

Further Education Corporation

Approved Minutes

Minutes of a Meeting of the Further Education Corporation held at the Basildon Campus (Room B011) on Monday 3 October 2016 at 6.00 pm.

Present: Mr D O'Halloran (Chairman)
Ms S Bridle
Mr B Brooks
Ms O Buck
Mr S Burrell
Dr R Gray
Mr T Knight
Mr R Launder
Ms A O'Donoghue CBE
Mr Paramjit Singh Narang
Mr R Patterson
Ms L Rieffel
Ms M West (as from item 7)

In Attendance: Mr A McGarel (Deputy Principal & Chief Executive)
Ms K Mulvey (Director of Teaching & Learning)
Mr S Smith (Vice Principal, Corporate Resources)
Ms D Hurst (Director of Finance)
Mr R I Millea FCA (Clerk to the Corporation)

1. Appointment of Student Member

Following recent elections to the Student Union Committee, the Committee has put forward Skye Bridle (SU President) as a candidate for Student Governor (FE) of the College for the academic year 2016/17. Skye served as FE Student Governor during the last academic year.

There is no nomination as yet for HE Student Governor but it is hoped a candidate will be found by the time of the Board Meeting on 5 December 2016.

The Board **APPROVED** the appointment of Skye Bridle as student governor for the academic year 2016/17, commencing immediately, subject to her remaining a student of the College. Skye will serve as a Member of the Curriculum & Quality Committee as last year.

2. Apologies for Absence and Declaration of Interests

Apologies for absence were received from Mrs S Carr, Mr G Ocen, Mr T Thompson, Mrs G Williams and Ms D Brown (Vice Principal, Curriculum & Quality).

The Clerk to the Corporation and the Director of Finance declared their interests as they occupy the same positions at Chelmsford College.

3. Urgent Business

The Board were **INFORMED** that a Special Meeting of the Corporation will be held on Monday 17 October 2016 (Southend 3pm) to discuss and validate the draft College Self-Assessment Report for 2015/16 as it has to be submitted as part of the Area Review process by 21 October 2016.

The Clerk confirmed that at least nine governors had confirmed their attendance with four more still to be contacted.

The Clerk **REPORTED** the Use of College Seal to sign the Underlease relating to the land at Market Square, Basildon with Basildon Borough Council and Basildon Town Centre Management Limited.

The Board **NOTED** the advice from its lawyers, Irwin Mitchell, that the College is not obliged to complete until it has satisfied the conditions precedent in the Nethermayne Agreement **AND** is also satisfied that it will have all necessary rights to carry out the Market Square development meaning that the property must be cleared of occupiers. If these conditions are not met by 19 June 2020 then the College can terminate.

4. Minutes of the Meeting held on Monday 11 July 2016

The Minutes of the meeting held on Monday 11 July 2016 were **APPROVED** and **SIGNED** by the Chairman.

5. Matters Arising

The Clerk **REPORTED** that the College Financial Forecast 2016-18 was submitted, as required, to the Skills Funding Agency by 31 July 2016.

The Principal & Chief Executive **PROVIDED** an update on the HE position with the University of Essex (see Confidential Minutes).

6. Staff Governor Elections

The Clerk proposed to the Board that, in the light of Area Reviews and the considerable administrative effort required in holding Staff Governor elections, which are due this Autumn, and to preserve continuity in the short term, that the terms of office of the two incumbent staff governors, Brad Brooks and Lisa Rieffel, be extended for a further year so that their terms of office will expire immediately before the Board Meeting on 4 December 2017.

The Board felt this was a sensible suggestion and **APPROVED** the extension of the terms of office for the two staff governors, as explained above.

The Board further **AGREED** that the Search & Governance Committee review the term of office for Staff Governors (currently two years) at its next Meeting and consider whether that should be extended.

ACTION: CLERK

7. Strategic Developments in South Essex (Paper FEC.16.19)

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.

8. Area Reviews (Paper FEC.16.20)

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.

