

## EALING, HAMMERSMITH AND WEST LONDON COLLEGE FE CORPORATION MEETING

Date	17 July 2019	Time	18.00
Venue	Hammersmith and Fulham, Room LT3, Gliddon Road, London W14 9BL		
Chair	Ian Comfort		

**Present:** Ian Comfort; Adrian Asuquo; Julia Clements-Elliott; Phillip Kerle; Karen Redhead (CEO); Peter Chapman; Roslyn O'Garro; Cllr. Yvonne Johnson; Sundeep Sangha; Maria Vetrone; David Paine

**In attendance:** Anil Nagpal (Executive Director, Finance & Resources); Laurie Morley (Project Director); Girma Ejere (ESFA Observer).

**Observer:** Neil Smyth (Mills and Reeve LLP)

*Attendance at the Meeting: 73%*

No.	Minute
1.	<p><b>Apologies for Absence and other matters</b> Received from Denise Waldron and Callum Anderson.</p> <p>A presentation was made to the retiring governors, Julia Clements-Elliott and Sundeep Sangha in recognition of their service to the College, its current and former students and to staff and the board. The board extended their considerable thanks to Julia for her duty and commitment to the College and its precursor institutions over very many years. A vote of thanks was recorded to Julia and Sundeep.</p>
2.	<p><b>Declarations of Interest</b> Cllr. Yvonne Johnson is an elected councillor and Cabinet member at Ealing Council.</p>
3.	<p><b>Minutes</b> The minutes of the meeting held on 22 May 2019 were approved as a correct record.</p>
4.	<p><b>Matters arising</b> The matters arising report tracking actions from the previous minutes and other items carried forward was received and noted. Other matters of report were as follows: -</p> <p><b>Independent Business Review (IBR)</b> The CEO reported that recent correspondence from the ESFA had indicated that the agency wished to initiate an IBR. There was a discussion about the timing of this noting the holiday period and the pressures on the College finance team.</p>

	<p><b>Any other Business – Park Royal Site</b></p> <p>In response to questions from Mr Chapman at the previous meeting regarding the potential for commercial letting of unused space at the Park Royal site, Mr Morley reported that no progress had been made on the matter.</p>
5.	<p><b>Estates Strategy {WITH REDACTIONS ON THE GROUNDS OF COMMERCIAL CONFIDENTIALITY}</b></p> <p>The Chair proposed that the meeting should give priority to the key items on the agenda which were 1) the estates strategy and decisions to be taken to ensure that the College remains solvent and viable going forward; and 2) the 2019/20 budget and two year financial forecast. The board agreed to adopt this approach.</p> <p>The Project Director gave an update about the intended sale of the main block at the Southall campus. The College had most recently received valuations for the land parcel of between [REDACTED] and [REDACTED]. Following the completion of a competitive bidding process managed by the College’s agent, the received bids were very disappointing. The highest bid received was [REDACTED] the second highest bid was [REDACTED]; the lowest bid received was [REDACTED]. A panel was convened including Peter Chapman, as a governor with specialist property expertise, to meet the highest bidders. As part of the discussions bidders were invited to provide a) their best and final offers; and b) their potential interest in purchasing Blocks A&amp;B instead. Only one of the bidders expressed interest in the option of the A&amp;B blocks, which whilst smaller, had the advantage of being an unencumbered sale with immediate possession available. The bid received for the A&amp;B block was [REDACTED].</p> <p>It was noted that the low offers received posed significant challenges for the Board in determining how the College moves forward. The disappointing response received has been discussed with the ESFA and FE commissioner’s team to establish if other financial options are available to support the College in the short term. The offers received compared disappointingly to the pre-bid estimate of [REDACTED] provided by the College’s appointed agents. The agent has provided an explanation for the difference between their original valuations and the actual bids which included: -</p> <ul style="list-style-type: none"> <li>• Restrictions on the permissible height of any development reflecting the fact that surrounding areas are low level build and not similar to the Berkeley redevelopment where greater building heights are possible.</li> <li>• Competition from other residential development in central Southall near the College site</li> <li>• Brexit and its impact on the depressed property market in London.</li> <li>• The adjacent leisure centre at Southall which is likely to be retained, thus compromising any potential wider development opportunities.</li> <li>• The lease back arrangement for two years and preventing immediate possession.</li> </ul> <p>Mr Chapman, who had participated in the panel discussions, commented that the highest bidders had downplayed the significance of the Brexit factor as the reason for the valuation.</p>

Their position was that the planning considerations were a significant factor which meant that instead of a 6 or 7 storey development, the likely permissible limit was 4 storeys which would thus reduce site values. Governors asked whether discussions had taken place directly between the College and the planning authority. It was **AGREED** that the College would follow-up on **this (ACTION: LM)**.

