

Further Education Corporation

Approved Minutes

Minutes of a Meeting of the Further Education Corporation held at the Southend Campus on Monday 8 July 2019 at 6.00 pm.

Present: Mr R Launder (Acting Chairman)
Ms O Buck
Dr R Gray
Mr T Knight
Mr R Launder
Ms J McGee
Ms A O'Donoghue CBE
Ms E Sipiery (Chair designate)
Ms M West
Mrs G Williams

In Attendance: Mr A McGarel (Deputy Principal & Chief Executive)
Mr M Twitchett (Vice Principal, Curriculum & Quality)
Ms S Lane (Deputy Principal, Curriculum & Quality)
Mr P Moore (Director of Finance)
Mr R I Millea FCA (Clerk to the Corporation)

1. Governor Appointments

The Board **APPROVED** the appointments of Sarah Stone and Mark Harrison as Board Members with effect from 1 August 2019. Sarah will join the Audit & Risk Committee and Mark will join the Policy & Resources Committee.

2. Apologies for Absence and Declarations of Interest

Apologies for absence were received from David O'Halloran, Bob Patterson, Estrella Ponce, Paul Griffiths, Anne-Lise Harding and Steve Smith (Vice Principal, Corporate Services).

The Clerk declared his interest as Clerk to Chelmsford College and Company Secretary of Essex Shared Services Limited and that his wife's cousin is the Clerk to Writtle University College.

Mr Launder and Mr McGarel declared their interests as Directors of Essex Shared Services Limited.

Ms Sipiery declared her interest as a Non-Executive Director of Swan Housing Group.

3. Urgent Business

Since the last Meeting of the Board, three email resolutions have been passed by a quorum of Board Members relating to the following matters:

- Discounting of a Promissory Note from Redrow with Barclays Bank
- Approval of a Lease with Basildon Town Council in respect of the Market Square site in Basildon and approval of the Build Contract for the new Campus in Basildon with Morgan Sindall, the appointed contractors
- Authorisation of the signing and issue of the audited PROCAT Report & Accounts for the year ended 31 July 2018

For completeness, the detailed resolutions plus the explanation for the resolution in respect of the PROCAT Accounts, of the above three matters are included in these Minutes at item 14.

There were no other items of Urgent Business.

4. Minutes of the Meeting held on Monday 25 March 2019

The Minutes of the Meeting held on Monday 25 March 2019 were **APPROVED** and **SIGNED** by the Chairman.

5. Matters Arising from the Minutes

There were no Matters Arising from the Minutes which are not otherwise dealt with in the Agenda.

6. Strategic Developments in South Essex (Paper FEC.19.08)

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

7. Finance Matters (Paper FEC.18.09)

Items 7(b) to (e) on the Agenda are deemed to be Confidential Items under the Instrument & Articles and separate minutes have been prepared in connection with these items and are attached to these minutes.

7.1 a.i. Management Accounts for the ten months to 31 May 2019

The DPCE presented the Management Accounts to 31 May 2019 for consideration and comment by the Board, assisted by the Director of Finance.

The April Accounts had been reviewed in detail by the Policy & Resources Committee at its Meeting on 24 June 2019, as evidenced in the Minutes of that Committee Meeting, included at item 11 of this Agenda.

Income & Expenditure Account

Total income to 31 May 2019 amounted to £36.218 million and total expenditure amounted to £37.347 million, giving rise to an operating deficit for the ten months to May 2019 of £1,129K, after crediting the favourable Bursary Fund variance of £5K and the release from the revaluation reserve of £151K.

This compares to the planned deficit for SEC (12 months) and PROCAT (six months) of £881K, an unfavourable variance of £248K for the ten month period.

The Board was reminded that 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 DPCE provided a verbal commentary on the variances and actions being taken to control expenditure and achieve income targets as reforecasted for the rest of the year. Full details were provided in the paper to Members.

At the year end, the figures will be restated so as to remove the costs funded by the Transactions unit as part of the PROCAT merger transaction.

The forecasted outturn for the year is a deficit of £1,073K (as reforecasted in April) against a combined Budget of £781K, an unfavourable variance of £292K.

Governors noted that the College has achieved over 97% of its AEB Budget for the year and therefore there will be no clawback in early 2019.

