noted that:

- due to circumstances beyond its control the College was not yet in a position to present financial statements with a finalised audit opinion for 2019/20 for consideration;
- whilst the field work for the financial statements audit was carried out in line with the original timetable and no significant issues had been identified the auditors had been unable to complete their audit due to the on-going ESFA audit;
- due to the likely timing of the completion of the ESFA audit and any subsequent challenge it was likely that the College would require an extension for the signing of its financial statements beyond the current end of January 2021 deadline;
- there would also be a requirement for further meetings of the Audit Committee and Board of Governors to complete the process;
- the Annual Audit Committee Report to the Board for 2019/20 had been provided for consideration, but stated that the opinion provided reflected the position as at the time of writing (16 November 2020), and any changes arising as a result of the conclusion of the ESFA funding audit would be dealt with in the form of an addendum to the report.

### **B20/133** The Board considered an update regarding the ESFA audit, noting that since the last update in October 2020:

- the audit process had progressed, but frustratingly this had been at a slower rate than the timetable promised by the ESFA;
- the College had submitted further data and evidence for a sample of students;

- on 11 December 2020 the College received initial feedback from the audit team which indicated that 'errors' had been identified totalling approximately £1M over 2018/19 and 2019/20;
- the College had identified approximately £250K which had been included in this figure which did not relate to residence;
- the College disputed the basis for the remaining £750K on the grounds that it was factually inaccurate as the College had been audited against the wrong set of funding rules.

**B20/134** The Board considered an update regarding the forward looking review of residential funding by the DfE noting that the review was on-going but initial indications of likely changes included discontinuation of the 4.7 uplift and support for residence being drawn down via the learner support funds.

**B20/135** The Board considered the draft financial statements, noting that:

- as a result of pension liabilities the College was reporting a £1.7M deficit position;
- as in previous years whilst this did not pose a significant short term risk for the College as the issues were largely as a result of accounting adjustments and did not reflect the College's operating financial position, it did require careful consideration by the Board in relation to going-concern, particularly in light of a potential worsening of the position arising as a result of possible ESFA clawback;
- as repeatedly shown FRS102 calculations were subject to significant variation year on year and triennial valuations had remained reasonably static over a longer period;
- however, this represented an unprecedented level of deficit for the College and should be considered carefully.

**B20/136** The Board considered a note from the College's legal advisor Tom Morrison (Stone King LLP), noting that:

- Stone King had been instructed to support the College in navigating issues associated with its claiming of residential funding, and supporting its discussions with the DfE in relation to future funding policy;
- a note provided to the Board at its last meeting had explained the issues in broad terms with regards to the ESFA audit and DfE review of funding, and their work in relation to counter-arguments against clawback, and advocating for a more positive outcome to the policy review once the outcomes were known;
- the note at this meeting focussed on the Board's legal duties in the context of the College's finances possibly coming under severe pressure in the future, as a result of one or both of these challenges materialising;
- the advice provided aimed to proactively support the Board's thinking at this time and arm governors with an understanding of the issues in advance, should matters progress in an adverse manner;
- the College had agreed to collaborate with Fircroft College in relation to legal advice and any subsequent challenge.

**B20/137** The Board was advised that:

- it was bound by legal duties that may in times of severe financial distress require it to prioritise creditors ahead of students, even in the face of natural desires or external pressures to do differently;
- if at any point there was no reasonable prospect of avoiding an insolvent winding up, Board members may need to act quickly to seek to protect creditors, this may include considering putting the College into administration;
- the Board and the College team (being the College's Executive Leadership Team and the Clerk to the Governors/Company Secretary) should consider their actions carefully in the context of any potential financial challenges – such as minimising the exposure of creditors to risk;
- the Board and the College team should monitor the situation closely, liaising with key stakeholders including the ESFA and keeping them sighted on any significant concerns around solvency;

