

Part I Minutes of the Corporation Meeting held on Tuesday 13th December 2022 at 4.30pm
in Conference room I, Broadway

Members present: Wendy Davies (Teams) Sukhninder Panesar
Nirmal Gupta (Teams) Jason Parker
Paul Hartridge Liz Sithole
Mollie-Amelia Hehir Jack Stokes
Alison Hodge (Teams) Neil Thomas (Chief Executive & Principal)
Valerie Little Nick Thompson
Tom Westley
David Whatton (Chair)

In Attendance: Georgina Barnard (Managing Director – IoT)
Gill Darwood (Director of Corporate Governance) (DCG)
Debbie Goode (Executive Director Public Affairs & Marketing)
Steve Johnson (Executive Director Estates & Capital Projects)
Kathryn Jones (Director of Human Resources)
Louise Jones (Chief Finance Officer) (CFO)
Diana Martin (Vice Principal)
Craig Wilkinson (Bishop Fleming) (items 7 to 10 only)

Board administrative matters

1 **Confirmation of quorum**

1.1 The Director of Corporate Governance (DCG) confirmed that a quorum was present.

2 **Apologies for absence**

2.1 Apologies for absence had been received from Liam Butler and Ian Austin.

3 **Appointment of new member**

3.1 The Chair advised that a selection panel had met with four shortlisted candidates on 24th November 2022 and the notes of the panel were noted.

3.2 The panel had unanimously agreed on the appointment of Professor Paul Noon as a member of the Corporation with effect from 1st January 2023 for a term of four years, with the intention of being appointed as Chair of the Corporation at the end of the current Chair's term of office. The Chair's term of office was due to end on 18th March 2023; however it was agreed to extend his term of office to 31st March 2023 at which time Professor Noon would take over as Chair from 1st April 2023.

3.3 **It was resolved** to approve the appointment of Professor Paul Noon as a member of the Corporation with effect from 1st January 2023 and to approve the extension of David Whatton's term of office to 31st March 2023.

4 **Declarations of interest**

4.1 There were no declarations of interest in relation to part I items.

- 5 **Approve minutes of previous meeting held on 8th November 2022**
5.1 The minutes of the meeting held on 8th November 2022 were confirmed as a true record for signature by the Chair.

- 6 **Matters arising**
6.1 There were no matters arising not covered on the agenda.

Audit and Finance Matters

Items 7 to 10 were taken before item 3

- 7 **Audit Committee - Minutes of meeting held on 28th November 2022**
7.1 W Davies as Vice Chair of the Audit Committee presented the draft minutes of the meeting held on 28th November 2022 and advised that any items recommended to the Corporation would be covered as separate agenda items. In addition she advised that the committee had considered a number of internal audit reports and the rolling schedule of audit recommendations which showed substantial progress against actions.

- 7.2 **It was resolved** to note the draft minutes of the Audit Committee.

8 **Audit Committee's Annual Report for 2021/22**

- 8.1 The DCG presented the report which summarised the work undertaken by the Committee in 2021/22. To comply with the Audit Code of Practice, as reflected in the Audit Committee terms of reference, the annual report must summarise the committee's activities relating to the financial year under review, including:

- Any significant issues arising up to the date of preparation of the report.
- Any significant matters of internal control included in the management letters and reports from auditors or other assurance providers.
- The number of meetings held in the year and attendance records for each member of the Committee.
- The appointment date of the external auditors and the remaining term of the contract.
- The Committee's view of its own effectiveness and how it had fulfilled its terms of reference.
- The Audit Committee's opinion on the adequacy and effectiveness of the Corporation's assurance arrangements, assurance over subcontracting, framework of governance, risk management and control processes for the effective and efficient use of resources, solvency, and the safeguarding of assets.

- 8.2 She advised that the Corporation should rely on the Committee's report in its consideration of the financial statements for the year ended 31 July 2022. A copy of the Audit Committee's Annual Report would be submitted to the relevant funding body with the annual accounts.

8.3 **It was resolved** to note the audit committee's annual report for 2021/22.