Balance Sheet

At 31 May 2019, group net assets stood at £82.414 million, including fixed assets of £130.034 million. General provisions of £19.665 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 1.13 due to the improvement in the College cash flow following the merger and the requirement that the College maintains £3million in the bank to comply with the Barclays covenant.

Pay expenditure to 31 May 2019 remains high as a percentage of turnover (63.5%) but is lower than the 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.

Cash flow forecast

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

The Board **NOTED** that the College cash balance must be maintained at £3million to ensure compliance with the Barclays covenant. In this regard, the DPCE stated, in response to a question from Elizabeth Sipiery, that the quarter dates are critical (end of April, July, October and January). Between the dates when the covenant test takes place, the cash balance does sometimes drop below £3million and then recovers quite quickly. At all times, the Director of Finance closely monitors the College cash flow.

Financial Health

Due to additional cash balances arising from the funds provided by the Transactions Unit as part of the PROCAT merger of £3 million improving the current ratio, the College's Financial Health based on the ESFA methodology is currently **Requires Improvement**. At the year end, it will remain at **Requires Improvement**.

The grade of **Satisfactory** has been replaced by **Requires Improvement** recently by the ESFA and the College is committed to raising the grade to **Good**. The Board noted that this measure is the causa belli of the ESFA Intervention Unit.

The Board otherwise **NOTED** the position.

7.1 a.ii. Estimated Financial Outturn to 31 July 2019

A full reforecast of the College Accounts as at 30 April 2019 and comparison to the combined budget for the year ended 31 July 2019 has been completed and is noted above.

The original combined budgeted operating deficit will not be met and there will be an unfavourable deficit of c£300K.

The forecast outturn for the year ended 31 July 2019 was **RECEIVED** by the Board.

7 (f) LGPS Pension Scheme Consultation

The Clerk **PRESENTED** a Paper to the Board informing the Board of the recent consultation from Government over future possible changes to the LGPS. This was accompanied by a copy of the Consultation itself and the response drafted by the Association of Colleges.

Proposals regarding future membership of the Scheme for new employees are of interest to FE Colleges, as it may not be any longer a requirement for them to be offered automatic membership of the LGPS.

The PCE said that this could be a real chance of beginning to limit the cost to the College of pension contributions by offering flexible employment arrangements.

The Board **NOTED** the consultation and the AoC response, which was supported by the Board.

7 (g) Lennartz Update

The DPCE and the Director of Finance **PROVIDED** the Board with an update of the current position regarding the above issue.

The Board were reminded 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.

The full background to this issue and potential impact is itemised in previous minutes of the Board and of the Policy & Resources Committee. The College has received an update (dated 24 June 2019) on the latest position from VATAngles, the College's consultants in respect of this issue, and this was tabled for the Board's information.

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 Board 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.

The College has begun to release on a quarterly basis (£45K per month) the Lennartz VAT provision due to effluxion of time (part of the £236K mentioned above) and which is argued not to be reclaimable by HMRC.

Elizabeth Sipiery asked for a document to be provided to the Board summarising this issue, including mapping of what has happened and what might happen in the future, based on the advice given by VATAngles. She felt this would help to understand the position.

In addition, the Board asked that future updates from Noel Tyler of VATAngles be presented more clearly to aid understanding, recognising that the issue is complicated.

ACTION: DPCE

Nevertheless, the College may have to pay this assessment (negative effect on cash flow). There is a provision in the College accounts of £1.2million, more than enough to cover the assessment, if it has to be paid, therefore, there will be no charge against the income & expenditure account.

The Committee **NOTED** the position.

8. Curriculum & Quality Matters (Paper FEC.18.08)

8.a FE Student Applications 2019-20 (Paper FEC 19.10)

The Deputy Principal & Chief Executive reported that Student Applications for 2019/20 are looking positive so far in aiming to meet our 16-18 recruitment target of 5400 (against our allocation of 5079) but they have to be converted into enrolments.

The Board noted the continuing challenges in recruitment due to more school sixth forms being opened 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.

The 16-18 enrolment target for 2019-20 is as noted above. This high target requires College subsidy this year in order to attract an increased allocation next year under the lagged funding model. It is recognised that there are withdrawals 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 learners and generate growth for the following year.

