

GOVERNANCE & SEARCH COMMITTEE



THURSDAY 24 MAY 2012

GATESHEAD COLLEGE

Report: Minutes of the meeting held on Thursday 23
February 2012

Author: Clerk to the Corporation

Action: Approve

Status: Open

Present: Allan Steele (Chair)
Bob Bell
Alan Reynolds
Richard Thorold

In attendance: Jackie Doxford
Gwyneth Jones

G/S462 Welcome/Apologies

Allan Steele welcomed everyone to the meeting. Apologies for absence were received from Keith Cann Evans and Robin Mackie.

The Chair invited members to declare any interests on any item on the agenda. No interests were declared at this stage in the meeting; however, members noted that should the direction of debate on any item result in a potential conflict of interest this should be indicated during the meeting.

G/S463 Minutes of the meeting held on Thursday 29 September 2011

The minutes of the meeting held on Thursday 29 September 2011 were accepted as a correct record.

G/S464 Matters Arising

G/S455 – Board Vacancies - The Clerk informed the Committee that the Marketing Team is developing a strategy aimed at finding women who may be interested in considering joining the Board of Governors.

G/S465 Review of Register of Interests

The Clerk introduced a report which advised the Committee on changes in the Register of Interests. In addition to the Register of Members' Interests the Clerk maintains a Register of Interests of key staff of the College. The entries on both registers are reviewed regularly by Governance and Search Committee on behalf of the Board. The Clerk reported that she had received a Register of Interest declaration from a newly appointed Governor, and there were no issues of concern.

RESOLVED to note the contents of the report

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G/S466 Revised Code of Conduct

The Clerk introduced a report which advised the Committee of changes proposed to the Board's Code of Conduct following advice received from Eversheds, a copy of the draft revised Code of Conduct was attached to the report. The Code of Conduct is based on a model document prepared by Eversheds, the College's Legal Advisers, which is reviewed on a regular basis in order to ensure that it complies with the Instrument and Articles of Government and is in harmony with current best practice in governance. The Code of Conduct was last revised in October 2010. A new template had been produced by Eversheds to incorporate changes/additions required by recent legislation and changes in SFA documentation.

The Chair commented that the Code of Conduct relates to the conduct of individual Board members whilst the Association of Colleges (AoC) Foundation Code of Governance, to be considered later in the meeting, relates to the way that Boards of Governors operate.

RESOLVED to recommend to the Board that the revised Code of Conduct be approved

G/S467 Revised Standing Orders

The Clerk introduced a report to which was appended a draft of a revised version of the Board's Standing Orders and the Corporation Complaints Procedure. The Board is committed to the regular review of its Standing Orders and the last review was undertaken in October 2011, the last revisions were made in October 2010.

The Clerk ran through the proposed changes and indicated that a new paragraph re: Sabbatical President of Students' Union has been added; a sentence re: membership and quorum has been revised and a footnote regarding the use of video conferencing to enable Members to participate in meetings has been added.

Commenting on the use of video conferencing, the Clerk explained that there are some issues to be resolved to ensure that attendance via video link adds to rather than detracts from the processes of good governance. For example there needs to be procedures and protocols in place in case a video link drops during a meeting. There were also issues relating to quoracy and whether a meeting should go ahead when the quorum was dependent upon one or more members participating by video link. If a link failed the meeting would become inquorate and there was need to determine how long the Chair should wait for the link to pick up before abandoning the meeting. The Chair expressed the view that if a quorum could be obtained by using a video link and business could be progressed the meeting should go ahead. The Principal indicated that currently only one person can join a meeting by video link, however, the purchase of additional licences will allow concurrent participation by several members in different locations. Trialling the use of video conferencing will continue and will be evaluated later in the year.

RESOLVED to recommend to the Board that the revised Standing Orders and Complaints Procedure be approved

G/S468 Review of Calendar of Retirements

The Clerk introduced a report which advised the Committee on current vacancies. There are currently three vacancies on the Board and the terms of office of several members of the Board are due to end during 2012. The full calendar of retirements

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was appended to the report in order to provide Governance and Search Committee with information on retirements falling in 2012. Copies of the current Register of Members and the Board Committee Table were also appended.

The 2007 Instrument & Articles of Government incorporate changes in the composition of the Boards of FE Corporations which have removed some of the prescriptive 'boundaries' between categories of Governor. The categories of business, community, co-opted and local authority members are replaced in Clause 2(1)(a) by *'up to sixteen members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions under article 3 of the Articles of Government'*.

On 9 February 2012 the Board confirmed the size of its membership at eighteen but re-determined the constitution to include the Sabbatical President of the Students' Union, when appointed. The membership of eighteen includes the Principal, two Staff Governors, two Student Governors and the Sabbatical President of the Students' Union, leaving twelve places to be filled by Governors appointed under the 'necessary skills' umbrella.

