

Policy & Resources Committee

Approved Minutes

Minutes of a Meeting of the Committee held on Monday 24 June 2019 at the Southend Campus at 6.05 pm.

Present: Ms M West (Chairman)
Ms O Buck
Mr R Launder
Ms A O'Donoghue CBE
Ms E Sipiery

In Attendance: Ms R Brooks (Head of Human Resources – item 6)
Ms J Abbott (Executive Director)
Mr P Moore (Director of Finance)
Ms K Mulvey (Vice Principal, Student Support)
Mr M Twitchett (Vice Principal, Curriculum & Quality)
Mr S Smith (Vice Principal, Corporate Resources)
Ms S Lane (Deputy Principal, Curriculum & Quality)
Mr R I Millea FCA (Clerk to the Corporation)

In the absence of the Chairman, Ms M West (Vice Chair) took the Chair.

1. Apologies for Absence and Declarations of Interest

Apologies for absence were received from Dr R Gray (Chairman of the Committee), Mr D O'Halloran and Mr A McGarel (Deputy Principal & Chief Executive).

The Clerk declared his interest as Clerk of Chelmsford College and as Company Secretary of Essex Shared Services Limited.

Mr Launder declared his interest as Director of Essex Shared Services Limited.

2. Urgent Business

a. IPES Framework Agreement

The Clerk **REPORTED** that he had received responses from a quorum of Board Members agreeing to the College entering into a Framework Agreement with Essex County Council and the Agreement was duly signed by the Principal and Chief Executive on behalf of the College and witnessed by the Clerk.

b. The Clerk **REPORTED** that he had received a written resignation from the Board from Olga Buck with effect from 31 July 2019 and therefore she will cease to be a member of this Committee as of that date. On behalf of the Committee, the Chair thanked Olga for her service to the Committee for the last few years.

3. Minutes of the Meeting held on Monday 29 April 2019

The Minutes of the Meeting held on Monday 29 April 2019 were **APPROVED** and **SIGNED** by the Chair.

4. Matters Arising

The Clerk **REPORTED** that the Board had approved with a sufficient quorum by email two resolutions pertaining to Discounting a Redrow Promissory Note with Barclays Bank and in executing under seal a formal lease for the Basildon Town Centre site with Basildon Town Council and approving the entering into the Morgan Sindall build Contract under seal.

Both of the resolutions will be incorporated into the Minutes of the Board Meeting to be held on 8 July 2019.

The Clerk also **REPORTED** that the Board had approved with a sufficient quorum by email a resolution giving authority to the Acting Chair of the Board and the Principal & Chief Executive to sign the Report & Accounts of PROCAT for the year ended 31 July 2018 and submit them to the ESFA in accordance with the Accounts Direction.

In giving this approval, the Board Members had regard to a paper on the approval process provided with the resolution by the Clerk. This Paper and the resolution will be included in the Minutes of the Board Meeting scheduled to be held on 8 July 2019, in order to fully document the process and the Board's decision making in respect of this matter.

There were no other Matters Arising from the minutes, not otherwise covered on the Agenda.

5. Human Resources Report (Paper PRC.19.10)

Staff Absence and Turnover

The Committee **RECEIVED** a Report from the College's Head of Human Resources providing the Committee with information regarding staff absence and staff turnover matching actual experience to KPIs. This is a standing item on the agenda of this Committee.

The **current rolling absence rate** is 8.08 days absence per person per annum against the College KPI of 7 days per person per annum during the twelve month rolling period to 30 April 2019, which is slightly higher than the rolling rate reported in the last Report at the April Meeting (7.98) but an improvement on this time last year (10.27).

The actual rate therefore slightly exceeds the KPI for 2017/18 of 7 days per person per annum.

Short term sickness remains a key concern as it equates to 88.6% of absences, the balance being long-term, the same as in the last Report. Roney Brooks explained that reasons for sickness are explored for validity and to ensure consistency of treatment across the College.