Applications to 26 June 2019 (comprising external applications plus progression learners) total 5672 (16-18) and 1133 (Adult), respectively an increase of 403 and a decrease of 257 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 in previous years and this progress will intensify, e.g. enrolling GCSE and A Level students on result days, and throughout the summer.

It is the case that the College has focused on year two student enrolments as well as new students. As at 29 June 2019, 5150 applicant 'offers' have been made, which includes 2908 progressing students.

Furthermore, students will be able to enrol on GCSE and A Level results days and this is anticipated to lead to the College exceeding its target allocation number.

Monitoring of attendance in the first few weeks of the new academic year will be vital in order to ensure the College does not lose students who may be thinking of withdrawing.

There is optimism that the College allocation for 2019/20 of 5079 students can be met and therefore, under the lagged funding model, the allocation of income for 2019/20 can at least be maintained. Efforts will be made to increase the enrolment above that figure to improve the allocation for 2019/20.

Richard Launder asked Management as to the level of confidence in meeting the 16-18 allocation of 5079. The DPCE said that, having regard to historic patterns and the trends this year that the College is on target to meet the allocation of 5079 and there is optimism this could be exceeded towards the target of 5400.

Sarah Lane told the Board that the target of 5400 includes PROCAT and there is no enrolment history in that regard. Staff at PROCAT believe that they will enrol well but that is yet to be proven.

The risk of applications not converting to enrolments is acknowledged by the College and the activity underway and planned should help to convince students to choose SEC as their preferred education option.

The Board **NOTED** the Report.

8.b FE Learner Survey 2018-19 (Paper FEC 19.11)

The Board **RECEIVED** a Report on the outcome of the FE Student Survey results for 2018/19, presented by Matt Twitchett (Vice Principal, Curriculum & Quality).

The College surveyed 5299 learners, of whom 4492 replied – a response rate of 85%, which met the College target of 80% and is a very good return for this type of survey. Basildon Campus had a response rate of 85%, Thurrock 78%, Stephenson Road 74% and Southend achieved best at 88%. Matt Twitchett said this positive response reflects a lot of hard work by the staff teams managing this survey.

Four departments failed to reach the target (Engineering and Construction, ESOL, Art and design, Sixth Form and English and maths) with English and maths (adult programmes) being the lowest at 44%.

Governors were provided with detailed analyses of the Survey showing breakdown of questions which were related to the Ofsted framework, key strengths and Areas for Improvement based on the satisfaction rates and proposed actions based on the results.

These Actions covered:

- Review of the questions to ensure clarity but recognising that any question changes can make it difficult to compare from year to year
- Departmental planning to meet response rate of 85%
- Access to students at Luckyn Lane and Canvey Island
- Heads of Departments to continue meeting with learners to receive feedback on how safe they feel at College and put in place actions to deal with concerns raised, moving towards target of 90% *
- Greater focus on Individual Learning Plans to increase response rate from students (77%) and ensure students are aware of the benefits of Plans
- Introduce a 'Welcome to College' survey in October 2019
- Learner Forum in term 1 to put in place actions to address issues highlighted by learners

*The Board **NOTED** that 83% of learners felt they are learning in a safe environment, down from 86% last year. Governors felt that there were societal trends behind this reduction and that 'feeling safe' can be undermined, with no good reason, by random social media traffic.

In response to Terry Knight, Matt Twitchett said that the results of the Survey are used by marketing for promotional work and by each individual curriculum area for information and future development of their own students.

Overall, the Board **NOTED** that the satisfaction results for 2018/19 which have improved compared to the previous year.

8.c HE Student Applications 2019-20 (Paper FEC.18.12)

The Board **REVIEWED** this Report indicating the likely cohorts for 2019/20 of new entry undergraduates.

The Board noted that numbers are down for applications with 448 new students contracted for as opposed to 484 at the same point last year.

The College is dependent, therefore, on more recruitment through Clearing to achieve its target student numbers of 365.

The Board noted that a development programme is in place to increase student undergraduate numbers to 1402 by 2023 to ensure the viability of the College HE offer in the market and with its validating institutions, as well as its financial contribution.

The PCE is of the view that this target of 1402 3 year undergraduate degree students by 2023 may well be too optimistic and needs to be revisited.