Retirements in 2012

The terms of appointment of Mark Taylor and Abdul-Aziz Kouame will end with the academic year in July 2012. Elections will be arranged by Learner Services early in the Summer Term. Alan Reynolds' term of appointment is due to end in November 2012 and an election will be arranged for early in the Autumn Term 2012. The terms of appointment of Chris Macklin and Ian Renwick are due to end on 31 December 2012. Chris Macklin joined the Board in December 2008 and is Chair of Audit Committee. Ian Renwick joined the Board in 2006 and is a member of Finance and General Purposes Committee.

Board Vacancies

There are two vacancies on the Board of Governors to be appointed under the terms of Clause 2(1)(a) of the Instrument and Articles of Government 2007 a.k.a. 'necessary skills' criterion. Currently women are underrepresented on the Board and there appears to be an extreme shortage of women with relevant skills and experience who are prepared to accept the challenge.

The Chair suggested the Open University, which has its regional HQ opposite the Baltic Campus as being a possible source for providing new members. The Principal commented that it is the biggest university in the UK and getting bigger all the time; he agreed to contact the Open University Regional Director on the subject.

There is also a vacancy for the Sabbatical President of the Students' Union. Arrangements for filling this post by election will be made by Learner Services.

Committee Vacancies

There is a vacancy on Audit Committee and a vacancy on Governance and Search Committee. Alex Rutherford, Support Staff Governor was suggested as a possible replacement as a member of Audit Committee. The Clerk agreed to approach Alex Rutherford to see if he would be interested in replacing Louise Ions on Audit Committee. The vacancy on Governance and Search Committee resulting from the resignation of Catherine Donovan has been filled temporarily by Keith Cann Evans until such time as another member can be appointed.

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The Committee noted that 50% of the current Board membership is due to retire during 2013.

RESOLVED to note the contents of the report

G/S469 Mid Year Update on Attendance

The Clerk introduced a report which provided a midyear update on Board members' attendance at Board and Committee meetings. Following discussion of the disappointing attendance figures for Board and Committee meetings in 2010/2011 at the meeting on 29 September 2011, Governance and Search Committee had requested a midyear update on attendance in spring 2012.

Board Attendance

Attendance at Board Meetings has improved with 73% attendance at the October 2011 meeting and 87% attendance at the December 2011 and February 2012 meetings. Average attendance for the whole of the 2010/2011 academic year was 63%.

Academic Standards Committee

Academic Standards Committee has met only once to date in 2011/2012; attendance was 67%. Average attendance for the whole of 2010/2011 was 78%.

Audit Committee

Audit Committee has managed to achieve a quorum (3 members = 60%) at meetings to date. The Committee is currently carrying a vacancy. Average attendance for the whole of 2010/11 was 89%.

Finance and General Purposes Committee

The September and November 2011 meetings only just achieved a quorum. The December 2011 meetings both achieved 86%. The January 2012 meeting achieved 71%; this included 'attendance' by one member by video link. Average attendance for the whole of 2010/2011 was 73%.

Governance and Search Committee

The Committee achieved 50% attendance at the September meeting, just sufficient to achieve a quorum. Attendance at the current meeting is 67%. Average attendance for the whole of 2010/2011 was 78%.

Individual Attendance

Considering individual attendance, not including the current meeting of the Committee, it was noted that five members have achieved 100% attendance to date, a further six have achieved 70% or better with three achieving 80% or more and two achieving 90%. Two members achieved 60% or more but less than 70%. Two members achieved 50% attendance to date. One member has achieved 37% attendance to date. Average individual attendance to date is 78% compared with the year end figure for 2010/2011 of 71%.

RESOLVED to note the contents of the report

G/S470 PWC Report on the audit of Corporate Governance

The Clerk introduced the draft report of the internal audit review of Corporate Governance by PriceWaterhouseCoopers the College's Internal Audit Service. She referred to the findings on Governor attendance and highlighted the comments made under this section. The report stated that "it would be good practice to establish an action plan aimed at improving Governor attendance and to regularly monitor progress made against the plan in terms of improved attendance."

The Principal commented on PriceWaterhouseCoopers apparent lack of understanding of the operation of FE college governance and the demands upon Governors' time; busy people did not need to attend meetings in person when facilities such as video conferencing were available. The Chair indicated that he was unhappy with the content of the report and did not accept that the Board does not have actions in place to help to improve attendance at meetings. He expressed the view that the advice contained in the report was unhelpful and mechanical and provided no evidence that PriceWaterhouseCoopers understand FE college governance. He requested that the Clerk should email PriceWaterhouseCoopers to feed back the Committee's comments as part of the management response. The Chair said that there was no substance to the Internal Audit Report which was not developmental and he would express his views at the Audit Committee meeting on 14 March 2012.

RESOLVED to note the contents of the report

G/S471 College Companies

The Clerk introduced a report which brought together a range of issues relating to the involvement of Governors in the operation of College subsidiary Companies which had arisen in discussions at Governance and Search Committee, Finance and General Purposes Committee and at the Board of Governors.