In the light of the outcome of bids and following discussion at Finance and General Purposes Committee, governors considered a detailed options review paper. The paper summarised the options available to the board, noting that none of the options met the criteria set by the board in the approved estates strategy which were to

1. Repay the EFS (in full);
2. Ensure continued viable provision at Southall;
3. Provide sufficient capital to bring the vacant blocks A&B back into use and relocate key facilities, particularly Motor Vehicle which is currently housed in the main block; and
4. Provide sufficient working capital for the College and provide sufficient capital headroom to support the commencement of the Hammersmith Gateway project.

It was noted that the low levels of bids had significant implications for the repayment of the EFS and the forecast critical cash position on the College in December 2019/January 2020. The College had, therefore, sought clarification of the positions of the agencies. Specifically, the College had requested that the ESFA consider re-profiling payments in 2019/20 to ease the College's cash flow difficulties at key times of the year. The agency has taken the case to the DFE's Provider Management Panel. A formal response is awaited, which may not be until August at the earliest. At the same time the FEC's team has recommended that careful consideration is given to the timing of the repayment of EFS in order to not jeopardise the solvency of the College. The outcome of this was also not yet known.

In summary, there were four options available to the board viz.

1. Accept the highest bid for the Southall Main block of [REDACTED]
2. Accept the unconditional offer of [REDACTED] for Blocks A & B; &
3. Re-market the site on the basis of
  - a) the main block; and
  - b) blocks A & B

The board reviewed the advantages and disadvantages of the various options. There was particular concern about how the board reconciled the various challenges it was facing. These were to ensure that the College a) remained solvent, given the forecast negative cash position in January 2020; b) met its statutory obligations under the new College insolvency regime; c) repaid EFS debt; d) continued to fulfil its duties to learners in the community of Southall; and e) secured best-value for the disposal of assets. It was felt that the timely

support of the agencies was critical. If the ESFA was unable to clarify and confirm its position in the immediate timeframe, the board was faced with a very difficult decision which had to prioritise College solvency in the short-term. The CEO noted she was aware that the agency had provided other colleges with flexibility with regard to EFS debt including, in some case, write offs or, as reported in the trade press, 'fresh start' and 'debt forgiveness'. The CEO was not sufficiently clear on the criteria that determined how debt would be treated and had sought clarification from the agency. The agency had been asked to consider its position on both the repayment of the EFS and the re-profiling of future funding payments to smooth out cash flow difficulties at the College whilst giving time to find an acceptable way forward with the Southall asset sale. The board was also advised that there was significant 'creditor stretch' at the moment which was unsustainable in the longer term.

The ESFA observer at the meeting noted the comments of the governing body with regards to their understanding of the position of the agencies.

The Chair invited Mr Smyth of Mills and Reeve LLP to comment on the insolvency position. He drew attention to the risk under the insolvency regime for a creditor of the College to initiate a winding-up action. Under the new insolvency regime for colleges, governors are required to act as if they are directors of a commercial company and they have a duty to act in the best interest of creditors. It was commented that governors had potential personal liability in the event of misfeasance or wrongful trading. There was discussion of the concept of wrongful trading and Mr Smyth commented that if directors have a reasonable belief that they are able to realise a viable plan, a claim of wrongful trading may not apply. It was commented that if the board has a reasonable belief that the ESFA is able to provide flexibility in terms of funding payments to manage cash flow so that an alternative plan can be implemented, that would be a defensible position.

