



FURTHER EDUCATION CORPORATION MEETINGS 2018/19

**MINUTES OF THE FURTHER EDUCATION CORPORATION SPECIAL MEETING
Held at 11.30am on Wednesday 28th November 2018
Accrington and Rossendale College, Room D101**

Members present: Stephen Barnes (Chair), Amanda Melton (Principal), Mike Phelan, Phil Wilkinson, Kendell Earl, Rob Pheasey, Claire Pye, Jane Cleaver, Emma Schofield

In attendance: David Rothwell (Deputy Principal)
Debbie Corcoran (Clerk to the Corporation)
Nicola Tomlinson (Merger Project Team)

<p>Item 1.</p>	<p><u>Welcome and Apologies for Absence</u></p> <p>Stephen Barnes (Chair) began the Corporation meeting by welcoming everyone, and introductions were made.</p> <p>Apologies for absence were received and accepted from the following Board members: David Whatley, Nadeem Rashid, Azhar Siddique, Helen Khan – and from Peter Ryder (Merger Project Team).</p> <p>The Chair confirmed that proper notice of the meeting had been given, and the meeting was quorate.</p>
<p>Item 2.</p>	<p><u>Declarations of Interest</u></p> <p>Members and officers present declared that they had no interests, personal, fiduciary, or otherwise in any item on the open agenda for the meeting.</p>
<p>Item 3.</p>	<p><u>Matters Arising</u></p> <p>The Clerk confirmed that since the last Board Meeting the following Governors had been re-appointed to the Corporation, with a one year term of office ending 27th November 2019: Stephen Barnes, Nadeem Rashid, Jane Cleaver, Helen Khan.</p>
<p>Item 4, 5 and 6</p>	<p>Minutes for items 4, 5 and 6 are recorded in the attached 'extract of minutes'.</p> <p>At the beginning of agenda item 4. David Rothwell (Deputy Principal) presented powerpoint slides summarising the Grant Funding Agreement (GFA) proposed for agreement between the College and Education and Skills Funding Agency (ESFA). Values were as previously communicated to the Board: £14.666m overall grant</p>

	<p>funding, with also the pay-off of Accrington and Rossendale’s Exceptional Financial Support which totals £3.92m. Delegated authority had been given by the Board to the Chair and members of the Merger Steering Group (MSG) to progress negotiations on the Board’s behalf, within a framework agreed by the Corporation, with final review and sign-off by the full Corporation at today’s Special Board meeting.</p> <p>The content, terms and implications of the GFA were again reviewed by the Board, building on substantive discussion at previous Corporation meetings, and the GFA was agreed for the Chair’s signature.</p> <p>The Chair and Board thanked the Principal, Deputy Principal and senior team of both Colleges for their hard work to progress merger and negotiate a grant funding position that would enable the merged College to be financially sustainable and successful.</p> <p><u>Resolved:</u> that the Corporation agree the Grant Funding Agreement value and terms, authorising the Chair’s signature of any required paperwork</p> <p><u>Report and Financial Statements to 31 July 2018 of the Corporation of Accrington and Rossendale College</u></p> <p>It was noted that the intention had been for the Corporation of Accrington and Rossendale College (“ARC”) to consider and approve ARC’s Report and Financial Statements to 31 July 2018 (“Report and Financial Statements”) during the course of its Corporation meeting held on 28 November 2018. It was further noted that ARC had been advised by its auditors, Grant Thornton UK LLP (“Grant Thornton”), that the Report and Financial Statements were not yet in final form and could not therefore be approved by ARC prior to merger.</p> <p>It was noted that all property, rights and liabilities would transfer from ARC to the Corporation on Merger. Grant Thornton had advised ARC that the Corporation could be granted delegated authority by ARC to review and approve the Report and Financial Statements post-Merger. The Corporation would need to consent to such delegation as well as enter into an engagement letter with Grant Thornton in order to do so.</p> <p><u>Resolved:</u> that the Corporation:</p> <ul style="list-style-type: none"> • accept delegated authority from ARC to consider, review, amend and approve ARC’s Report and Financial Statements at such time post-Merger as the Report and Financial Statements are in a final form; and • do all such other things, as may be required, including but not limited to entering into an engagement letter with Grant Thornton, to effect the approval of ARC’s Report and Financial Statements as above <p>Following item 6, Nicola Tomlinson left the Corporation meeting.</p>
Item 7.	<u>Governance Report</u>
	<i>Submitted: Report (circulated with Board papers)</i>