9. Finance Matters (Paper FEC.16.21)

a. Management Accounts to 31 July 2016 and outturn for the year

The Director of Finance presented the Management Accounts with commentary for the year ended 31 July 2016, including status against agreed KPIs.

The Accounts show that, to 31 July 2016, total income amounted to £54.0 million (including South Essex Commercial Services Limited) and total expenditure amounted to £55.2 million (which includes £257K of restructuring costs) giving rise to a deficit for the year of £1.2million, compared to an original budgeted surplus for the year of £500K, an unfavourable variance of £1.7 million.

The outturn for the year was a worsening against the last forecast given to the Board of a deficit of £632K. The main reason for this was the unfavourable decision against the College of the Crown House court case which produced an unexpected loss of £500K.

Crown House dispute

This matter came to Court in July and the decision, despite positive legal advice given to the College in the past, was unfavourable and the judge found against the College, on the grounds that the College had not constructively terminated the Lease in accordance with the provisions in the Lease. The liability for unpaid rent, interest and costs amounts to £500K and will be a charge in the College's Income & Expenditure Account for the year ended 31 July 2016.

The payment of the liability is demanded by 31 December 2017 by the Department of Work & Pensions, the landlord.

There is no right of appeal and the College, having considered the matter, does not believe there is any merit in attempting to pursue an action against the College's solicitors for bad advice. The judge's view was that the abandonment of Crown House by the College did not constitute a Notice to terminate the Lease and, even if it was thought by the College's lawyers to be defensible, abandonment did not constitute constructive vacation.

The Board **RESOLVED** to set up an internal inquiry by governors (small committee) into what happened and why it was suggested last year that the contingency included in the Accounts had been released. There would also be a question as to what governors and the Senior Leadership Team could have done to prevent this.

The Clerk was asked to prepare draft Terms of Reference for such an inquiry and agree them with the Chairman of the Corporation. It was intended that the Committee would report back to the Board at the December Meeting.

ACTION: CLERK

A governor noted the apparent poor legal advice which we were given and asked if the College is still using this firm for legal matters. We are not using them except to finalise the dilapidations on Crown House, costing around £40K, as, by virtue of the decision, the College is still the occupier (lessee) of the property until mid December 2016.

In all other respects, the College's property advice is procured from Irwin Mitchell.

Governors are very disappointed with this outcome and the negligent advice received and the fact that we had no contingency in the budget (having reversed it last year).

At 31 July 2016, group net assets stood at £37.3 million, including cash at bank of £2.354 million and fixed assets of £108.7 million.

The Board noted that the FRS17 pension liability of £24.9million, which has increased following the Report from the actuary by £6.8 million compared to last year, is now treated as a deduction from net assets, rather than, as previously, as a reserve, and that deferred capital grants are now classified as liabilities rather than as reserves, in order to comply with the provisions of FRS102.

They were also reminded that the Management Accounts do not include any adjustments that might arise from the FRS17 adjustments for pension liability and the external audit, which is due to start shortly.

All bank covenants continue to be met. The current ratio is negative 0.6.

The **College's Financial Health** has now deteriorated to **Inadequate** as at 31 July 2016 and the College may well be required to prepare a Financial Recovery Plan for submission to the SFA if the College is issued with a Notice of Concern by the SFA. The College is seeking to have this possibility moderated on the basis that the Crown House dispute cost is a 'one-off' event, which should not cause the Financial Health to be classed as Inadequate.

The Senior Leadership Team has met with the SFA new relationship team on 21 September 2016 to discuss this forecasted position and the possible consequences.

Without the effect of the Crown House loss of £500K, the Financial Health of the College would be Satisfactory, which is considered more appropriate.

Pay as a % of turnover is running at 63.0%, above the KPI of 62.5%, still affected adversely by the level of agency spend (£1.5 million) against a budget of £200K for the year, although this is partially offset against savings elsewhere on pay costs.

Members asked what is the position of agency costs this year, noting that employing agency staff costs (including VAT) one third more than employing them directly by the College. It was explained that some staff have been now employed for the future but there is a real challenge here and there are considerable risks to this year's surplus.