In the light of Mr Smyth's comments, there was discussion about whether the board had any option but to accept either the largest bid for the main block [REDACTED] or the largest bid for blocks A&B [REDACTED]

The chair of the Audit Committee commented on the position from an audit and governance perspective, as she saw it. She urged the ESFA to consider sympathetically the case for funding re-profiling and phasing EFS repayments. None of the executive managers of the College and very few governors were here when the issues that had given rise to the present difficulties had occurred. Governors needed to be furnished with a timeline of action; immediate action was needed to negotiate appropriate arrangements with significant creditors; furthermore, because of the uncertainty regarding the realisation of best value for assets, it was essential that the College tested the market again.

Other governors suggested that urgent action be taken to obtain a further independent valuation of the site assets so that they could be clearer about whether the tabled bids

represented a fire sale or best value taking into account all of the short and medium-term factors such as Brexit.

The Chair summarised the options for decision by the board which were

- 1) Obtain as a matter of urgency an independent valuation of both parts of the Southall site;
- 2) Assuming that the agencies are able to take the actions requested and taking into account 1) above, determine whether the preferred option was to dispose of the main block or blocks A&B; and
- 3) In the event that the ESFA is unable to commit to the requested actions or is unable to respond to these requests within a reasonable timeframe, the board may have no option but to accept the highest receipt on the table, i.e. in respect of the main block [REDACTED]. This would not be ideal as it could be considered a fire sale.

**RESOLVED:** that the actions as set-out below be progressed as a matter of urgency: -

- 1) Obtain as a matter of urgency an independent valuation of both parts of the Southall site;
- 2) Assuming that the agencies are able to take the actions requested and taking into account 1) above, the board determine whether the preferred option was to dispose of the main block or blocks A&B; and
- 3) In the event that the ESFA is unable to commit to the requested actions or is unable to respond to these requests within a reasonable timeframe, the board may have to accept the highest receipt on the table i.e. [REDACTED] risking a sale well below medium term market value.

**6. Draft Budget 2019/20 and 2 year forecast including pay review**

The board noted that the draft budget for 2019/20 and the 2 year financial forecast had been reviewed in detail by the Finance and General Purposes Committee at its recent meeting. The draft budget as presented met the expected KPIs required by the FE Commissioner's office and, in particular, there is clear progression to the achievement of 65% staff costs to income percentage by 2020/21. The board noted the forecast KPIs as follows:

Key Performance Indicators (KPIs)	Outturn forecast 2018/19	Draft Budget 2019/20	Draft Budget 2020/21
Financial Health	Requires Improvement	Requires Improvement	Good
Financial Health Score	150	160	200
Adjusted current ratio	2.53	2.60	2.70
Borrowings as % of income	36.49%	34.36%	32.31%
EBITDA as % of income	-8.36%	0.51%	4.38%
Staff cost % of income	75.95%	67.74%	64.66%
Cash position	£1,171k	£4,206k	£4,720k

The budget for next year was based on an anticipated deficit of (-£371k), which compared to the forecast deficit of (-£2,977k) in the current year. In 2020/21 a surplus of £932k was planned. It was noted that the 2019/20 budget achieved the objective of being cash neutral, although this had been queried by the FE Commissioner's team who had challenged the extent of the creditor stretch until the College was able to take receipt of the capital disposal. The CEO drew attention to the challenge from the agencies to deliver the required financial KPIs sooner which had been debated at the recent board strategic planning workshop. The agreed position of the board was that stretch targets would be set internally which the College team would seek to achieve or exceed wherever possible.

Members of the Corporation were advised that the budget for 2019/20 and two year forecast did not make provision for a cost of living pay rise as it was not affordable in the current very challenging environment. There was discussion of the issue of staff pay and it was confirmed that provision had been made for incremental pay increases, where applicable. The staff governor commented that in her view colleagues were very much aware of the financial position and that the CEO had kept all staff aware of the challenges facing the College. The CEO said that she was in regular contact with the trade unions through the Joint Consultative Committee which met every 6 weeks and with staff through regular campus meetings. She was looking to find other ways to reward staff whilst also seeking to preserving jobs. Governors asked whether further redundancies were expected in future years. It was noted that the budget had made provision for £200k restructuring in the next two years for a small number of redundancies. The CEO emphasised that wherever possible she had sought to avoid compulsory redundancies and the numbers thus far had been small.

The Chair thanked the staff governor for her feedback.