The PCE reported that low recruitment has led to a decision to cease the offer for BSc (Accounting and Finance) due to small numbers and lack of accreditation from ACCA, the validating body.

The PCE said that she remained hopeful that the target of 365 for this year, noted above, could be met.

Terry Knight noted that the HE progression levels are not mirroring the position in FE and that further activity to increase progression internally into HE is required.

Governors asked to be informed of the final HE enrolment numbers for new undergraduates at the Curriculum & Quality Committee in November, as they remained concerned about the predicted numbers and the small numbers on some of the programmes.

The Board **NOTED** the Report.

ACTION: DEAN of HE

9. Report on International Work (Paper FEC.19.13)

An update on International Business Development was presented by the PCE in the form of a Paper authored by Suzie Wagstaff, Head of International Business Department.

The Report outlined the proposals for the future for this activity and its continued income growth:

- Maintain strong relationship with existing partner institutes overseas (China, Malaysia, Myanmar (Burma) and Taiwan)
- New international Prospectus to be developed
- Redesign the international websites to be more user friendly
- Continuing work with authorised recruitment agents abroad
- New partnership with overseas institutes to recruit students for Summer Schools
- Recruit an International Programme Leader to provide ongoing quality curriculum support
- Recruitment of an additional International Administrator to support the existing staff and the new students, especially those who come to the UK for their students at SEC
- New recruitment agents have been signed up abroad
- Tier 4 status has increased our marketability in China in particular

The budgeted income for 2019/20 for this activity is £580K (2018/19 £500K). With the successful application of Tier 4 status, there should be considerable growth opportunities in this area in the medium term.

The Board **NOTED** that the College is now accepting students on programmes in the UK, following Tier 4 status being restored. As a result, Rod Gray asked about accommodation for these resident students. The DPCE said that the College is using halls of residence of the University of Essex in Southend (where there are vacancies) and the College also has access to flats around the Southend area for students. The College prefers that the students are accommodated in University of Essex Halls of Residence but, wherever the students are billeted, thorough checks and follow ups take place by Student Services.

Terry Knight asked to see income and surplus achieved for International Work at the direct cost level so that the Board can see evidence that the work is profitable and is worth doing. The PCE **AGREED** and a summary will be sent to Members by email.

ACTION: DPCE

The Report was **RECEIVED**.

10. Matters for Approval by the Corporation

The Clerk presented a verbal Report outlining matters for approval by the Corporation arising from items already considered in detail by Committee and are recommended for approval by the Board.

From the Policy & Resources Committee

The Board **APPROVED** the

- Fees Policy 19-20 (FE & HE)
- Information Security Management Policy
- Data Breach Notification Policy
- Health & Safety Policy
- Whistleblowing Policy
- Risk Management Policy
- Review of Financial Regulations

Gwynn Williams asked that wording in the DBN Policy – ‘without undue delay’ – relating to the obligation of the College to respond be checked. The DPCE and the Clerk felt it was probably a statutory requirement but this will be confirmed.

ACTION: DPCE

The Clerk confirmed to the Board that the Ethics Policy, Anti-Money Laundering Policy and Anti-Bribery Policy, which are due for two yearly review, will be brought to the September Meeting of the policy & Resources Committee, when reviewed, and then to the October Board Meeting for approval.

ACTION: CLERK

From the Curriculum & Quality Committee

The Board **APPROVED** the

- FE Curriculum Plan 2019/20 (including Adult Provision)
- HE Curriculum Plan 2019/20

In response to questions from the Board, the PCE responded as follows:

- Consideration is being given to delivering a part-time MBA
- The BSc(Hons) Exercise, Health & Sport Performance course has now been validated
- A minimum course size of 10 is viable but retention is a key factor to remain financially viable for the full 3 years.

11. Items for Information Only

The Board **RECEIVED** the following Committee Meeting Minutes (unapproved):

- Search & Governance 13 May 2019
- Audit & Risk 8 May 2019
- Policy & Resources 29 April 2019 and 24 June 2019
- Curriculum & Quality 13 May 2019

The Board **RECEIVED** the following documents which had been considered by the Policy & Resources Committee on 25 June 2019:

- Management Accounts to 30 April 2019 (see minute 7 a i)
- Estimated likely outturn for the year to 31 July 2019 (see minute 7 a ii)

The Board also **RECEIVED** the Predicted Outcomes 2018/19 Report which had been considered by the Curriculum & Quality Committee on 13 May 2019.