9 **Letter of Representation year ended 31 July 2022**

9.1 The CFO presented the letter of representation which had been prepared by Bishop Fleming to support the Corporation in confirming that:

- The Corporation had fulfilled its responsibilities in accordance with the UK Financial Reporting Standards, the FE/HE Statement of Recommended Practice and the College Accounts Direction for 2021/22.
- All information had been made available to Bishop Fleming.
- Grants made by DfE/ESFA had been applied for the purposes intended and there had been no breaches in grant conditions.
- The College's expenditure had been applied to the purposes identified by Parliament.
- The financial statements were prepared on a going concern basis.
- The Accounting Officer had fulfilled his responsibilities under the requirements of the funding agreement between the College and the Secretary of State for Education and the relevant Financial Handbook.

9.2 **It was resolved** to approve the letter of representation for signature by the Chair.

10 **Confidential Management Letter, Annual Report and Financial Statements 2021/22 and reconciliation of July 2022 management accounts and year-end accounts 2021/22**

This matter is the subject of a separate and confidential minute.

C Sullivan then left the meeting.

11.1 **IoT update**

11.1.1 The CEP advised that the board of TTPL had met on 3rd December 2022, and a summary of the matters considered was noted as:

- Agreed the revised IOT mission, vision and values statements.
- Update on progress against the operational development plan.
- Presentation on enrolments, curriculum offer and employer engagement.
- Presentation from new Curriculum Manager for engineering, medical, healthcare and digital curriculum, Bisola Mutingwende.
- The HE Opening Evening on 7th December.
- Approval of the annual report and financial statements 2021/22 for TTPL (*to be covered at agenda item 11.3*)
- Approval of the management accounts to 31 October 2021.
- Risk register review.

11.1.2 The full minutes of the board meeting were available in the document library of Convene. The CEP advised that the board had discussed at length the change in the mix and balance of provision from that originally planned

towards more short programmes for upskilling employed learners. The board had agreed that their next meeting would focus on the following key items:

- Update on ONS reclassification
- Comparison of business plan against actual performance in-year
- Updated financial forecast

11.1.3 G Barnard provided an update on a meeting she had attended in relation to ONS reclassification and the potential impact on IoTs which had indicated that the decision was unlikely to affect capital arrangements for wave 1 IoTs.

11.1.4 She provided a further update on the success of the recent HE Open Evening which had attracted a pleasing number of visitors and subsequent applicants for both College and partner universities.

11.1.5 **It was resolved** to note the Institute of Technology update.

11.2 **TTPL accounts**

11.2.1 The CFO advised that Bishop Fleming had concluded their audit work and confirmed in doing so that they had not identified any significant risks requiring further audit work. Bishop Fleming had issued an unmodified audit report for the year.

11.2.2 The year-end position showed a positive outturn compared to forecast. Income, pay and non-pay costs all returned positive variances.

11.2.3 The key points to note from the financial statements were:

- Income generated through Dudley College and through catering were higher than the budget. As previously reported, there was no income generated by University of Wolverhampton or as yet by the University of Worcester.
- Pay costs were lower than budget by £6.8k (3%).
- Non-pay costs were lower than budget by £74.5k (17%). The budget was based on estimates of likely costs in the first year of operation and the budgets for 22/23 had been adjusted based on actual activity in year 1.
- As a result of this positive performance, TTPL returned a deficit of £280k, being 27% better than the budget deficit of £383k.
- The balance sheet showed net liabilities of £280k, which included the 'float' of £569k owing to the College and classed as a creditor due after one year. It was anticipated that this would be repaid by the end of year five.

11.2.4 In completing their audit work, Bishop Fleming had made the following recommendation:

- The Company was set up separately on the finance system to enable invoicing to partners.

11.2.5 Management had accepted this recommendation, and the work to set up the company separately was already underway.

11.2.6 The annual report and accounts for TTPL had been considered and approved by the TTPL board at its meeting on 3rd December.

11.2.7 **It was resolved** to note the TTPL accounts for 2021/22.

12 **Finance & Estates Committee – Minutes of Meeting held 1st December 2022**

12.1 J Parker as chair of the Finance and Estates Committee presented the draft minutes of the meeting held on 1st December 2022 and outlined the matters considered by the committee. He noted that any items recommended to the Corporation would be covered as a separate agenda item.

12.2 **It was resolved** to note the draft minutes of the Finance and Estates Committee

13 **Management accounts to October 2022**

13.1 The CFO presented the management accounts to October 2022 which showed the position three months into the new financial year. The accounts and commentary did not take account of the revised budget that had been prepared for approval under item 14.