The principal reasons for recent absences have been back & neck problems and stomach infections, followed by neurological issues and colds and flu.

It is the case that there are some genuinely ill staff who have had (and are still experiencing) long absences.

At the previous Meeting of this Committee, the Head of HR was asked to provide some information on the sickness absence experienced by staff employed within Prospects Learning Foundation Limited, the wholly owned subsidiary of PROCAT which employed all the staff.

The Head of HR included information regarding sickness recording at PROCAT to inform the Committee. Some of this reporting was not clear as to reasons for absence or complete as to the data itself and, with effect from 1 May 2019, those staff now report their sickness absence using the College occupational health provider, IMASS.

The **staff turnover** rate for the period to 30 April 2019 was 11.79% (last year comparator was 17.28%). On an annualised basis, this would equate to 17.68% , slightly above the KPI set for this year of 17%.

The AoC Workforce Data Report published on 1 June 2018 indicates most Colleges (around 75%) report an average turnover of 17.4%.

The PCE suggested that, for future reporting, it was not worthwhile or relevant to include data relating to leavers through merger in the turnover figures as this distorts the general trend. The Committee **AGREED**.

The Head of HR provided an **update** to the Committee on a number of key HR matters, including an employment claim, TUPE transfer, a civil court case and safeguarding.

Elizabeth Sapiere asked if the Committee had considered instituting other HR related KPIs and, if so, what they might be. The PCE referred to detailed Staff Surveys which are carried out in College, the results of which are reported to governors. It was **AGREED** that additional KPIs would be explored.

The PCE indicated that College management have decided to meet with 'former' PROCAT staff to seek their feedback on the merger and their perception of how it had gone for them.

The Report was **NOTED**.

7. Strategic Developments in South Essex (Paper PRC.19.11)

This item was deemed to be a Confidential Item under the Instrument & Articles and a separate minute has been prepared, which is attached to these minutes.

8. Policy Approvals

The Committee was provided with the following Policies for review and comment

- GDPR Policy
- Whistleblowing Policy
- Health & Safety Policy
- Fees Policy 2019/20 (FE/HE)
- Risk Management Policy

GDPR Policy

The Clerk **REPORTED** that, having consulted with the College Head of IT and DPO that no changes are required to the Information Security Management Policy or the Data Breach Notification Policy.

Health and Safety Policy

This was substantially rewritten in 2016 and is the overarching document governing Health & Safety in the College. Steve Smith **REPORTED** that the Policy has been reviewed in the light of current legislation and practice.

Whistleblowing Policy

This Policy is reviewed annually and has been in place since 2016. The Head of HR **REPORTED** that this year's review indicated no major changes other than to include appropriate references to Prospects Learning Foundation Limited, now a subsidiary company of the College and which company did not have a policy in place.

The Committee was informed that currently this policy does not apply to Essex Shared Services Limited and it will be considered by that joint venture company at its forthcoming Board Meeting on 11 July 2019.

Fees Policy 2019-20 (FE/HE)

The Director of Finance **PRESENTED** this Policy for review by the Committee and advised that it has been prepared in accordance with 2019-20 Funding Body criteria and that was the major change from last year's policy.

The Clerk commented that an up to date Fees Policy is a condition of ESFA funding.

Risk Management Policy

The Director of Finance **PRESENTED** this Policy for review. It was last updated and approved by the Board in October 2017.

There are no legislative changes required, however, the College has received advice and guidance from the internal auditors regarding the layout of the risk register to incorporate assurance mapping. This advice has been included in the policy and the assurance map will form part of the risk register in the future stipulating the internal and external assurances as well as tracking the movement of the risk from iteration to iteration. The College's appetite for risk will be noted including the maximum risk tolerance.

Elizabeth Sapiere asked about College review of Insurance Policies. The Clerk **REPORTED** that this review is carried out by the Board at the October Board Meeting and is done annually. He believed it included cover for cyber security. This will be checked again for 2019-20. She also requested that in future policy updates are showed as tracked changes.