12. Governance Matters (Papers FEC.19.14)

Election of Chair 2019-21

The Board **APPROVED** the appointment of Elizabeth Sipiery as Chair of the Corporation for the two year period beginning 1 August 2019, following the recruitment process to identify a Chair earlier this year.

The Board **AGREED** that Elizabeth Sipiery is a fit and proper person to serve as a Member of the Board, on the recommendation of the Search & Governance Committee, as documented in the Minutes of that Committee dated 13 May 2019, provided to all Board Members.

Resignation of Olga Buck

Due to work pressures, Olga Buck tabled her resignation from the Board with effect from 31 July 2019.

The Chair thanked Olga for her contribution to the Corporation and to the Policy & Resources Committee over the past six years, which the Board **ENDORSED**.

The Board also **RECORDED** their thanks to Kathy Mulvey (Vice Principal, Student Services), who retires shortly, for her long years of service to the College and to Geoffrey Ocen, a Board Member since 2015 for his service to the Board and the Audit & Risk Committee.

Committee Memberships 2019/20

The Clerk provided the Board with a schedule of Corporation and Committee Memberships for 2019/20, following review by the Search & Governance Committee at its May Meeting. The schedule was **APPROVED**.

The Clerk indicated that the schedule reflects the following changes:

- Sarah Stone joins the Audit & Risk Committee
- Mark Harrison joins the Policy & Resources Committee
- Olga Buck leaves the Audit & Risk Committee
- Geoffrey Ocen leaves the Audit & risk Committee
- David O'Halloran leaves the Policy & Resources Committee and joins the Audit & Risk Committee
- Elizabeth Sipiery joins the Policy & Resources Committee, the Remuneration Committee and the Search & Governance Committee

In order to facilitate the appointment of Elizabeth Sipiery to the Remuneration Committee and the Search & Governance Committee, the Board **APPROVED** an increase of one Member in the determined Membership of each of these Committees. The Membership of the Remuneration Committee becomes 6 (quorum 3) and the membership of the Search & Governance Committee becomes 7 (quorum 3).

Re-appointment of Governors

On the recommendation of the Search & Governance Committee, the Board **APPROVED** the re-appointments of Rod Gray and David O'Halloran as Members of the Board for further terms of four years, commencing in each case on 15 July 2019.

The Board also **APPROVED** the re-appointment of Estrella Rodriguez Ponce as HE Student Governor for the year ended 31 July 2020, the Clerk having confirmed that she was keen to continue for another year.

Governor Retirements and Recruitment

The Clerk informed the Board that the terms of office as governors of the College of Terry Knight, Gwynn Williams and Bob Patterson all expire on 31 July 2020.

A potential student has been identified as an FE student governor, which is being explored as to the student's availability.

A possible new independent governor has applied for membership, having met informally with the Principal & Chief Executive. He has returned a completed Application Form and an interview will be organised in due course. It was noted that he would be available to join the Board from around 1 January 2020.

There are currently three vacancies on the Board (two independent governors and one FE student governor).

Clerking Appointment

The PCE **REPORTED** that Melissa Drayson, Clerk at NCCI and Barnet and Southgate College, will be appointed as the Clerk to the Corporation from 1 November 2019. She will be a sub-contractor of Essex Shared Services Limited from that date.

The current Clerk, Robert Millea, has **AGREED** to continue as Clerk for the period from 1 August 2019 to 31 October 2019 and he will sign a contract with ESS to that effect. The Board **THANKED** Robert for his willingness to continue in the role for a further three months from his original agreed departure date.

13. Corporation Matters (Paper FEC.19.15)

The Clerk **PRESENTED** this Paper.

Meeting Planner and Schedule of Business of the Board and Committees for 2019/20

These were **APPROVED** by the Board.

Performance Indicators

The Clerk **REPORTED** on Attendance by Members at Board and Committee Meetings during 2018/19. The Board set a KPI of 80% attendance.