13.2 The key points to note from the first operating quarter were:

- The operating position and EBITDA were lower than budget and this was largely being driven by a shortfall in adult and apprenticeship income. The KPIs were therefore showing red and yellow flags for performance.
- There were positive variances in pay and non-pay expenditure which were offsetting the adverse variance in income.
- The College was not currently using the Revolving Credit Facility (RCF) as the cash position was comfortable however this was having a slight adverse impact on KPIs for cash, current ratio and debt service cover, although borrowing as a proportion of income was much lower.
- The accounts represented performance in the first quarter and information on loan covenants, financial health and sensitivity analysis were included.

13.3 The report had been considered in detail at the Finance and Estates Committee and was recommended to the board for approval.

13.4 V Little noted that there were actions in hand to recover the financial position. The CEP agreed and noted that starts had been reprofiled across the year to recover the position and costs were being tightly controlled.

13.5 **It was resolved** to approve the management accounts to October 2022.

14 **Revised budget 2022/23**

14.1 The CFO advised that this revised budget was being presented for approval, given the original budget was based on an understanding of finances and other matters in May 2022. The revised budget had been considered at the Finance

and Estates Committee and was recommended to the Corporation for approval.

- 14.2 The paper set out the key changes from the original budget in the management accounts format. There were small positive variances on income and pay budgets, however non-pay budgets had increased by a total of £950k to reflect a cautious approach to inflationary increases on energy costs (which had increased from £700k in the previous year to £1.6m for the current year) and an increase in contingency budget to protect any shortfall in income generation.
- 14.3 The impact of these changes was reflected in a drop in EBITDA by £417k, at £3.5m this represented 7.12% of turnover, lower than the original 8%. This had resulted in a drop of 10 points on the financial health score from 180 to 170, which meant that the financial health grade was Requires Improvement.
- 14.4 The cash position was improving, the revised budget allowed for a higher level of RCF repayment, so the balance at 31 July 2023 was expected to be £2.25m, against the original budget of £3.5m. Actual cash was slightly higher and cash days were unchanged.
- 14.5 The KPIs relating to EBITDA and operating surplus were now showing as red flags, given the drop in performance, however it was felt that it was prudent to allow a higher budget for inflationary energy costs and protect against income under-performance, than try to ensure the College met the original targets which given the economic situation, may not be achievable. The CFO assured members that the College would endeavour to manage the finances such that the original KPIs were met, if possible.
- 14.6 The CFO highlighted a proposed increase in spend on capital expenditure from £700k to £885k with a corresponding decrease in IT leasing from £600k to £415k.
- 14.7 The CFO and CEP provided further clarification in response to questions from members. In relation to the revised financial health grade from good to requires improvement, the CEP noted that the previous year had been at requires improvement and this was not considered to be a cause for concern in respect of ESFA or FEC oversight.
- 14.8 The CEP noted that a collective decision had been taken to not cut costs in order to pay for the increase in energy costs as this was not felt to be in the best interests of learners. This did not represent a change to the agreed overall financial strategy to reduce reliance on the RCF.
- 14.9 Members noted that the costs pressures would impact all colleges and the methodology for calculation of the financial health grade was unlikely to change to reflect this.
- 14.10 In response to a question from J Stokes, the CFO explained the approach to apportionment of energy costs from the various streams of income and noted

that the College was continually looking for efficiencies in order to cover the increased costs.

14.11 The Chair reminded the members of the importance of achieving a healthy EBITDA in order to generate income to pay interest on loans which had been used to fund capital developments. The CEP noted that it was also important to ensure resilience to cope with unforeseen challenges.

14.12 In response to a question from L Sithole, the CFO confirmed that the other income streams were considered achievable, for example High Needs funding from the local authority was received to support SEND learners with a high level of need and this was an area of high demand.

14.13 **It was resolved** to approve the revised budget for 2022/23.

15 **Fees policy 2023/24**

15.1 The CFO presented the fees policy which was revised annually to reflect changes in funding agency rules and fees. The revised fee policy also incorporated the fee refund policy. The policy had been considered at the Finance and Estates Committee and was recommended to the Corporation for approval.

15.2 **It was resolved** to approve the Fees Policy 2023/24.

16 **Partnerships (sub-contracting) plan for 2022/23 and termly monitoring report**

16.1 The VP presented the paper which provided the Corporation with an overview of the College's planned subcontracting provision for 2022/23 and the monitoring arrangements in place. It also provided an update on the employer partnership and other managing agent (OMA) activity.

