

**REVIEW OF THE MANAGEMENT OF THE MERGER  
OF COATBRIDGE COLLEGE  
AND NEW COLLEGE LANARKSHIRE**

**ALEX LINKSTON**

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## **1. SECTION 1 - BACKGROUND, REMIT & METHODOLOGY**

### **1.1 Background**

In June 2014 the Scottish Government asked the Scottish Funding Council (the “**Council**”) to arrange for an independent specialist to conduct a non-statutory review (the “**Review**”) of the management of the merger of Coatbridge College (“**Coatbridge**”) and New College Lanarkshire (“**NCL**”).

The overall objective of the Review was to consider the management of the merger of Coatbridge and NCL and, in particular, what consideration was given to the impact on senior staff of the merger process and how that impact was managed.

It is important to note that the Scottish Government asked for this Review to be conducted following representations from family members concerning the death of Francis McGeachie, a senior member of staff at Coatbridge, during the preparations for the merger. However, as responsibility for the investigation of deaths in Scotland is a matter for the Procurator Fiscal, the Scottish Government, the Council and other relevant stakeholders recognise that this review must focus on the merger process and not on the circumstances surrounding that death which would be beyond the Council’s powers.

On 13 August 2014 I accepted an appointment as the Review Lead by the Council. In terms of my own background, I was Chief Executive of West Lothian Council between 1990 and 2010; Acting Chair of the Board of Management of West Lothian Council between 2011 and 2013; and Regional Lead for West Lothian between 2011 and 2013. I am currently Chair of the Board of NHS Forth Valley, a role I was appointed to in 2012.

I have had no prior direct involvement with Coatbridge College or NCL. Other than previous meetings with the Regional Lead for Lanarkshire in my capacity as Regional Lead for West Lothian, I have had no prior involvement with the key individuals involved in the merger.

The Council has commissioned support for this independent review from DLA Piper Scotland LLP (“**DLA Piper**”), and I have been assisted by solicitors from DLA Piper in carrying out the Review. The Council instructs DLA Piper on a variety of matters including governance and employment advice.

All of the documentation and information gathered will remain with DLA Piper given its sensitivity and commitments made regarding confidentiality to those who have spoken to me throughout this Review.

In carrying out this review, I have had full co-operation from NCL in both supplying me with all the documents I wished to study and arranging access to all the people I wished to interview. NCL also ensured that some legal advice was offered to individuals who sought this and that dispensations were granted to any former employees who had signed compromise agreements so that they were free to speak. This assistance has been appreciated.

### **1.2 Remit**

The remit and overall objective of the Review was prescribed by the Council as follows:

- Review the management of the merger of Coatbridge and NCL – and, in particular, what consideration was given to the impact on senior staff of the merger process and how that impact was managed.

- Additionally, if appropriate, the review should make recommendations on how the management of mergers and their effect on senior staff might be improved.
- Produce a report with recommendations, if appropriate, for the Scottish Funding Council.

The Council's role in instructing this independent assessment is informed by its statutory powers and responsibilities under the Post-16 Education (Scotland) Act 2013, Further and Higher Education (Scotland) Act 2005 (as amended) and more generally under the Further and Higher Education (Scotland) Act 1992 (hereinafter referred to as the "**2013 Act**", "**2005 Act**" and "**1992 Act**" respectively). In particular, the Council is charged with ensuring the proper and robust governance of colleges and universities and retains overall accountability for the spending of public money by these fundable bodies.

The Council does not ordinarily get involved in operational matters or decision-making within individual fundable bodies; these remain matters solely for each college as an autonomous entity. Accordingly, the remit of this independent investigation has been carefully scoped to reflect the role of the Council in this matter.

It is worth mentioning that as of April 2014 incorporated colleges are now classified as public bodies by the Office for National Statistics ("ONS") for accounting purposes. This has had material consequences for the manner in which college finances are managed. The Council will publish imminently an updated Financial Memorandum between the Council and the sector to take into account the impact of this reclassification in the governance rules with the sector. Specifically the ability of colleges to agree severance packages is much more circumscribed under the new rules. Accordingly I have taken this development into account in the report.

The outcome of the Review is this report, addressed to the Council.

My conclusions and recommendations vary in their approach and detail. The purpose of the Review is to comment on the merger process and to identify where lessons can be learned and processes and approaches improved for future mergers. Where I have identified weaknesses or gaps in current processes, policies or management/governance approaches, I have suggested discrete and specific action points to be taken forward by the Council in providing guidance and support to the sector. I did not consider it appropriate for this report to make recommendations directly to the sector.