The attendance percentages for the Corporation and its Committees over the past twelve months have been as follows (last year in brackets):

Corporation	77%	(78%)
Search & Governance	78%	(83%)
Policy & Resources	87%	(90%)
Audit & Risk	65%	(65%)
Curriculum & Quality	86%	(77%)
Remuneration	90%	(80%)

The attendance percentages are based on actual membership during the year (excluding number of vacancies in the calculations).

Governors were provided with a schedule of training events which they had attended in the past year. The Clerk was included on this schedule.

Register of Interests and Eligibility to serve on the Board

Board Members are to be given copies of their current declarations of Interests for updating and return to the Clerk. They will also be asked to confirm that they remain eligible to serve on the Board.

14. Detailed Resolutions passed by the Board

Since the date of the last Board Meeting on 25 March 2019, the Board has **APPROVED** three resolutions by email, as noted under item 3 – Urgent Business. The detailed resolutions passed are documented below to provide a complete record in the Minutes of the Board.

Discounting of Promissory Note

A written resolution of the corporation (“the **Corporation**”) of South Essex College of Further and Higher Education (the “**College**”) circulated on 15 May 2019.

There was circulated to the members of the Corporation, the Terms for the one-off purchase of a promissory note (the “**Terms of Purchase**”).

It was resolved that:

1. The College agrees to the Terms of Purchase from Barclays Bank PLC (the “**Bank**”) and the terms and conditions set out in the attached letter; and
2. The approval of the Terms of Purchase is considered to be in the best interest of the College; and
3. The Terms of Purchase from the Bank now produced is approved by the Corporation and either the Principal and Chief Executive and the Deputy Principal and Deputy Chief Executive are hereby authorised to sign the acceptance of the Terms of Purchase on behalf of the College to the terms and conditions stated therein; and
4. Either the Principal and Chief Executive and the Deputy Principal and Deputy Chief Executive are hereby authorised to:

- i) take any action required in connection with the Terms of Purchase;
- ii) agree the form and terms of any other document(s) required to be executed in connection with the Terms of Purchase including the endorsement of the promissory note to the Bank on behalf of the College, at any time during the course of the Terms of Purchase; and
- iii) are authorised to agree and sign, without limitation, any notices, certificates, letters or other document(s) to be given thereunder by the College; and

5. The following are specimen signatures of the Principal and Chief Executive and the Deputy Principal and Deputy Chief Executive pursuant to points 3 and 4 above:

Name: Angela O'Donoghue
 Capacity: Principal and Chief Executive/Authorised signatory

Specimen signature:

Name: Anthony McGarel
 Capacity: Deputy Principal and Deputy Chief Executive/Authorised signatory

Specimen signature:

Please read the explanatory note at the end of this document before signifying your agreement to the resolution.

We, the undersigned, were at the time the resolution was circulated entitled to vote on the resolution and irrevocably agree to the resolution.

Member Name Signature

1. If you agree to the resolution, please signify your agreement by signing and dating this document where indicated above and returning it to the College by using one of the following methods:

By hand: by delivering the signed copy to the College.

By email: by emailing the signed copy to sue.mack@southessex.ac.uk

If you do not agree to the above resolution[s], you do not need to do anything.

2. Once you have signified your agreement to the resolution[s], you may not revoke your agreement.
3. Unless, by Tuesday 21 May 2019, sufficient agreement has been received for the resolution to be passed, it will lapse. If you agree to the resolution, please ensure that signification of your agreement reaches us before or on this date.
4. Sufficient agreement will have been reached to pass a resolution if eligible members (ie, members who were entitled to vote at the time the resolution was circulated) representing a simple majority of the total voting rights of eligible members signify their agreement to it.

Lease of Market Square from Basildon Town Council and Morgan Sindall Build Contract

A written resolution of the members of the corporation (the “**Corporation**”) of South Essex College of Further and Higher Education (the “**College**”) circulated on 15 May 2019.

Market Square Lease

A copy of the proposed lease of Market Square Basildon to be entered into by (1) Basildon Borough Council (as landlord and (2) the College (as lessee) (“the **Lease**”) had been circulated to the members. The members acknowledge that the lease is to be granted to the College by the Council pursuant to an Agreement for Lease dated 30 September 2016.