The Clerk presented the report which offered updated Instruments and Articles for Board consideration today. The proposal was for the updated Instruments and Articles to be adopted post-merger on 1st December 2018. The rationale for the changes was explained and discussed, and included the incorporation of updated Charity Commission rules on the disqualification of Trustees and an updated designation for Board membership to allow for up to 21 Governors in the following categories:

Independent Governors	15
Principal	1
Staff Governor(s)	3
Student Governors	2
Total members	21

The Clerk also updated that the Corporation Chair and College's Principal, as members of Search Committee and in line with agreed process, had recently interviewed 2 candidates who expressed an interest in becoming Governors at the College. The Chair and Principal's recommendation to the Corporation was that they be appointed - with a term of office of 1st December 2018, ending 30th December 2019.

The Chair and Principal offered the Corporation a summary of the interviews and overview of the two candidates: - Tim Webber MBE (Chairman and Managing Director of Barnfield Construction Ltd) and Brian Fisher, Director of Commercial Interventions. Both potential members had confirmed their eligibility to serve as Governors, and commitment and passion to support the College.

Following discussion and due consideration, the Board agreed the revised Instruments and Articles and new designation for Board composition. Tim Webber MBE and Brian Fisher were agreed as Corporation members, and terms of office set.

Resolved: The Corporation resolved to:

- **Approve revised Instruments and Articles, to be adopted from 1st December 2018**
- **Approve updated designation of Board membership**
- **Appoint Tim Webber MBE and Brian Fisher to the Board of Corporation, with a term of office of 1st December 2018 to 30th December 2019**

8. Any Other Business

There were no items of any other business.

With this, the Chair thanked all members and attendees for their attendance and support and the meeting was closed.

**Debbie Corcoran
Clerk to the Corporation**

Signed as an accurate record:.....(Chair of Corporation)

Name:.....Date:.....

Nelson and Colne College ("Corporation")

Extract of the minutes of a meeting of the members of the Corporation held at the offices of Accrington and Rossendale College on Wednesday 28th November 2018 commencing at 11.30am

PRESENT	Stephen Barnes (Chair), Rob Pheasey (Vice Chair), Amanda Melton, Jane Cleaver, Kendell Earl, Mike Phelan, Claire Pye, Emma Schofield, Phil Wilkinson
IN ATTENDANCE	Debbie Corcoran (Clerk to the Corporation), Nic Tomlinson (Project Manager), David Rothwell (Deputy Principal)

1. NOTICE AND QUORUM

The Chair reported that proper notice of the meeting had been given and a quorum being present in accordance with the Instrument of Government ("**Instrument**") the Articles of Government of the Corporation ("**Articles**"), the Chair declared the meeting open.

2. DECLARATION OF INTERESTS

Each Member present confirmed that he or she had no interests which they were under a duty to disclose in accordance with clause 11 of the Instrument.

3. FURTHER AND HIGHER EDUCATION ACT 1992

The Chair reminded the members that the merger must be to further the Corporation's charitable purposes and be compliant with all obligations under applicable charity law, and that the members of the Corporation have the powers under section 19 of the Further and Higher Education Act 1992 to enter into the Merger Documents (as defined below).

4. NO BREACH

4.1 The meeting reported that the authorisation of the execution and delivery of the Merger Documents (as defined in clause 6) by the Members would not be a breach of the powers delegated to the Members in accordance with the Articles.

4.2 It was also reported that neither the execution and delivery of the Merger Documents by the Corporation nor the performance of the Corporation's obligations thereunder would breach or would result in any breach of any obligation or restriction imposed by the Articles or any other agreement or instrument to which the Corporation is a party or which is otherwise binding upon it.