### 1.3 Methodology

My methodology was to conduct interviews with as wide a range of stakeholders as possible within the time constraints including Board of Management members, senior management, staff and certain other stakeholders including the family of Francis McGeachie to gain a deeper understanding of the merger process and the effect on senior staff.

Interviews were conducted between Saturday 4 October 2014 and Friday 7 November 2014. Interviews took place at the offices of DLA Piper in Edinburgh and Glasgow or at NCL and, in one instance, by telephone.

The first interviewees I spoke with were members of Francis McGeachie's family. While clear that the focus of the Review was not to investigate Mr McGeachie's death, I wished to ensure that I was able to consider any relevant issues concerning the merger procedure or process which arose from those first interviews and to allow me to put those points to the interviewees I met thereafter.

The list of key personnel for interview was drawn up following initial meetings with members of the family of Francis McGeachie on 21 August 2014, Martin McGuire, Principal of NCL, on 27 August 2014, and Alan Hughes, Senior Executive at Frontline Consultants Limited (who provided specialist project management support to NCL during the merger process) on 4 September 2014.

I approached 31 potential interviewees and all 31 agreed to speak with me<sup>1</sup>. In order to give appropriate focus and structure to each interview I conducted a preliminary review of documentation and information requested by me (described below) and focussed primarily on the issues of:

- Voluntary severance payments offered to senior staff at Coatbridge;
- The Management restructuring that was carried-out following the retirement of the Principal on 31<sup>st</sup> October, 2013
- The interview process for senior posts at NCL; and
- Consideration of issues pertinent to the duty of care owed to senior staff by the Board of Management at Coatbridge.

I undertook a review of documentation relevant to the merger to gain a deeper understanding of the issues. This material included:

- Minutes of Coatbridge and NCL Board Meetings;
- Minutes of Coatbridge Remuneration Committee Meetings;
- Documentation produced by Frontline Consultants Limited pertinent to its role in the merger;
- Coatbridge College Annual Report, 2011/2012;
- Scott Moncrieff - Merger Due Diligence Report into Coatbridge College, dated 7th October 2013;
- Report by HM Inspectors on behalf of the Scottish Funding Council: Coatbridge College, 6 July 2012;
- Cultural review of Coatbridge, Cumbernauld and Motherwell College: Cultural preparations for merger, Roger Mullin, September 2013; and
- Coatbridge College Annual Audit Report for 2012/13 to the Board of Management and the Auditor General for Scotland, Henderson Loggie, 18 December 2013.

From the interviews I have conducted and from my review of relevant documentation and information I have identified a number of themes and issues which appear to me to have led to difficulties arising in the latter stages of the merger process which had or were likely to have an impact on senior staff involved.

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<sup>1</sup> A list of those who I sought to interview and spoke with is included at Annex 1.

I have structured my report broadly under the same “themes” used as the basis for each interview:

- The background to the merger between Coatbridge and NCL;
- Voluntary severance payments offered to senior staff at Coatbridge;
- The Management restructuring that was carried-out following the retiral of the Principal on 1<sup>st</sup> November,2013
- The merger process at NCL itself including specifically the interview process for senior posts at NCL; and
- Consideration of any duty of care owed to senior staff by the Board of Management at Coatbridge.

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## 2. SECTION 2 - CONTEXTUAL BACKGROUND TO MERGER INVOLVING COATBRIDGE COLLEGE

- 2.1 On 29 June 2011, in a statement in the Scottish Parliament<sup>2</sup>, the Cabinet Secretary for Education and Lifelong Learning, Michael Russell, announced a review of college governance, to be chaired by Professor Russell Griggs.

The “*Report of the Review of Further Education Governance in Scotland*” (the “**Griggs Review**”) was published on 20 January 2012.<sup>3</sup>

The Griggs Review considered that regional colleges offered greater potential for national management of policy and the recommendation was for regional colleges, in smaller numbers than the existing college state, each with a single regional board with the power and control to receive public funding and decide how to manage its resources.

The Scottish Government’s response to the Griggs Review - “*Reinvigorating College Governance: The Scottish Government Response to the Report of the Review of Further Education Governance in Scotland*”<sup>4</sup> - was published on 28 June 2012.

The outcome of the response has been the enacting of the Post-16 Education (Scotland) Act 2013 (the “**2013 Act**”), which extends powers set out in the 1992 Act and the 2005 Act.

The 2013 Act provides for regional colleges (single college regions) and regional strategic bodies (multi-college regions). In single college regions, the regional college has responsibility for delivery of college provision and strategic planning. In multi-college regions, there is a separation of the strategic role and delivery role between the regional strategic body and its assigned colleges respectively.