It is resolved that:

1. the Corporation, agrees that the College should enter into the Lease in accordance with the terms of the Agreement;
2. the form of the Lease is consistent with the Agreement and is approved by the Corporation;
and
3. the seal of the Corporation should be affixed to the Lease and the Chairman (or other member of the Corporation authorised to countersign the seal in the place of the Chairman) together with any second member of the Corporation be authorised to countersign the seal on behalf of the Corporation.

Build Contract

As previously reported to the Corporation the College intends to enter into a building contract for the construction of the new college facilities at Market Square, Basildon. The Contract is to be entered into by the College (as employer) and the contractor Morgan Sindell (“the **Building Contract**”).

It is acknowledged that the provisions of the Building Contract will be within the parameters of the cost plan and programme in the capital programme which the Corporation has previously approved but some of the detailed terms of the Building Contract have not yet been settled with Morgan Sindell. These details will be agreed by the Principal and Chief Executive and the Deputy Principal and Chief Executive before execution and completion of the Building Contract

It is resolved that:

1. the Corporation, in good faith and for the purpose of carrying on its business agrees to enter into the Building Contract once the final build costs, the programme and other detailed terms have been agreed;
2. the Principal and Chief Executive and the Deputy Principal and Chief Executive are hereby authorised to agree the final build costs programme and other detailed terms of the Building Contract so long as they are within the parameters of the approved capital programme;
3. once the build cost, the programme and other detailed terms of the Building Contract have been agreed, the seal of the College should be affixed to the Building Contract and the Chairman (or other member of the Corporation authorised to countersign the seal in his absence) together with any second member of the Corporation be authorised to countersign the seal

Ancillary Documents/Notices

It was further resolved that the Principal and Chief Executive and the Deputy Principal and Chief Executive are hereby authorised to:

- a. take any action required in connection with the Lease and Building Contract; and
- b. are authorised to agree and sign, without limitation, any notices, certificates, letters or other document(s) to be given thereunder by the College.

Please read the explanatory note at the end of this document before signifying your agreement to the resolution.

We, the undersigned, were at the time the resolution was circulated entitled to vote on the resolution and irrevocably agree to the resolution.

Member	.....	.....
	Name	Signature

Member	.....	.....
	Name	Signature

Member	.....	.....
	Name	Signature

Member	.....	.....
	Name	Signature

Member	.....	.....
	Name	Signature

Member	.....	.....
	Name	Signature

Member
Name Signature

Member
Name Signature

5. If you agree to the resolution, please signify your agreement by signing and dating this document where indicated above and returning it to the Corporation by using one of the following methods:

By hand: by delivering the signed copy to the College.

By email: by emailing the signed copy to sue.mack@southessex.ac.uk.

If you do not agree to the above resolution[s], you do not need to do anything.

6. Once you have signified your agreement to the resolution[s], you may not revoke your agreement.
7. Unless, by Tuesday 21 May 2019, sufficient agreement has been received for the resolution to be passed, it will lapse. If you agree to the resolution, please ensure that signification of your agreement reaches us before or on this date.
8. Sufficient agreement will have been reached to pass a resolution if eligible members (ie, members who were entitled to vote at the time the resolution was circulated) representing a simple majority of the total voting rights of eligible members signify their agreement to it.

Signing of PROCAT Report & Accounts for the year ended 31 July 2018

The authorisation for and the signing of the Report & Accounts by the Acting Chair and the Principal (as Accounting Officer) was given by resolution of the Board by email. The email included the justification for the authorisation and the formal resolution and it is included below to make clear the Board's views on the matter, following decisions previously taken by the Board at its March Meeting.



SOUTH ESSEX COLLEGE

PROCAT ACCOUNTS – year ended 31 July 2018

BACKGROUND

The Board is aware of the need for the Report & Accounts of PROCAT for the year ended 31 July 2018 to be completed, audited, signed and submitted to the ESFA. This, of course, should have happened by 31 December 2018 before the date of merger.

This failure means that it is a requirement of SEC to sign the accounts, even though they relate to a period with which SEC had no responsibility for or control over PROCAT and its business.

The Board Minutes of the 25 March 2019 explain the matter in detail and a way forward was documented. An extract of these Minutes is attached. They have been approved by the Chair and will be approved by the Board on 8 July 2019.

The Audit & Risk Committee reviewed the Report & Accounts at their Meeting on 8 May 2019 and an extract of the Minutes of that Meeting are attached. These Minutes have been approved by the Chair of the Committee and will be approved by the Committee as a whole on 11 September 2019.