16.2 In summary:

- The total activity relating to subcontracting for 2022/23 was planned to be £1.18m. The college planned to make payments in the region of £0.86m.
- Monitoring arrangements for sub-contracted provision were detailed in section 2.
- Appendix 1 provided a summary of all sub-contractor providers and the value of expected income in 2022/23.
- Appendix 2 provided a summary of all employer partners.
- Appendix 3 provided a summary of all other managing agents.
- It was expected 'niche' high-value partnerships may continue to be required as more technical curricula were introduced (including within the Black Country & Marches Institute of Technology).
- New partnerships with Higher Education Institutions were planned to come on-board from 2023 onwards.

16.3 The report had been considered at the Finance and Estates Committee and was recommended to the Corporation for approval.

16.4 In response to a question from the Chair, the VP advised that the partnerships team had managed any concerns in relation to quality assurance very closely to support partners and achievements had shown an improvement as a result.

16.5 **It was resolved** to approve the Partnerships (sub-contracting) Plan for 2022/23.

17 **Update on proposed sale of Priory Villa**

17.1 The CFO advised that since the previous Corporation meeting, she and the CEP had taken the opportunity to meet with the DAT senior team to discuss their earlier request to buy Priory Villa. The DAT had now concluded that due to the expansion of their central team, Priory Villa would shortly not be able to accommodate their staffing numbers. As a result, they would be looking to move to new premises and in the meantime the College would continue to charge the DAT for rent, utilities and maintenance at an appropriately increased cost to cover increases in energy and maintenance.

17.2 The request for approval of the sale of the property was therefore being withdrawn. The plan for the future would be to develop the building possibly as a professional adult training centre.

17.3 **It was resolved** to note the withdrawal of the approval request regarding the sale of Priory Villa.

18 **Reclassification of the FE sector in England by the Office for National Statistics**

18.1 The CEP advised that on 29th November the Office for National Statistics had published its decision on the classification of colleges in the UK National Accounts and its verdict was that all 228 college corporations and designated institutions in England as well as their subsidiaries should be reclassified to the public sector side of the UK national accounts. ONS had explained their decision in a short statement which advised that this decision was based on the existence of legal powers that had existed since 1992. Because of this, the public sector classification decision was retrospective to April 1993.

18.2 Attached to the paper were two letters that were shared with colleges. One provided a summary of the decision, potential changes and next steps in its implementation. The other provided some more specific implications in relation to 'Managing Public Money' framework which all colleges would now be subject to.

18.3 At the Finance and Estates Committee meeting there had been an early discussion on the potential implications of this decision and what it could mean for the future operation and plans for the College. A lot of this detail was still to be understood and further announcements were expected over the coming days and weeks as the Department for Education (DfE) and others implemented this change.

- 18.4 There was one immediate change which would require Corporation approval. Under the new framework, colleges would no longer be able to make new commercial borrowing arrangements and changes to existing arrangements would need to be approved by DfE. As the College had made the decision to not make use of its existing Revolving Credit Facility (RCF) for a period when it was not needed (to save on bank fees), when the College did start to draw on this during the usual period from January this would be seen as a 'change to existing arrangements'. Therefore DfE approval would be required for this. Members agreed that it would be appropriate to submit a request for consent immediately to ensure that the RCF facility was in place in readiness for the Spring period.
- 18.5 It was agreed that once further information was made available a detailed paper would be brought to the next Corporation meeting to ensure all members were aware of the changes and could approve any further actions needed to implement these changes. It was also agreed that this ONS reclassification was added to the College Risk Register.
- 18.6 The CEP advised that he was working with the AoC to ensure that colleges had an opportunity to shape the development of the framework and to lobby for any additional changes which might be advantageous to colleges and would bring parity to the FE sector compared to the Academies sector, such as those in relation to VAT reclaim and pensions liability.
- 18.7 The CEP advised that legal advice had indicated that the arrangements in respect of Health Innovation Dudley would not be considered a novel or contentious transaction and so would not require DfE approval.
- 18.8 The Chair noted that this decision was as a result of accounting rule changes and was an independent decision taken by ONS not driven by DfE.
- 18.9 It was not yet clear how capital allocations would be provided, which might be through an allocation formula or through a bidding process. Members expressed some concern that this would lead to a restriction on capital developments and a potential impact on innovation in the sector.
- 18.10 **It was resolved** to note the update on ONS reclassification and approve the submission of a request to the Department for Education/ESFA to approve use of the agreed Revolving Credit Facility.