The purpose of the reform was to create regional bodies that would work with employers and other stakeholders in its area to develop the regional economy and maximise employment opportunities of its students.

## 2.2 Background to merger between Coatbridge and NCL

Following the publication of the Scottish Government’s response to the Griggs Review, Coatbridge produced a proposal to the Council for a four way merger of the Lanarkshire Colleges. The other three Colleges were not advised of this initiative and learned of it through a press release.

I am advised that Cumbernauld, Motherwell and South Lanarkshire Colleges did not have sight of this communication and subsequently a request was made under the Freedom of Information (Scotland) Act 2002 which I understand was for a copy of the communication. The Scottish Information Commissioner was ultimately required to determine the issue of whether the colleges’ request for review of Coatbridge’s initial response was responded to.<sup>5</sup>

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<sup>2</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6577&i=59834&c=1246388>

<sup>3</sup> <http://www.scotland.gov.uk/resource/0038/00387255.pdf>

<sup>4</sup> <http://www.scotland.gov.uk/Resource/0039/00396150.pdf>

<sup>5</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201200527.aspx>

On the 12<sup>th</sup> December 2011 the Principals of Cumbernauld College (“Cumbernauld”), Motherwell College (“Motherwell”) and South Lanarkshire College (“South Lanarkshire”) announced in a statement their intention to explore the formation of a federation of colleges to provide a structured approach to regionalisation. A commitment was given to presenting a paper to the Scottish Funding Council (the “Council”) by 29<sup>th</sup> February, 2012 setting out the details of the proposed approach.

Ultimately dialogue took place during the early part of 2012 between the four colleges, with involvement from the Cabinet Secretary for Education and Lifelong Learning, Michael Russell, the Cabinet Secretary for Infrastructure and Investment, Alex Neil (attending in his capacity as the Member of the Scottish Parliament for Airdrie and Shotts).

I am advised that it was apparent from that meeting that the merger could not work unless relationships between Principals in particular were improved. Ultimately the Advisory, Conciliation and Arbitration Service (“ACAS”) were brought in as mediators.

Thereafter, Coatbridge joined the Federation.

On 11 January 2013 Motherwell and Cumbernauld announced their intention to merge<sup>6</sup>. On 11 February 2013, Coatbridge announced its intention to join the merger.

As is common in advance of sector mergers, a Merger Management Group (“MMG”) was put in place comprising representatives from each participating college including Chair, Vice-Chair(s) and Principals of each of Motherwell, Coatbridge and Cumbernauld Colleges.

The MMG met for the first time on 14 January 2013, where it was agreed that the Chairman of Motherwell would be Chair and the Chair of Cumbernauld would be Vice Chair. It also established various work streams and allocated staff from the two colleges to these work streams. It also appointed Chairs to the work streams from the two colleges.

On 25 February 2013, at the MMG’s first meeting following the announcement of the intention of Coatbridge to join the merger, Coatbridge withdrew from the merger. The minutes of that meeting show that the MMG’s proposal regarding how Coatbridge senior staff would become involved in and lead future work stream groups of NCL with staff representatives and the student representative becoming members of the MMG, was deemed as unsatisfactory by the Chair of Coatbridge, following discussion with colleagues.

At this point in the merger process there appears to have been a great deal of mistrust between the Principals which was not conducive to going forward. It is unfortunate that there was not a spirit of greater compromise between the parties as the best interests of staff and learners should have been the overarching consideration.

Thereafter Cumbernauld and Motherwell announced the merger would proceed as a two-college merger.

On 23 July 2013 the Principal and Chair of Coatbridge met with a representative of the Scottish Government and the Regional Lead for Lanarkshire. At that meeting Coatbridge agreed to consider re-joining the merger. They understood at that point the merger process between Cumbernauld and Motherwell had proceeded to the point that the Principal designate had been recruited and that those colleges were working towards a merger date of 1 November 2013.

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<sup>6</sup> <http://www.vle.motherwell.co.uk/mod/forum/discuss.php?d=1259>

Coatbridge ultimately agreed to re-join the merger in August 2013. As the merger process had been on-going between Cumbernauld and Motherwell, those colleges merged on 1 November 2013<sup>7</sup>. Coatbridge thereafter merged with NCL on 1 April 2014<sup>8</sup>.