Governors requested that the budget forecast checklist be checked-off and that a full commentary be provided. It was **AGREED** that this be circulated separately (**ACTION: AN**).

**RESOLVED:** that the 2019/20 budget and two year financial forecast be approved as presented.

Mr Morley left the meeting at this point.

**7. Management Accounts as at 31 May 2019**

It was noted that the management accounts for May 2019 had been reviewed in detail at the recent Finance and General Purposes Committee meeting. It was noted that an adverse variance of £291k was reported at the end of period ten, May 2019. The senior leadership team will continue to scrutinise income and expenditure work streams in order to mitigate variances wherever possible. The full year forecast for pay and non-pay costs is currently projecting adverse variances of £87K and £204k respectively. Income is currently maintained in line with budget and no variance is reported at this stage. The position will

	<p>closely monitored through to the end of the financial year to ensure that the college remains on track.</p> <p>The board confirmed that the management accounts as presented confirmed that the College remained a going concern.</p> <p><b>RESOLVED:</b> that the management accounts as at end of May 2019 be noted.</p> <p>Mr Chapman left the meeting at this point.</p>
8.	<p><b>CEO Report</b></p> <p>The CEO's report discussed</p> <ol style="list-style-type: none"> <li>1. The progress of FE Commissioner intervention</li> <li>2. The progress of ESFA monitoring</li> <li>3. Enrolment and funding performance</li> <li>4. Office for Students (OfS) update</li> <li>5. Recruitment of permanent Deputy Principal Curriculum and Quality</li> </ol> <p>The CEO commented on the visits of the FE Commissioner's team in June and July, the most recent visit being on 9<sup>th</sup> July. The team had spent some time reviewing the College's curriculum, workforce and financial planning processes and work. The FEC's team felt that College had made good progress on curriculum planning and that processes were sound. There was challenge on the pace of workforce reform which the board had considered at the board strategic planning workshop and subsequently.</p> <p>An ESFA case conference had taken place on 7 June and a further visit was scheduled for the following day, 18 July. The board noted that the agencies had been advised immediately about the disappointing bids for the planned Southall disposal. As discussed earlier in the meeting, the College had requested support from the ESFA in respect of the phasing of the EFS debt repayment and a re-profiling of funding payments to provide support in the management of the College's cash flow next year. The College had provided the agency with detailed information as required and the case was made to the Department at a meeting on 01 July. The outcome was not yet known but the ESFA had now requested that the College provide a full narrative to accompany the curriculum, workforce and financial strategies with a clear demonstration of the links between the strategies.</p> <p>The CEO provided a detailed analysis of the funding report for the College in relation to 16-18 students, Adult Education Budget (AEB) including sub-contracting and apprenticeships. The critical target for AEB was to achieve the 97% funding threshold which the College had failed to do last year, leading to a significant claw back of funding. The data presented by the CEO gave assurance to governors that the AEB threshold would be achieved: College performance overall is at £6.52m and 97.3% of target</p>

(93.8%% reported in May), including an estimated £0.45m to be drawn down in achievement funding (a conservative 80% achievement rate assumed whereas the predicted achievement rate is around 92%). Sub-contractor performance was at 95% of target. Apprenticeships are a small but important part of the College's offer. Currently performance is at £806k or 97.5% of target, including estimated achievement funding of 54k (an increase from £797k or 96.4% of target reported in May). The College needs to significantly strengthen its business development activities for apprenticeships if it is to achieve the growth targets set for 2019/20 (950k) and 2020/21 (1,150k).

The board noted that the Office for Students (OfS), who are the new regulator for higher education in England, had issued an 'intention to refuse' letter in response to the College's registration application. The basis of the OfS's position was as follows: -

1. Poor and declining student continuation rates;
2. The submitted Student Protection Plan (which should provide safeguards to students that the College will honour course offers and permit students to complete their studies) did not 'provide a credible assessment of the risks to the continuation of study for students'. The OfS was influenced in this judgement by the FEC Commissioner's intervention report which was published after the registration was submitted. The OfS were particularly concerned by the financial difficulties faced by the College;
3. The College had not submitted adequate evidence that it met 'public interest governance conditions' in relation to freedom of speech, the composition of the governing body and the 'fit and proper person' test; and
4. The College's registration application did not meet the 'management and governance conditions', noting that the application did not refer to the FEC intervention report which 'raised concerns about the credibility of the information supplied.' The OfS referred to the criticisms in the FEC report about risk management at the College, the effectiveness of the governing body, the independence of the governing body and matters of regularity, propriety and value for money.