In both these sets of minutes, it is made very clear that the Board and the Audit Committee wished that the PROCAT Report & Accounts clearly reflect with suitable wording the responsibilities of the two governing bodies in respect of the Accounts, specifically that SEC cannot take responsibility for the content of the PROCAT Accounts for the year in question.

The Board acknowledged that it, as the successor College, has to follow the ESFA Accounts Direction requirement to file the accounts of PROCAT.

At the Audit & Risk Committee Meeting, the Report & Accounts were reviewed by the Committee, inclusive of wording to make clear the responsibilities of the two Colleges in respect of the Accounts.

The auditors of PROCAT – RSM – raised no issues with the wording included in the Report & Accounts at the Meeting of the Audit & Risk Committee on 8 May 2019, which they attended. They are now saying that they will not sign the accounts with the wording included because the ESFA Accounts Direction requires SEC, as successor College, to take responsibility for the PROCAT Accounts, and the caveats are not acceptable.

There is no legal precedent should the Board decide not to sign the Accounts or to insist on the caveat wording be included. RSM is relying on the authority of the ESFA Accounts Direction, the effect of not complying with which has not been tested. Presumably, RSM would want to qualify their Report but that is not known.

However, the Board's view on this issue and that of the Audit & Risk Committee is quite clear. Nevertheless, if the Board holds to its view, there is, from what RSM have said, an impasse, which needs to be resolved.

Having discussed the issue with the Principal & Chief Executive and the Deputy Principal & Chief Executive, the following course of action is proposed:

- 1 The Board be sent extracts of the Minutes of the Board Meeting on 25 March 2019 and the Audit & Risk Committee Meeting on 8 May 2019
- 2 The final PROCAT Report & Accounts as 'agreed' by RSM, the external auditors, be sent to the Board without the 'caveats' as to the responsibilities of each Governing Body which were reviewed by the Audit & Risk Committee
- 3 The Letter of Representation requested by RSM and has been signed by Theo Steel (former PROCAT governor) and Judith Abbott (Former Accounting Officer of PROCAT)

4 The Board be asked to consider these documents, and this paper, and be asked to authorise the Report & Accounts (as noted in 2 above) for signature and filing with the ESFA by email resolution as soon as possible, giving authority to the Principal & Chief Executive and the Acting Chair to sign the Report & Accounts on behalf of the Board

5 A copy of this Paper and the Resolution below, together with a note of governor email responses, be reported to the full Board on 8 July 2019 and included unaltered in the Minutes of that Meeting which would demonstrate the Board's view in a public document, i.e. the Board Meeting Minutes, as to their responsibilities in connection with these Accounts and that the Accounts are being signed at the insistence of the auditors.

The intention is that, if there is a quorum of Board Members agreeable to this course of action, the Report & Accounts and the Letter of Representation noted in 3 above, be signed at the Meeting of the Policy & Resources Committee on 24 June 2019.

RESOLUTION

In the light of the explanation advice provided above, the Board is asked to

ENDORSE the contents of this Paper noted above

APPROVE

- (a) The Report & Accounts of PROCAT for the year ended 31 July 2018 be authorised for issue by the Board to satisfy the ESFA Accounts Direction and that the Principal & Chief Executive and the Acting Chair be authorised to sign the Report & Accounts on their behalf
- (b) The Letter of Representation requested by RSM in connection with their audit examination, which has been signed by Theo Steel (former PROCAT governor) and Judith Abbott (former Accounting Officer of PROCAT), be also signed, under delegated authority, by the Principal & Chief Executive and the Acting Chair and given to them

Signed Date.....

Name of Governor

Rob Millea
Clerk to the Corporation – 14 June 2019

13. Forthcoming Events (Paper FEC.19.16)

The Board **NOTED** the contents of the paper, prepared by the Clerk.

In particular, the Board **NOTED** that the Board Development Day will be held next Monday at the Southend Campus, commencing with lunch at 1.00pm and ending with dinner in Waves Restaurant at 5.30 pm. The programme for the Day will be sent later this week.

14. Date of Next Meeting

Monday 14 October 2019 at the Thurrock Campus.

There being no further business, the Meeting terminated at 8.10 pm.

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