It is sometimes impossible to control agency costs for a variety of reasons – last year was heavily affected by the number of students (3,000) studying GCSE English & Maths and the availability of staff to teach them. All these posts have been filled this year with full time staff.

One governor expressed lack of confidence in the budget situation being achievable this year as one of the weaknesses last year was that the projected forecast kept changing, which suggested a lack of overall control. It was agreed that it is incumbent on governors and management to exercise much sharper and more diligent control over the budget as the year proceeds and see that amelioration is taking place when things are not on track.

Budget reviews are taking place with individual budget holders shortly and then regularly throughout the year (monthly). This will encourage more in ownership of budgets and accountable for their spending.

One governor agreed that there was a clear and vital need to control expenditure but there is a need on the other side to grow income. It was noted that the Curriculum Plan (later on the agenda) does attempt to meet the challenge of growth over the next four years.

It was agreed that governors should review Departmental Budgets as part of their link Governor role with Departments.

The Director of Finance informed the Board that cash flow remains challenging and it is virtually certain that an overdraft facility will be required in the early part of 2017, as was the case this year. A cash flow projection was provided to the Board as part of the Accounts package.

The Audit & Risk Committee will examine the Accounts and results of the Audit in detail at its November Meeting and make a recommendation to the December Board Meeting that the Accounts for the year ended 31 July 2016 be approved. Its examination will include consideration of the going concern position of the College.

The Director of Finance also provided details of the **College's Insurance Cover** with effect from 1 August 2016. The cost increase for this year has risen by about £8K due to the increase in the rate of Insurance premium Tax from 6% to 9% and increased cost due to additional plant having been purchased.

The Board was informed of the increase in the **pension liability** for the year (see above) and that it relates to a reduction in the discount rate and changes to the assumptions on pension and salary increase. Governors have been provided with a full copy of the Actuary's Report on OneDrive.

A full actuarial review of the Essex LGPS is in hand and should be complete by the end of 2016.

In addition, Essex LGPS have contacted all Colleges in Essex seeking additional security for the pension deficit as it is no longer guaranteed by the Government. The expected security could be cash deposited in an escrow account, a financial bond or security over College assets.

The Scheme are seeking a proposal from the College by February 2017. If no proposal is received (or one that is not acceptable), the repayment term of the deficit repair payments will reduce from 24 years to 10 years which will increase said payments for the College from £250K per annum to £1million per annum.

A proposal in this regard will be brought to the next Meeting of the Policy & Resources Committee on 21 November 2016.

The Board **RECEIVED** the Report.

ACTION:DH

b. College Financial Strategy – 2016/17 to 2018/19

c. Barclays Bank Loan Arrangements

These two items (b and c) and item (e) below were 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.

d. Learner Numbers and Financial Implications 2016/17

The Board **RECEIVED** a Report on the above subject, which showed College's progress against its learner number targets for the current year following the recruitment process, together with the estimated financial effects thereof.

16-18 Learner numbers remain below our allocation (5987 enrolments plus 210 sub-contracting numbers – 94.3% of allocation) and it is doubtful that the target will be reached, although efforts continue to this end.

This shortfall will influence our allocation for 2017/18.

Total 19+ learner numbers are 2278, 6% less than at the same date last year. Nevertheless, further enrolments and activity is planned during the rest of this academic year and it is planned that the College will deliver 100% against the Adult allocation.

The 19+ loans budget is drawn down as to 45% of the allocation and again further activity will increase this by the end of the year.

Following discussion of the trends, the Board **APPROVED** the actions identified to meet or exceed the enrolment targets, as follows:

- Continue Collaborative Partner recruitment strategy for both 16-18 and 19+ learners and review actual enrolments against individual contracts
- Monitor withdrawals for 16-18 learners
- Review actual retention rates against SFA funding rules
- Review 2017/18 admissions strategy to ensure College achieves its EFA allocation including a reduction in collaborative partner allocations
- Further Recruitment drives throughout the year
- 150 Traineeships being planned this year (not in figures)

Clearer final figures regarding enrolments will be available in the next month or so and will be reported to the Policy & Resources Committee on 21 November 2016. This area needs close monitoring.