The Committee considered these Policies and **RECOMMENDED** that they all be approved by the Board at its Meeting on 8 July 2019.

ACTION: CLERK

9. College Finances (Paper PRC.19.13)

Item 8 (b) to (d) were deemed to be confidential under the Instrument & Articles and separate minutes have been prepared, which are attached to these minutes.

(a) Management Accounts for the ten months ended 31 May 2019

Income & Expenditure Account

Total income to 31 May 2019 amounted to £32.292 million and total expenditure amounted to £33.348 million, giving rise to an operating deficit for the ten months to May 2019 of £1,051K, after crediting the favourable Bursary Fund variance of £5K.

The Committee were reminded that the results in the Management Accounts do not include any adjustments for Pensions accounting in respect of the Essex LGPS.

The Management Accounts include a detailed Commentary on all major lines of income and expenditure.

The Director of Finance provided a verbal commentary on the variances against the 2018/19 budget. Full details were provided in the paper to Members.

The expectation of the College is that the combined budget for the year (deficit £782K) for SEC/PROCAT will be met based on the deficit position of £1,051K.

The PCE explained the disappointing reversal of available funds from Government for non-levy apprentices. This has hampered the College's marketing to SMEs for apprenticeships as there is no line of income coming through to cover the apprentices' training. SMEs are unhappy with this uncertainty.

Sarah Lane commented that the apprenticeship marketing team is very agile and is working hard with levy payers to keep the income line up to offset non levy reduction.

The Director of Finance informed the Committee that £1,027K has been released to the income & expenditure statement in relation to merger costs out of the funding provided by the Transactions Unit. A list of the areas to which this release relates was included in the paper to the Committee.

Balance Sheet

At 31 May 2019, group net assets stood at £79.846 million, including fixed assets of £116.242 million. General provisions of £19.5 million represents virtually entirely the pension liability under FRS102, as calculated at 31 July 2018.

All bank covenants continue to be met (debt service cover and gearing). The current ratio at 31 May 2019 was 1.28.

Pay expenditure to 31 May 2019 remains high as a percentage of turnover (63.8%) against a revised target of 64.6%. Borrowing as a percentage of income (gearing ratio) stands at 53.8% against the sector target of no more than 60% and taking 40% as reasonable.

Outstanding debtors

An analysis of outstanding debtors at 31 May 2019 will be provided to the Board Meeting on 8 July 2019. There will be a full review of the provision for doubtful debts (currently £358K) as part of the end of year accounts preparation.

ACTION: DIR OF FINANCE

The College also has Notes Receivable (from Redrow in connection with the Nethermayne Sale) of £27,179K.

Cash flow forecast 2018-19

Reports on the cash flow of the College continues to be a regular item on the Agenda of this Committee and the forecast for the remainder of this year and for next year was provided to Members.

The Committee noted that £3,000K of the £5,861K received from the Transactions Unit was to increase working capital in order to assist in meeting the revised bank covenants imposed by Barclays and the College must maintain at least this balance at all times.

The Committee noted that bank covenants are reviewed quarterly and the covenants were met at the time of the first review on 30 April 2019.

A discussion took place with Governors re the College's cash position. Governors asked about the contingencies we can put in place if the predicted cash balances, particularly in January, February and March 2020, fall below the predictions.

Governors asked for a list of actions the College could take to prevent us falling below the £3m threshold to be presented to the Board to provide reassurance.

ACTION: DEPUTY PCE

The Executive Director informed the Committee that the original combined budget of the two Colleges for the period ended 31 May 2019 was £1,051K as noted above so the expected deficit for the year to date is approximately £250K better than that budget.

Questions from Committee Members

The Committee recognised and were concerned about the College's Financial Health calculations under the ESFA methodology. As at 30 April 2019, the points score is 120, which ranks the College as Satisfactory. It is expected that the score will improve to 150 points at 31 July 2019 which would make the College a 'strong' Satisfactory.

The Committee otherwise **NOTED** the position.