Standards matters

- 19 **Standards Committee – Minutes of Meeting held on 16th November 2022**
- 19.1 S Panesar as chair of the Standards Committee presented the draft minutes of the meeting held on 16th November 2022 and advised that any items recommended to the Corporation would be covered as separate agenda items. In addition, the committee had looked at the College dashboard, progress on the operational development plan, annual strategic impact assessment grading, equality, diversity and inclusion action plan, teaching and

learning matters and an update on higher education including Office for Students conditions of registration.

19.2 **It was resolved** to note the draft minutes of the Standards Committee.

20 **Annual Strategic Impact Assessment**

20.1 The CEP noted that at the recent Standards Committee, members had considered the data tables for all six sections of the Annual Strategic Impact Assessment (ASIA). After reviewing each set of data, a proposed overall judgement score was agreed for each area. A summary of the data and judgements was recorded in the minutes of the Standards Committee and noted as:

- 16-18 full time learners– meeting expectations
- A-level learners – exceeding expectations
- Adult learners – meeting expectations
- Apprentices – below expectations
- Higher level learners – meeting expectations
- Subcontracted apprentices – below expectations

20.2 Members were asked to approve the overall scoring for each key client group, as put forward from the Standards Committee. The full report in draft format was provided to members and agreed for final publication. The document would then be shared with Ofsted and stakeholders.

20.3 **It was resolved** to approve the Annual Strategic Impact Assessment 2021/22.

21 **Operational Development Plan update**

21.1 The CEP presented the update on the College Operational Development Plan. The current plan was considered which included the latest updates on all actions and it was noted that this had been considered in detail at the recent Standards Committee. Many actions were now completed and some were still 'on track' with due dates leading up to Christmas and beyond. There were a few actions which remained as 'overdue' as either the scope of the action had changed or the work was now planned to continue into the new calendar year.

21.2 As part of the standard quality cycle, a new plan would be developed in January which would take on board actions from the Strategic Plan related to 2023 as well as areas for development identified through the ASIA process. This new plan would be brought to Corporation for final approval.

21.3 **It was resolved** to note progress on the Operational Development Plan.

22 **Policy updates**

22.1 G Barnard noted that the following policies had undergone regular review and update and were being presented to Corporation for approval. They had been reviewed by colleagues previously at the Standards Committee.

- HE Admissions Policy. This had been substantially rewritten as part of our review of all higher education processes in preparation for recent internal audit.
- Safeguarding Policy (and associated procedure). The Policy had had minor changes to reflect latest national guidance and changes in job roles internally. The Safeguarding Procedure was also included as this provides further detail on meeting statutory requirements in relation to safeguarding and had been substantially updated to reflect the current guidance.

22.2 **It was resolved** to approve the HE Admissions Policy, the Safeguarding Policy and Safeguarding Procedure.

Governance matters

23 **Committee terms of reference**

23.1 The DCG advised that the committee terms of reference for Standards Committee and for Finance & Estates Committee had been reviewed and were recommended by the relevant committees for approval. Any changes to the previous version were tracked for ease of reference.

23.2 **It was resolved** to approve the terms of reference for 2022/23 for Standards Committee and for Finance & Estates Committee.

24 **Students' Union Constitution**

24.1 The VP presented the Dudley College Student Union Constitution which had been reviewed. The constitution was the governing document for the student union setting out their aims and objectives along with providing clear guidelines around key elements of the union's roles including powers, money and property, members, referendum, Executive Committee, Trustees, Student Council, clubs and societies code of conduct, complaints and elections.

24.2 The DCG noted that under the Constitution, the Corporation was required to approve any changes to the document.

24.3 **It was resolved** to approve the Students' Union Constitution.

25 **Any other business**

- 25.1 The Chair noted that Charlie Harvey's term of office had ended on Friday 9th December. On behalf of the Corporation and staff, he recorded his thanks to Charlie for her eight years' service and in particular for her advice and support in her capacity as chair of the audit committee.

Senior managers, staff and student governors left the meeting.

The part 2 matters are the subject of a separate confidential minute.

Approved by the Corporation at the meeting held on 21st March 2023.