The Board **RECEIVED** the Report.

ACTION: DH

e. Sub-Contracting Provision 2016/17

See above under items b and c.

10. Curriculum & Quality Matters (Paper FEC.16.22)

a. FE Curriculum Plan 2016-20

The Board **RECEIVED** a Report outlining a detailed Curriculum plan for Further Education provision for the next four years, clearly showing areas for growth and development and informs our capital investment needs.

The Board **NOTED** that a Curriculum Plan for 2016-17 had been approved at the previous Meeting of the Board. However this is a longer term curriculum plan to inform new Strategic Plan which will be developed over the next 6 months. Agreed we would wait until after the Area Review process.

The Curriculum Plan is very detailed and addresses all provision in the College and will undoubtedly change over its life to reflect changes in Government priorities for skills post 16 in the future. However, it is based on current knowledge and the current environment.

It is important that, for the Area Review, the College can positively show how we will specialise in the future, address the Apprenticeship challenge set by Government, achieve growth and make best use of our resources.

It will now be shared across the College with Curriculum Heads.

The Paper provides all the influences for **future Apprenticeship provision** focusing on the role of the employer in commissioning the College to provide Apprenticeships to meet their staffing needs since the funding will rest with employers through the Apprenticeship Levy. They will have considerable influence over the training plans and the assessment organisations to be used.

The Levy will be introduced from 1 April 2017 and all employers with a pay bill of over £3million per annum will pay a levy of 0.5% of the total payroll bill.

A new body, the Institute for Apprenticeships, will oversee quality and governance at the same time as the Levy begins.

The **basis of the plan** is labour market intelligence and the voice of employers in the region plus the growth sectors identified by the South East Local Enterprise Partnership, the Essex Employment and Skills Board, Thames Gateway Partnership and the Business Boards of Southend, Thurrock and Basildon.

The **key drivers for the plan** are:

- Improved student outcomes
- Meet the needs of industry
- Curriculum rationalisation with focus on specialisation
- Increase HE offer
- Apprenticeship changes (see above)

- Replacement of sub-contracted income
- Retrain and reskill Adults utilising the adult loans system and the Apprenticeship Levy
- Improving Financial Health to reach a 3% surplus in the next three years
- Grow full cost courses especially to meet higher level professional skills needs in the workforce

The Board **APPROVED** the FE Curriculum Plan for 2016-2020.

b. Learner Performance 2015-16 (Preliminary)

The Board **RECEIVED** a preliminary Report on Learner Performance for 2015-16, noting that most results have been received, except for some Adult provision.

The Board will receive a final Report on Learner Performance for last year at its next Meeting in December. In the meantime, the Curriculum & Quality Committee will examine the final results in more detail at its Meeting on 7 November 2016.

The picture this year is much improved over last year and as regards seven out of the ten curriculum areas, our success rates are at or above the national benchmarks. At the time of the last Ofsted, it was only four out of ten. The overall trends are noted below.

This will be a good story to present to Ofsted and we will get an Improvement Visit in January 2017. It is reasonable to believe that we will get a full Ofsted visit possibly in April/May 2017. It is not likely to happen before the Area Review process is substantially complete.

The Report follows the new methodology introduced in December 2014 as was the case last year. It was noted that the National Averages are last year's figures as the QAR 15/16 is not yet available.

The Report also explains how the various statistical information is compiled to add context. In particular, the potential success rate column is close to or virtually the final position which the College anticipates.