Gateshead College has five active subsidiary companies: Amacus Ltd, North East Apprenticeship Company Ltd, Gateshead College Foundation, Charge Your Car (North) Ltd, Zero Carbon Futures UK Ltd (formerly Charge Your Car Ltd) and currently the Chair of the Board of Directors of each company is a Governor of the College.

The Clerk referred to the SFA Guidance Document 'Consent for Further Education Colleges to invest in Companies' published in September 2011 which contained the following statement '*to maintain a degree of independence in audit matters, members of the college audit committee should not sit on the company board*'. With the exception of Keith Cann Evans and Alan Reynolds all of the Directors of College subsidiary companies are members of Audit Committee.

Governance and Search Committee had considered the SFA guidance during the review of the terms of reference of Audit Committee on 29 September 2011 and noted that neither the Instrument and Articles of Government nor the Joint Audit Code of Practice guidance on audit committees included similar references and that members of Audit Committee had been appointed as Directors of the Gateshead College Foundation and of Charge Your Car (North) Ltd and Zero Carbon Futures UK Ltd before the SFA document was published. The Committee formed the view that advice should be sought from SFA as to whether the guidance was to be regarded as 'guidance' or whether it was 'mandatory' before any further changes

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were made to the terms of reference of Audit Committee or to the appointment of Directors to subsidiary companies.

The Clerk explained that she had initially attempted to obtain informal advice from SFA via telephone. However, it became apparent that finding a live person to answer questions by telephone was unlikely to be successful and a letter was despatched to SFA on 15 November 2011 seeking guidance specifically with regard to the validity of the appointments of Susan Bickerton and Allan Steele on the Board of Directors of Gateshead College Foundation. A copy of the letter was attached for reference. No reply had been received by early January 2012 and after several telephone calls and emails to SFA offices around the country the Clerk received an email reply from Derek Lewis, Provider Financial Intervention and Support Manager (Policy).

The reply set the SFA document in context, explaining that it was *'written to provide guidance to colleges and is based on what is deemed to be best practice'*. It recommended that *'governors who are members of a college audit committee should not also be directors of college companies so as to minimise the risk of conflicts of interest arising and not compromise the independence and impartiality of the audit committee'*. The reply went on to indicate that *'it is a matter for the governing body of the college to decide what governance arrangements are best suited to its needs and what checks and balances need to be in place to ensure that it operates with due regard to its fiduciary duties and responsibilities'*. It summed up by indicating that *'after taking due regard of the Agency's guidance and appropriate expert advice, the governing body of Gateshead College may still wish to appoint governors who are members of the college's audit committee as Directors of the Gateshead College Foundation'*. Should this be the case the response recommended that the Board *'should be made fully aware of the possible consequences and reputational risk which could result from these actions'*.

The report also set out a number of issues with regard to the day to day management arrangements for the Managing Directors of each of the commercial subsidiary companies, excluding the Gateshead College Foundation which operates as a charity and has no employees. It is customary for the Managing Director of a company to report to the Chair of the Board of Directors. However, under the terms of the Instrument and Articles of Government, Governors have no direct responsibility for College employees other than the designated Senior Postholders. The responsibility for all other staff rests with the Principal and by delegation to the Deputy Principals. Each College subsidiary company Board of Directors includes at list one Deputy Principal. Members noted that the Deputy Principals provide day to day guidance and support to the MDs of each of the companies on whose Boards they serve and are the interface between the College management and the company. In effect, they represent the Principal in terms of his responsibility for staff, and by extension should provide line management for the MDs.

The Principal indicated that he was meeting lawyers on Tuesday 28 February 2012 to confirm the legal situation. He commented that the matter would require consideration at Board level and after his discussion with lawyers he would put a proposal to the Board. He added that in his opinion the matter did not need to be referred to Audit Committee.

RESOLVED to note the contents of the report and to approve that, following discussions with lawyers, the Principal should draft a report for consideration by the Board

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G/S472 AoC Foundation Code of Governance

The Clerk introduced a report which summarised the history, context and considerations for the recently published Foundation Code of Governance (Association of Colleges (AoC) November 2011). Members were asked to consider the merits of the Foundation Code and decide whether it should be adopted by Gateshead College FE Corporation. The Clerk referred the Committee to additional documents including a response to the Foundation Code of Governance and a comparison of the key points of the Foundation Code and the UK Corporate Governance Code which had been provided for the National Clerks' Network by the Clerk at New College, Nottingham. A number of questions relating to the Foundation Code remain unanswered and further guidance and information are anticipated. The Chair expressed the view that the Board should consider the advantages and disadvantages of adopting the Code as part of discussions on the current context in FE resulting from the Education Act 2011.

RESOLVED to refer consideration of the adoption of the AoC Foundation Code of Governance to the meeting of the Board on Thursday 22 March 2012

G/S473 Any Other Business

There was no other business.

G/S474 Date of next meeting

The next meeting will take place on Thursday 24 May 2012.