(e) PROCAT Financial Statements – year ended 31 July 2018

As agreed by the Board on 25 March 2019, the accounts of PROCAT for the year ended 31 July 2018, which should have been approved and signed by the PROCAT Board (and filed) prior to 31 December 2018, were to be reviewed by the Audit & Risk Committee on 8 May 2019.

This review took place and is documented in the minutes of that Committee of 8 May 2019. The Audit & Risk Committee duly **RECOMMENDED**, subject to some final amendments and final review by RSM as external auditors, to the Board Meeting on 8 July 2019, that these accounts be authorised for signature by the Board and filed with the ESFA.

The Board were provided with a Paper and draft Resolution regarding authorising the PROCAT Accounts for issue for the period in question. Approval to the resolution by the Board by email is documented under Urgent Business (item 3 of these Minutes). The full Paper and Resolution will be included in the Minutes of the Board Meeting on 8 July 2019 in order to fully document the process followed by the Board in approving the Report & Accounts of PROCAT, which the Board had previously agreed.

Accordingly, the Report & Accounts were signed at the end of the Meeting by the Acting Chair of the Board and the Principal and Chief Executive (as Accounting Officer) for submission to the ESFA.

ACTION: CLERK

(f) PROCAT Financial Statements – 1 August 2018 to 31 January 2019

It is the case that PROCAT accounts will be required to be prepared for the final trading period from 1 August 2018 until the date of merger on 31 January 2019. The ESFA Accounts Direction states that the completion and sign off of these accounts (which would be audited) rests with the SEC Board under the combination rules when a College is taken over.

The Committee were prepared to recommend to the Board that the Board approve and sign off these accounts for the final trading period, even though SEC were not running PROCAT during this time. However, the Committee felt that SEC had considerable knowledge of the operations of PROCAT and its financial situation through the pre-merger due diligence process, the Merger Project work and the activities of the Shadow Board during this final trading period of PROCAT to support this decision.

The Committee were advised that RSM (PROCAT auditors) have nearly finished the audit work on the final trading period's accounts to 31 January 2019 and no issues have arisen to date. It is proposed that the Audit & Risk Committee consider these accounts and the auditor's report thereon at the Meeting of that Committee scheduled for 11 September 2019.

If the Audit & Risk Committee is satisfied with the accounts and the audit process, the Board would be asked to approve and sign the accounts of PROCAT for the final trading period ended 31 January 2019 at its Meeting on 2 December 2019, in order to meet the filing deadline of 31 December 2019.

The Committee **NOTED** the position.

(g) Annual Expenses Report

The Committee **RECEIVED** this Report, which details the expenses paid by the College in the year ended 31 May 2019 for the Principal & Chief Executive and other governors in respect of expenses incurred by them in fulfilling their duties.

(h) Review of Financial Regulations

The Committee **RECEIVED** a paper from the Director of Finance on this matter. The Regulations were last reviewed in May 2018 and approved by the Board on 9 July 2018 and need updating.

The changes are:

- Where necessary, change HEFCE to Office for Students
- Delegated authority schedule now reflects Audit requirement changes
- Status of appendices and review dates have been revised

The Director of Finance advised that the Regulations, appendices and financial delegation schedules will be distributed to all staff requiring confirmation that they have read the Policy – this will be monitored.

The Committee **RECOMMENDED** that the Regulations be approved by the Board at its Meeting on 8 July 2019.

ACTION: CLERK

(i) Lennartz Update

The Director of Finance **REPORTED** at the September Meeting of this Committee that a decision in respect of the Lennartz VAT case which is being led by Colchester Institute on behalf of 17 FE Colleges was announced wherein HMRC have rejected the Application by the Colleges to the proposal that VAT should not be paid on

buildings on the grounds that the premises are for educational purposes and therefore exempt from VAT. This is the situation with schools.

The consultants acting for the Colleges considered the decision and the reasoning to be flawed and the Colleges are considering an Appeal to a higher judicial authority.