The Board noted the main findings as follows:

- Overall Achievement Rate for 16-18 cohort is 87.8% - up 6.9 pp on last year and 0.7 pp above the last National Average (2014/15)
- GCE A and AS levels are below NA by 14.8 pp – A2 levels by 4.6 pp and AS levels by 21.2 pp – and both have decreased from the College achievement last year
- Study Programme Achievement for 16-19 cohort has risen substantially at level 1 by 17.2 pp but remains below the NA – nevertheless there has been rapid improvement. Level 2 progress is much slower as it is affected by learner achievement at GCSE English & Maths
- Apprenticeship Achievement is above NA by 1.1 pp and may rise further
- Success rates for HE are 2.1 pp lower than last year
- Adult Study programmes at levels 1 (0.4 pp) and 2 (3 pp) are close to NA and demonstrate slight improvement on last year but level 3 has presented challenges this year and is 5.2 pp below NA

The Board **NOTED** the Report.

ACTION: DB

c. Quality Strategy

The Board was reminded of its responsibility under the Articles of Government to 'approve the quality strategy of the institution' (Clause 3 (b)).

The Paper, presented by the Director of Teaching & Learning, outlined the key quality assurance priorities directly linked to the College Strategic Aims and the strategy is designed to ensure there is a cohesive Strategy for Quality Assurance and Improvement across the College, covering both FE and HE provision.

The five key priorities of the strategy are unchanged from those approved by the Board at its Meeting on 5 October 2015.

The Board noted that the Strategy is a continuance of the existing Strategy and that it should be reviewed and refreshed annually. Accordingly, the Board **APPROVED** the Quality Improvement Strategy for 2016-17.

d. Self-Assessment Report and Quality Improvement Plan

The Board **REVIEWED** the draft Quality Improvement Plan for 2016/17 based on the preliminary learner outcomes for the year just ended and the individual course reviews held recently. Further work to finalise the QIP is required once the Self-Assessment process is complete. Governors are participating in Departmental Reviews over the next week or so, in order that they might challenge the self-assessments and Quality Improvement Plans in each Department.

In addition, a Special Governors' Meeting is being held on 17 October at 3pm (Southend) to validate the draft SAR. It is required to be submitted to the Area Review panel as part of the dataset for that process by 21 October in as final a form as possible.

These two processes will enable governors to thoroughly review the College's judgements and the plans to effect continuing improvement and therefore demonstrates their involvement in the Self-Assessment process.

The Curriculum & Quality Committee will examine a final SAR at its November Meeting and the Board will formally ratify it in December.

The Board **NOTED** the Report and **AGREED** the arrangements for finalising the 2015/16 SAR.

11. Higher Education (Paper FEC.16.23)

a. Progress against QAA HE Review Action Plan

The Board **RECEIVED** a Report on progress, as previously requested by the Board.

The viability of the College's HE provision depends on successfully completing the Action Plan and to revise the current judgement from 'Requires Improvement' to 'Meets Expectations' in two of the four areas assessed.

Reasonable progress is being made and the Board had sight of a table showing what has been done and is in hand. Not all the actions due for completion in September 2016 are complete but nearly so and those with a later deadline date are on track.

The timetable for implementation has been agreed with the QAA HER Manager and there will be three progress meetings with the Manager in January, March and May 2017 to ensure that progress is happening. An update action plan with evidence of progress will be submitted by 12 June 2017 and the outcome of this will determine if a monitoring visit is necessary in which case it will happen in July 2017.

The Board **NOTED** the Report.

b. HE Curriculum Plan 2016-20

The Board **RECEIVED** a Paper proposing the high level HE Curriculum Plan for 2016-2020. The Board **NOTED** that a specific Plan for 2016/17 had been approved at the Board Meeting in July 2016.

The Plan is aspirational because of the uncertainties surrounding the funding and delivery of Higher and Degree Apprenticeships and the selection by the College of new HE validation institutions to replace the University of Essex (see below).

Therefore, a detailed Curriculum Plan is not feasible at this stage.

The College is moving validation of Degree provision from the University of Essex to other validating partners as UoE will not continue in this role after 1 September 2017 and this adds to the difficulty of creating a detailed Plan at the present time.

The Principal & Chief Executive informed the Board that University of Arts London is considering validating more of our degrees (they do some already) in the areas relevant to their specialisms.