5. **BACKGROUND**

5.1 [The Chair reported that at the meeting of the Corporation held on 1 October 2018, the Corporation had agreed to move forward with a merger of the Corporation with Accrington and Rossendale College ("**ARC**").]

5.2 To give effect to the merger, the Corporation would in due course need to resolve on the property, rights and liabilities of ARC being transferred to the Corporation immediately prior to 00:01 am on 30 November 2018 (the "**Merger**"); by giving effect to the following resolutions:

that, following:

- publication of the results of the statutory consultation exercise undertaken by ARC (as required under The Further Education Corporations (Publication of Proposals) (England) Regulations 2012);
- the carrying out of legal and financial due diligence exercises in respect of ARC; and
- publication of the draft resolution of ARC to dissolve and provide for the transfer of its property, rights and liabilities;

the Corporation hereby **RESOLVES** to merge with the Corporation of Accrington and Rossendale College with the Corporation of Accrington and Rossendale College dissolving at 0:01 am on 30 November 2018 and its property, rights and liabilities transferring immediately before that time to the Corporation.

6. **PURPOSE OF MEETING**

6.1 The purpose of the meeting, if thought fit, was to approve the terms of, and the transactions contemplated by, the Merger.

6.2 The Chair further reported that the purpose of the meeting was also to consider the following documents to be entered into prior to the Merger (together, the "**Merger Documents**"):

6.2.1 a final form transfer deed between (1) ARC and (2) the Corporation to document the transfer of all property, rights and liabilities from ARC to the Corporation (the "**Transfer Deed**");

6.2.2 a final form pension agreement between (1) the Corporation, (2) ARC, and (3) Lancashire County Council (the "**Pension Agreement**");

6.2.3 the property documents:

6.2.3.1 a final form TR5 to be entered into between (1) the Corporation and (2) NCC in respect of effecting the transfer of the properties known as:

(a) Broad Oak Campus, Sandy Lane, Accrington; and

(b) Waterside, Accrington.

6.2.3.2 a final form deed of novation between (1) the Corporation, (2) NCC and (3) The English Sports Council in respect of the transfer of a lottery funding agreement dated 19 September 2014;

6.2.3.3 a final form licence to assign between (1) the Corporation, (2) NCC and (3) Globe Enterprises Limited in respect of the Waterside lease;

- 6.2.3.4 a final form deed of assignment and declaration of trust between (1) the Corporation and (2) NCC in respect of warranties relating to the property known as Broad Oak Road, Accrington, BB5 2AW;
- 6.2.3.5 a final form deed of novation between (1) the Corporation (2) NCC and (3) John Turner Construction Group in respect of the building contract for the Heartwood Centre; and
- 6.2.3.6 a substantially final form deed of novation between (1) the Corporation (2) NCC and (3) Interserve Project Services Limited in respect of the building contract for the Coppice Centre

(together the "**Property Transfers**"); and
- 6.2.4 the finance documents:
 - 6.2.4.1 a final form grant agreement between (1) the Corporation and (2) the Secretary of State for Education ("**Secretary of State**") (the "**TU Grant Agreement**");
 - 6.2.4.2 a final form legal mortgage pursuant to which the property known as land and buildings lying to the south of Sandy Lane, Accrington registered at HM Land Registry under Title Number LA888357 will be charged by the Corporation to the Secretary of State by way of a fixed charge to secure the liabilities of the Corporation ("**Legal Charge**");
 - 6.2.4.3 a final form authorised signatory's certificate to be given by authorised officers of the Corporation setting out, inter alia, certain confirmations in relation to the Corporation as required to be given under the terms of the TU Grant Agreement;

(together the "**Finance Documents**"); and
- 6.2.5 if thought fit:
 - 6.2.5.1 approve the terms of, and the transactions contemplated by, the Merger Documents and resolving that it execute, deliver and perform the Merger Documents to which it is a party;
 - 6.2.5.2 authorise specified persons to agree any minor amendments which may be required and execute the Merger Documents to which it is a party on its behalf;
 - 6.2.5.3 authorise a specified person or persons, on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Merger Documents to which it is a party or any other document required to be entered into to give effect to the Merger and the Merger Documents.