It was noted that directly delivered HE provision at the College has become very small (income circa £45k) and the financial risk should the OfS uphold its intention to refuse the register application was regarded as minimal. It was the CEO's intention to rebuild the College's HE provision but only in areas of specialism and strength and meeting high quality student experience and outcome targets.

The College had submitted a detailed written response to the OfS and the CEO and Clerk had met at the OfS's offices to make further representations. A decision was expected later in July.<sup>1</sup>

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<sup>1</sup> Postscript note by the Clerk: the College has subsequently been advised that the OfS will be writing to confirm that it will be registered, subject to conditions.

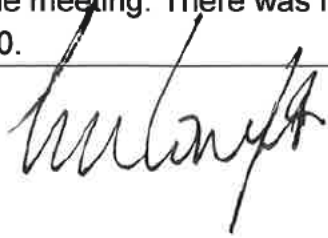
	<p>The CEO also updated governors about the recruitment to the key Deputy Principal (Curriculum and Quality) post. The previous appointment had not worked out; since then a very capable interim had been covering the post but he had now retired. Following a recruitment process last month an appointment had been made. Unexpectedly, the individual was subsequently poached by another college who were recruiting to the same post, but with the title of Principal and a slightly higher salary. Following discussion with the Chair and the Clerk, a new recruitment campaign had initiated with the post title of 'Principal' to seek to recruit a stronger field. In the meanwhile an experienced interim had been secured for the period of September to November.</p> <p><b>RESOLVED:</b> that the CEO's report be noted.</p>
9.	<p><b>College Recovery Plan: Progress Tracking Report</b></p> <p>The board reviewed the updated College recovery plan tracking document. The following category headline updates were noted: -</p> <p><b>Governance:</b> progress in this area has been strong, with 100% of actions achieving a RAG rating of Green.</p> <p><b>Senior Leadership:</b> actions rated Green or Amber/Green represent 84.6% of all actions, although the difficulties in recruiting a new Deputy Principal for Curriculum and Quality were an inhibiting factor.</p> <p><b>Market Assessment and Opportunities:</b> actions rated Green or Amber/Green represent 66.7%.</p> <p><b>Workforce Reform:</b> this area has performed strongly against the agreed recovery plan targets with 100% of actions achieving a RAG rating of Green or Amber/Green, although it was recognised that there was challenge from the agencies to hasten the pace of recovery.</p> <p><b>Curriculum Efficiency and Effectiveness:</b> 100% of actions have been rated Green or Amber/Green.</p> <p><b>Financial Performance:</b> actions rated Green or Amber/Green represent 82.3% of all actions.</p> <p>The board queried the assessment for estates at 85.7% Amber/Green given the serious difficulties in relation to the Southall disposal.</p> <p>The chair commented that the report gave assurance to the board that good progress was being made in the implementation of the recovery plan.</p> <p><b>RESOLVED:</b> that the update report on progress in implementing the College recovery plan be noted.</p>
10.	<p><b>Strategic Plan 2019-2024</b></p> <p>This item was deferred to the next meeting.</p>