There is an opportunity to have some degrees validated by the Open University and there are some others who are interested. She explained that we do not really want more than three partners for HE as there would be three different QA systems to which to comply and this adds to the bureaucratic burden.

She further noted that new validators need to be agreed and signed up as soon as possible as the process is lengthy and we need to have revalidated programmes in place by 2018.

Nevertheless, the Plan outlines the College's objectives and growth plans over the next three years noting that it is a requirement as part of the dataset requested by the Area Review panel by 21 October 2016.

The Board **APPROVED** the Higher Education Curriculum Plan for 2016-2020, noting that it will require further development as circumstances regarding funding, delivery and validation arrangements become clear.

ACTION: P&CE

12. Key Performance Indicators 2016-17 (Paper FEC.16.24)

The Board **RECEIVED** a Report providing them with information relating to the College's performance against agreed KPIs for 2015/16 (HR, Finance and Academic) and to set targets for 2016/17.

The Board **APPROVED** the following targets for **HR and Finance** for 2016/17:

- Absence rate 7 days per person over a 12 month rolling period (unchanged)
- Turnover of staff 15% (unchanged)
- Financial Health – Satisfactory
- Surplus 0.4% of turnover (£200K)
- Pay as a % of turnover 62.5%
- Dependency on SFA/EFA income 75%

In connection with staff absence being stubbornly high, one Member asked whether the high level of chest and respiratory illnesses and cold and flu with ear nose and throat infections was in any way attributable to the condition of the College's buildings. This will be investigated and reported back to the Policy & Resources Committee on 21 November 2016, although at this point there is no known causal link.

A Board Member challenged the new KPI's set for HR, as they were not achieved this year. A question was asked about whether the targets needed to increase. It was agreed after discussion that they should remain aspirational and remain as proposed.

It was recognised that the Finance targets may need to be adjusted once the first set of Management Accounts for 2016/17 are produced in mid-October. The Policy & Resources Committee will **review** the position on 21 November 2016 and, if any amendments are required, they will be put to the Board in December.

ACTION: D HURST

It is still too early to give definitive conclusions on **academic performance** against last year's KPIs, although some preliminary information was provided in the Paper, or to set targets for 2016/17. A further detailed paper on academic performance will be **provided** to the Curriculum & Quality Committee on 7 November 2016 with 2016/17 proposed KPIs and then ratified by the Board in December.

ACTION: D BROWN

The Board otherwise **NOTED** the Report.

13. Items for Approval

On the recommendation of the Audit & Risk Committee, the Board **APPROVED**:

- Internal Audit Strategy 2016-17
- Internal Audit Annual Report 2015-16
- JACOP – Annex C – Self-Assessment Questionnaire
- Terms of Reference – Audit & Risk Committee

The JACOP Questionnaire will be **signed** by the Principal & Chief Executive and the Chairman of the Corporation and passed to the external auditors as part of their evidence base for their regulatory audit. It also informs disclosures in the College's Annual Report regarding Corporate Governance and Internal Control.

ACTION: CLERK

14. Annual Review of Confidential Items (Paper FEC.16.26)

The Clerk presented his Report on the above topic, following the principles approved by the Board in 2013. The Board **APPROVED** the Report.

15. Items for Information Only

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

- Audit & Risk 13 September 2016
- Board Development Day 4 July 2016

The Board **RECEIVED** the Risk Management Report, which had been reviewed by the Audit & Risk Committee, comprising the Risk Register, Dartboard and Assurance Mapping.

The Chair of the Audit & Risk Committee pointed out that the College currently has nine **RED** risks on the Risk Register which emphasized the difficult environment in which the College is operating. It is like a 'Perfect Storm' and the Board and the Senior Leadership Team have considerable challenges in mitigating those risks.

16. Management Structure Diagrams

The Board **RECEIVED** the current College Management Structure diagrams for information.

17. Forthcoming Events (Paper 16.11)

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

18. Date of Next Meeting

Monday 5 December 2016 at the Southend Campus at 6.00 pm.

There being no further business, the Meeting terminated at 8.20 pm

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