- if in the light of raising concerns any assurances are offered by the ESFA or others, the Board should seek legal advice on the effectiveness of those assurances in reducing risk to the Board and the College;
- based on the information available and the likely trajectory of the challenges being faced, it would be prudent for the Board to consider engaging the services of an appropriately qualified corporate finance and restructuring specialist which, when taken together with legal advice, will afford the Board support and protection when navigating what may be difficult moments in the coming weeks and months;
- the corporate finance specialist should be tasked with working with the College team to consider and stress test its financial plans, scenario planning and assumptions to help provide confidence that there remains in the various scenarios a reasonable prospect of avoiding an insolvent winding up – or identifies the scenarios where that prospect is lost.
- this information could be used to support decisions over whether an insolvency process becomes necessary, but it may also be used to support the College's arguments for support from the ESFA in particular to avoid that necessity (e.g. a smoothing arrangement, additional grant funding or loan).

**B20/138** The Board:

- explored the quickly evolving situation in relation to the ESFA audit and DfE review and agreed that a formal outcome was required in order to decide next steps, but there was likely to be a basis for challenge should that be required;
- noted the advice regarding insolvency, wrongful trading, personal exposure and steps which should be taken in particular circumstances;
- noted that the College was not facing cash insolvency but there was the potential if challenges crystallised to have liabilities in excess of its assets "balance-sheet insolvency";
- noted that lots of Colleges were at risk of balance sheet insolvency, particularly in relation to pension liabilities, and this was not a problem if the liabilities did not crystallise, but this made it even more important for the Board to be certain as best as was possible, that they would not materialise, and for the basis of financial assumptions to be rigorous;
- noted that the Board should also seek to develop a business model which planned to close the pension gap in the medium to long term;
- agreed that it was important to start to undertake scenario planning and that support from an external finance/funding specialist would be helpful in enabling the College to undertake the task, but also to demonstrate that the College was taking all reasonable steps and testing the validity of assumptions and planning;
- explored the role of the FE commissioner;
- explored the likely ESFA approach to repayment of clawback should that eventuality not be successfully challenged, noting that they have been clear that their intention is not to destabilise the College and they would seek to avoid the College reaching an administration position.

**B20/139** The Board agreed that it should;

- seek to establish a clear plan for how the College could continue to successfully trade;
- build into that plan stabilisation of the Colleges assets against its liabilities, particularly in relation to pensions;
- work with Stone King and the executive team to engage appropriate external financial/funding advice to support the development of scenario plans and testing assumptions.

**B20/140** The Board reiterated that the situation faced by the College was as a result of a particular set of issues which it was confident could be effectively managed and was not a reflection of any fundamental lack of sustainability, the College did and would continue to deliver high quality education, and be well managed both operationally and financially.

**Resolved:** i **Receive and note the draft financial statements for 2019/20, audit findings and annual audit committee report to the Board.**

ii **Receive and note the legal advice from Stone King LLP.**

- iii **Consider and approve for signing the regularity self-assessment for 2019/20.**
- iv **Note the position with regards to the ESFA assurance audit and the DfE review of residential funding.**
- v **Seek to establish a clear plan for how the College can continue to successfully trade, build into that plan stabilisation of the Colleges assets against its liabilities, particularly in relation to pensions.**
- vi **Work with Stone King and the executive team to engage appropriate external financial/funding advice to support the development of scenario plans and testing assumptions.**

## **PART TWO**

The Board paid tribute to the contribution to adult education of Prof Bob Fryer, a former principal of the College, who had recently passed away.

### **B20/141 FINANCIAL PERFORMANCE (Document 2i)**

The Board considered the final outturn management accounts for 2019/20, noting that:

- the report showed a deficit of £188K for the year, which included £328K of restructuring costs;
- as the College had achieved above the 68% ESFA delivery target it had retained all its allocation;
- in addition, the same methodology had been applied to DLSF which resulted in £156K not being clawed back as allowed for, and would therefore bring the College back to a break even position;
- overall this was a good result for the College, particularly under the challenging circumstances including the pandemic, significant unexpected changes to funding levels and resulting restructuring requirements;
- the College continued to negotiate regarding a counter claim in relation to costs arising from an abandoned procurement process and this would be likely to result in further income.

**B20/142** The Board agreed these results provided a good basis for financial planning going forward and demonstrated that operationally the College was in a good position.