11.	<p><b>Quality Improvement Action Plan (QIAP)</b></p> <p><b>RESOLVED:</b> in recognising that the QIAP had been reviewed in detail at the meeting of the Curriculum, Quality and Performance Committee, that the quality improvement action plan be noted.</p>
12.	<p><b>Strategic Risk Register</b></p> <p>The strategic risk register had been reviewed in detail at the meeting of the Audit Committee held on 26 June 2019. The Chair of the Audit Committee commented that the College now had a detailed and whole-college risk register which should be used as a live document. It was noted that the increases in net risk scores recommended by the Audit Committee had been reflected in the document before the board. The significant risks were</p> <p>Item 10 - Cash flow pressures and risk of insolvency  Item 11 - Failure to implement all aspects of the estates strategy  Item 13 - Quality of teaching, learning and assessment  Item 18 - Inability to maintain the college estate and infrastructure</p> <p><b>RESOLVED:</b> that the strategic risk register be noted.</p>
13.	<p><b>Audit Committee report and minutes, 26 June 2019</b></p> <p>The minutes of the meeting of the Audit Committee held on 26 June 2019 were noted. The chair of the Committee commented that there had been lots of good challenge at the meeting and the Committee was satisfied that good progress was being made. The outcome of the corporate governance audit undertaken by the College's internal auditors had been positive with only 1 minor recommendation.</p>
14.	<p><b>Finance and General Purposes Committee report and minutes, 10 July 2019</b></p> <p>The minutes of F&amp;GP Committee held on 10 July 2019 were noted. Reflecting their importance, most of the key matters at the meeting had been discussed in full at today's meeting.</p>
15.	<p><b>Board Approvals</b></p> <p>The following matters had been scrutinised in detail at the meeting of the Finance and General Purposes Committee on 10 July 2019 and were commended to the board for approval.</p> <p><b>RESOLVED:</b> that the Subcontracting Supply Chain, Fees and Charging Policy for 2019/20 and the Tuition Fees and Refund Policy 2019/20 be approved.</p>
16.	<p><b>Terms of Reference and Cycle of Business of the Committees of the Corporation and Standing Orders</b></p> <p><b>RESOLVED:</b> that following review by each of the Corporation's committees, the terms of reference and cycles and business be approved as recommended.</p> <p><b>RESOLVED:</b> that paragraph 3.14 of the Corporation's standing orders be amended as follows</p>

	<p><i>'Members shall appoint a Chair of the Corporation and Vice Chair(s) normally at the July Corporation meeting of each year and persons appointed shall hold office for two years up to a maximum of six years. The Principal, any staff member or any student member may not act as Chair or Vice Chair of the Corporation. The retiring Chair and Vice Chair(s) of the Corporation shall be eligible for re-appointment, subject to the terms of the re-election process.'</i></p>
<p><b>17.</b></p>	<p><b>Amendment to Instrument and Articles of Government</b></p> <p>The Clerk explained that, following discussion with the chair and the CEO, it was being recommended that Article 12(1) of the Instruments and Articles of Government be amended to provide greater flexibility in determining the membership of selection panels for senior post holders as the current requirement to involve three governors plus the CEO was often logistically very difficult. It was recommended that the matter be one for the Corporation to determine.</p> <p><b>RESOLVED:</b> that article 12 (1) to (3) be amended as follows:</p> <p><i>12.(1) Where there is a vacancy or expected vacancy in a senior post, the Corporation shall:</i></p> <ul style="list-style-type: none"> <li><i>(a) advertise the vacancy nationally; and</i></li> <li><i>(b) determine the arrangements for the selection and appointment to that post</i></li> </ul> <p><i>(2) A recommendation shall be made to the Corporation and if the Corporation approves the recommendation, that person shall be appointed.</i></p> <p><i>(3) Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff:</i></p> <ul style="list-style-type: none"> <li><i>(a) may be required to act as Principal or in the place of any other senior post holder; and</i></li> <li><i>(b) if so required, shall have all the duties and responsibilities of the Principal or such other senior post holder during the period of the vacancy or temporary absence.</i></li> </ul> <p>Paragraph (4) is deleted.</p> <p>It was <b>AGREED</b> that at least one external governor plus the CEO participate in the interview panel for the selection of the Deputy Principal (Curriculum and Quality) post, now re-titled 'Principal', in September.</p>
<p><b>19.</b></p>	<p><b>Meeting Evaluation</b></p> <p>Governors were invited to comment evaluatively regarding the conduct of the meeting, the information presented in reports, the effectiveness of scrutiny and challenge and the opportunities for debate. The unanimous view was that the meeting had been effective with thorough and informed discussion of the critical issues facing the board.</p>
<p><b>20.</b></p>	<p><b>Any other Business</b></p>

Thanks were extended to Mr Smyth of Mills and Reeve LLP for his attendance and contribution to the meeting. There was no further business and the meeting was closed by the chair at 20.00.

Chair's signature:



Date:

17/10/19