A further case involving Wakefield College (the alternative decision) has been considered by the High Court (higher court than HMRC Tribunal) and has rendered a decision contradictory to the Colchester case decision. This was reported to the Committee in November.

The full background to this issue and potential impact is itemised in previous minutes of this Committee. The College has received an update (dated today) on the latest position from VATAngles, the College's consultants in respect of this issue, and this was tabled for the Committee's information.

The approval given by this Committee at its last Committee to spend £20,000 + VAT on assessing if a judicial review would have merit. This is being pursued.

The Committee were reminded that the point of the judicial review would be to have HMRC's alternative decision (the Wakefield decision) revised so that the College could be reimbursed rather than the current position of HMRC, which is that 'even if you are correct, we should not have to pay you'. The claim amounts to £755,328.

The Director of Finance further advised the Committee that HMRC have raised an assessment for £236K for unpaid VAT but the College is appealing this assessment on the grounds that it is out of time and, even if it is valid, the VAT claimed is not payable under the terms of the general Lennartz case.

Meanwhile, the College may have to pay this assessment (negative effect on cash flow). There is a provision in the College balance of £1.5million, more than enough to cover the assessment, if it has to be paid.

The Committee **NOTED** the position.

(j) Learner Applications 2019-20

The PCE and the DPC&Q **PRESENTED** this Report which advised the Committee of the current position with regard to learner applications for 2019-20. The Committee noted the continuing challenges in recruitment due to increased competition from school sixth forms and schools encouraging students to remain with them rather than move into College.

As a consequence, College enrolments have declined over the last four years and this has severely impacted our ESFA funding allocation. It is noted that growth in numbers may be helped by an improved demographic over the next few years.

A realistic 16-18 enrolment target for 2019-20 is 5400 against our allocation of 5079. This high target requires College subsidy this year in order to attract an increased allocation next year under the lagged model. It is recognised that there are departures in the first six weeks of the academic year so the target number is therefore likely to reduce. Overall, therefore, it is low risk in terms of having to fund additional earners and generate growth for next year.

Applications to 13 June 2019 (comprising external applications plus progression learners) total 5453 (16-18) and 1067 (Adult), respectively an increase of 275 and a decrease of 172 compared to last year.

The Paper provided analysed detail of these high level figures. It also indicated measures to ensure applications convert to enrolments. The College is much further advanced in enrolment for 2019-20 than previously and this progress will intensify, e.g. enrolling GCSE and A Level students on result days.

Some A Level learners may be lost this year due to restructuring of the department and reduction of the offer to students.

The DPC&Q stated that the conversion rate is around 50% from applications and said that more applications are coming in steadily since these figures were put together. The College is trying to get this figure up to 60% conversion.

The Committee **NOTED** the Report and how challenging it remains to attract students to the College, with the consequent financial impact on the lagged funding model, but the outlook for 2019/20 appears optimistic. The refusal of local schools to provide proper careers advice and opportunities for the College to present to potential students is very disappointing.

10. Committee Matters

The Clerk **PRESENTED** a draft Annual Cycle of Business for 2019/20, which the Committee **RECOMMENDED** for Approval by the Board on 8 July 2019.

ACTION: CLERK

The Clerk **ADVISED** that, at the request of the PCE, he is postponing his retirement from the College as Clerk until 31 October 2019. Recruitment of his successor is underway.

On behalf of the Committee, the Chair thanked Judith Abbott, who leaves the College today, for her commitment to the merger and following through after it had occurred.

11. Forthcoming Events (Paper PRC.19.14)

The Clerk provided details to the Committee of Forthcoming Events in the College.

12. Dates of Next Meetings

Monday 23 September 2019 – Southend Campus at 6.00 pm.

Monday 3 February 2020 – Luckyn Lane, Basildon Campus at 6.00 pm.

Monday 27 April 2020 – Thurrock Campus at 6.00 pm.

Monday 22 June 2020 – Stephenson Road, Leigh-on-Sea at 6.00 pm.

There being no further business, the Meeting terminated at 8.05 pm.

Signed.....Dated.....