**B20/143** The Board considered the reconciliation statement for 2019/20, noting that as in previous years there was a significant difference between the management accounts and the financial statements as a result of pension liabilities.

**Resolved: i That the report be noted.**

### **B20/144 CURRICULUM PERFORMANCE (Document 2ii)**

The Board considered the self-assessment for 2019/20, noting that:

- it was a strong report with positive outcomes, particularly considering the context;
- student achievement and retention were overall excellent, with a small number of dips in data due to Covid, which had been carefully analysed;
- BAME engagement had increased by 8%;
- male engagement had not hit target and further work, particularly in relation to marketing and curriculum planning was being undertaken to address this;
- the College had not been able to drive forward its quality agenda in the way it had planned during the year, largely due to the lower than planned delivery of provision;
- however, student feedback remained strong;
- a new approach would be adopted in relation to development of the quality improvement plan focussed on the new academic team.

**B20/145** The Board noted that the report had been scrutinised by the Curriculum, Quality and Student Experience Committee who recommended it for approval.

**Resolved: i That the 2019/20 self-assessment report be approved.**

**B20/146 COMPLIANCE ANNUAL REPORTS 2019/20** (Document 2iii)

The Board considered the **Health and Safety Annual Report 2019/20**, noting that:

- the report provided a comprehensive summary of health and safety management, systems and activities through the year, including the extensive work undertaken in response to COVID 19;
- details of risk assessments and recommendations were outlined and no significant/outstanding issues were identified.
- the report had been scrutinised in detail by the Audit Committee which had particularly considered the data in relation to accidents, RIDDOR and insurance claims and were assured that there were no key issues to draw to the attention of the Board.

**B20/147** The Board considered the **Safeguarding and Prevent Annual Report 2019/20**, noting that:

- the key theme of looking after students and children continued throughout the lockdown periods, with referrals continuing to be made as required;
- training and compliance had remained at a high level, which was reflected in referrals demonstrating that staff were confident to make referrals where appropriate and have challenging conversations;
- the Assistant Principal, - Student Experience had been appointed as a SPOC, the only one from education in South Yorkshire, with particular reference to trafficking and modern slavery;
- in relation to Prevent good partnerships had been developed with the local team, the counter terrorism unit had been invited to talk to students regarding staying safe online, and a greater emphasis in relation to online safety for adults was being developed.

**B20/148** The Board considered the **Data Protection Annual Report 2019/20**, noting that:

- overall an adequate state of compliance was believed to be in place, although risk areas remained and there were several areas of on-going work;
- the impact of the COVID-19 pandemic has been a significant feature of 2019/20, and whilst this had undoubtedly increased the risks relating to cyber security and data protection, no increase had been seen in data breaches or issues/concerns raised by data subjects;
- a data protection compliance framework had been developed and a limited amount of work had been undertaken, this would be developed further in 2020/21;
- compliance testing in relation to IT security had been limited and it was hoped that work on the development and implementation of a new ICT strategy in 2020/21 would significantly strengthen the understanding of, testing and further development of the College's IT security arrangements;
- the report had been scrutinised in detail by the Audit Committee where the work in relation to further developing the College ICT security was welcomed and it had been agreed that there were no key issues to draw to the attention of the Board.

**B20/149** The Board considered the **Governance Annual Report 2019/20**, noting that overall the evidence suggested that:

- the governance framework and structure continued to serve the College well;
- the use of virtual meetings had been effective;
- the Board was made up of committed, skilled individuals with a range of expertise which was highly relevant, members have a good understanding of the context in which the College operates, a very good understanding of further education and adult learning and a strong awareness of the College's strengths and areas for improvement. This enables the Board to be fully involved in setting the strategic direction of the College;
- relationships and communication were positive and based on trust and transparency, creating an inclusive, challenging and supportive environment which enabled decision making to be timely, effective and based on good quality information;
- the Board adequately fulfilled its statutory/compliance responsibilities;

- areas for development to address in 2020/21 included succession planning which would be moved forward early in 2021 and a refresh of membership taking diversity into consideration, a refresh of the membership of the Board's committees, further work on refining and developing the reporting framework;
- the Board agreed the need for an external/peer evaluation of its governance arrangements in 2021.