7. **DOCUMENTS TABLED**

A draft of each of the Merger Documents was tabled. It was noted that the majority of the Merger Documents were in final form.

8. **CONSIDERATION**

8.1 The following matters were noted in respect of the Merger Documents:

8.1.1 The following matters in respect of the TU Grant Agreement were noted in particular:

- 8.1.1.1 the TU Grant Agreement would require the Corporation to satisfy certain conditions precedent before the grant would be available to it;
- 8.1.1.2 the TU Grant Agreement would require the Corporation to satisfy certain conditions subsequent following completion of the TU Grant Agreement, failure to comply with which would result in events of default arising under the TU Grant Agreement; and
- 8.1.1.3 the Corporation would be required to make (and repeat periodically) certain representations and warranties and enter into certain covenants and undertakings regarding the Corporation.
- 8.1.2 Under the Transfer Deed the property, rights and liabilities of ARC would be transferred to the Corporation.
- 8.1.3 Under the Legal Charge, the Corporation would be required to grant security over the properties therein mentioned.

9. **RESOLUTIONS**

9.1 **IT WAS UNANIMOUSLY RESOLVED** that following:

- 9.1.1 publication of the results of the statutory consultation exercise undertaken by ARC (as required under The Further Education Corporations (Publication of Proposals) (England) Regulations 2012);
- 9.1.2 the carrying out of legal and financial due diligence exercises in respect of ARC;
- 9.1.3 publication of the draft resolution of ARC to dissolve and provide for the transfer of its property, rights and liabilities;

the Corporation hereby **RESOLVES** to merge with the Corporation of Accrington and Rossendale College with the Corporation of Accrington and Rossendale College dissolving at 0:01am on 30 November 2018 and with its property, rights and liabilities transferring immediately before that time to the Corporation.

9.2 **IT WAS UNANIMOUSLY RESOLVED** that with regards to the Merger Documents:

- 9.2.1 the Corporation, in good faith and for the purpose of carrying on its business, enter into the Merger and perform its obligations and exercise its rights in relation to the Merger;
- 9.2.2 the Merger Documents be approved (subject, in each case, to such amendments as approved in accordance with 9.2.3 below);
- 9.2.3 any two members of the Corporation as listed at 9.2.7 below be authorised to agree any amendment which becomes necessary to the Merger Documents to which the Corporation is a party on the Corporation's behalf;
- 9.2.4 any member of the Corporation as listed at 9.2.7 below be authorised to sign on behalf of the Corporation such of the Merger Documents as are not required to be executed as deeds;
- 9.2.5 where those Merger Documents are to be executed as deeds, the application of the seal of the Corporation to those Merger Documents shall be authenticated by the signature of any two member of the Corporation as listed at paragraph 9.2.7;
- 9.2.6 any two members of the Corporation as listed in 9.2.7 below (each an "**Authorised Signatory**") (provided that such persons shall not be student members of the Corporation) be authorised to agree, affix and authorise the use

of the seal of the Corporation to sign and despatch on behalf of the Corporation all such other documents, agreements, certificates, notices, communications or confirmations to be signed and/or despatched by it under or in connection with the Merger Documents to which it is a party and to do all such other things, as may be required, or as any member may approve, in connection with the Merger generally and the funding of the Corporation; and

9.2.7 that the authorised signatories of the Corporation for the purposes of this minute 9.2 are:

Name of Authorised Signatory

Stephen Barnes (Chair)

Rob Pheasey (Vice Chair)

Amanda Melton (Principal)

Mike Phelan (Governor)

9.2.8 any of the foregoing matters that have been done on or before the date of the meeting be and are hereby adopted, ratified, confirmed and approved.

A handwritten signature in black ink, appearing to read 'S Barnes', is written over a horizontal dotted line. A long, thin, horizontal line extends from the end of the signature to the right.

Chair of the Corporation