**B20/150** The Board was satisfied that compliance work in these areas was satisfactory.

- Resolved:**
- i **That the reports be noted.**
  - ii **That an external/peer evaluation of the College's governance arrangements be undertaken during 2021.**

**B20/151** **PERFORMANCE TO DATE 2020/21 AND RECOVERY PLAN** (Document 2iv)

The Board considered a report which set out performance to date in 2020/21 and a recovery plan for the remainder of the year. This included:

- a recruitment and funding dashboard which set out the position to date and a forecast outturn;
- financial report to 31 October 2020;
- ESFA cash flow monitoring – including detailed assumptions;
- a curriculum recovery plan for the remainder of 2020/21.

**B20/152** The Board:

- noted that the College was currently running at 50% of its delivery plan due to the on-going pandemic situation; and this could only improve if recruitment opens up in term 2/term 3;
- noted that the ESFA had not provided any assurance regarding funding protection for 2020/21 and was unlikely to do so until at least March 2021;
- noted that loans funding was even more significantly impacted as the pandemic had severely affected the willingness of some adults to study residentially;
- agreed that the early part of 2021 was likely to remain a challenging period for student recruitment;
- considered and welcomed the curriculum recovery plan which included plans for offering fast track opportunities for students starting in the Spring 2021, progression planning sessions, summer intensives, maths, English and digital provision and community bounce back and resilience support;
- agreed that the College needed to ensure that it sought to achieve as high a percentage of its delivery target as possible;
- agreed that the College's long standing track record of over delivery would be an important factor;
- noted that if no protection was provided by the ESFA the College would be likely to end the year with a £1M deficit;
- noted that cash flow remained good and was likely to do so throughout the year, debtors were low and the College had an ESFA capital allocation to utilise.

**B20/153** The Board agreed that it was a challenging position but welcomed the plan which gave the College a good basis for recovery.

- Resolved:** i **That the report be noted.**

**B20/154** **OFSTED INTERIM REVIEW**

The Board received a verbal report regarding the interim Ofsted monitoring visit to the College which had taken place in early December 2020. It was reported that:

- the purpose of the two-day visit was to fact find in relation to how the College had managed since the pandemic began in March 2020;
- no judgement was given, and there were no observations of classes or document scrutiny;

- overall it was felt to have been a really valuable process and an opportunity for self-reflection and galvanising staff;
- also provided a reminder of the need to be ready for a full inspection at some point in the future;
- the process had highlighted the huge amount of work undertaken over the period and that significant progress had been demonstrated;
- though no judgements were made it was clear that the inspectors were impressed.

**B20/155** The Board:

- welcomed the feedback and looked forward to receiving the report;
- agreed that whilst the visit did not include any judgements it was inevitable that it would inform future judgements and risk assessments by Ofsted in some way so it was important that a positive outcome was achieved;
- welcomed the opportunity for the College to demonstrate that it was a flexible and dynamic organisation.

**Resolved: i That the report be noted.**

**B20/156** POLICIES FOR APPROVAL (Document 2vi)

The Board considered and approved the following policies/regulations:

- admissions;
- additional learning support;
- compliments and complaints;
- student disciplinary;
- residential admissions
- safeguarding children and young people;
- redundancy;
- financial regulations

**Resolved: i That the admissions, additional learning support, compliments and complaints, student disciplinary, residential admissions, redundancy and safeguarding children and young people policies and the financial regulations be approved.**

**B20/157** AUDIT MATTERS (Document 2vii)

The committee received and noted the internal audit service annual report and opinion for 2019/20.

**B20/158** The committee considered and approved the internal audit service annual plan for 2020/2021.

**Resolved: i That the internal audit service annual report and opinion for 2019/20 be received and noted**

**ii That the internal audit service annual plan for 2020/2021 be approved.**

**B20/159** DATES OF THE NEXT MEETINGS

11 March 2021– 11.00am

15 July 2021– 11.00am