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<sup>7</sup> Cumbernauld College (Transfer and Closure) (Scotland) Order 2013

<sup>8</sup> Coatbridge College (Transfer and Closure) (Scotland) Order 2014. The name of New College Lanarkshire was changed from Motherwell College - the "host" college in terms of the merger model - on 1 November 2013 in accordance with section 3(4) of the Further and Higher Education (Scotland) Act 1992 (c.37) ("the 1992 Act").

### 3. SECTION 3 - VOLUNTARY SEVERANCE AT COATBRIDGE COLLEGE

#### 3.1 Overview

The issue of the voluntary severance scheme(s) offered to senior staff at Coatbridge was identified at the outset of my Review as a key issue of concern for stakeholders. I have provided a summary of the key facts as I understand them to have developed in this section. It is clear to me from the information and statements obtained that the proposals were put together rapidly and at a time of fluidity in terms of whether Coatbridge was committed to the merger. The views obtained from individuals involved in the process differ in terms of how the proposal(s) crystallised and were agreed and whether or not the original scheme was intended to be applicable to senior staff. This differing of views for such a significant matter in itself is troubling and demonstrates that the governance of this process was poor and falls short of what should reasonably be expected of leadership in a college.

##### 3.1.1 Severance based on 21 months' service

Initial discussions around the development of voluntary severance schemes for the merging colleges took place in November 2012. The Minutes of a meeting of the Lanarkshire Principals' Forum held on 23 November 2012 indicate that the Principal of South Lanarkshire circulated electronic copies of the voluntary severance scheme from South Lanarkshire. The minutes state that "*Discussion took place regarding the other colleges developing similar schemes*".

I have been provided with a draft of the South Lanarkshire College voluntary severance scheme" which details the maximum payable to individuals whose application is accepted is 1 month's pay per completed year of continuous reckonable service up to a maximum of 21 months.

I understand the Strategic Action Plan put together by the colleges identified January 2013 as the target date to make a successful application to the Council for support funding for a Lanarkshire Voluntary Severance scheme.

The minutes of a meeting of the Coatbridge Remuneration Committee on 28 January 2013 include the following text:

*"[The HR Director of Coatbridge] confirmed that the emerging severance arrangement within the sector was the Edinburgh Model and she clarified that this offered one month's salary for each year of service up to a maximum of 21 months. It was agreed that [The HR Director of Coatbridge] would provide a copy of the Edinburgh model documentation to members after the meeting."*

*[The HR Director] confirmed that the Edinburgh model was also the one that was being discussed as part of the Federation and had already been agreed separately by the Board of South Lanarkshire College..."*

*"It was agreed that the Principal [of Coatbridge] would receive the 21 month severance arrangement plus an additional three months' severance for taking the College successfully through to merger."*

*It was also agreed that the same model (not including the additional three months) would be afforded to college senior staff and that the Committee understood it was good practice to agree these arrangements now”.*

There was also discussion that this scheme should be extended to all staff. However accounts vary as to what was discussed at this meeting and whether the Clerk to the Board/HR Director was absent for a significant part of the discussion.

### **3.1.2 Severance correspondence to senior management staff at Coatbridge dated 7 February 2013**

The Coatbridge Remuneration Committee meeting of 28 January 2013 was followed up by letters to senior management staff at Coatbridge on or around 7 February 2013 which set out (as described in the correspondence):

*“an outline of what arrangements will be in place...in the event that you do not see an opportunity for yourself in the new arrangements or that you are unable to secure what you consider to be suitable employment within a merged college or federation”.*

The package offered in that correspondence included the following proposal:

- *“A redundancy payment equivalent to 21 months gross salary which we believe is reasonable and is consistent practice within the sector;*
- *The above assumes a termination date of 31 July 2013. However, the Board of Management or its successor reserve the right to discuss this further with you in the event of an earlier or later date being preferred. Any variation to the termination date would be subject to the agreement of both yourself and the Board or its successor.”*

Whether the reference to 31 July 2013 meant that if the merger did not occur by that date (as was the case after Coatbridge withdrew in February 2013) then the offer of 21 months lapsed has been a matter of dispute between interviewees.

I note that the terms of the above letter (supported by the information from interviewees) did not offer 21 months' salary depending on service in either the college sector in general or in that college in particular (like the Edinburgh and South Lanarkshire models respectively) but rather it offered 21 months' salary to all senior staff regardless of duration of service.

A number of months later on 9 September 2013, during which period Coatbridge had withdrawn from then re-entered the merger, there was a Merger Committee meeting of NCL involving representatives from all three colleges. It was agreed that there should be a voluntary severance scheme for all staff across the three colleges *based on continuous service and subject to a maximum payment of 13 months.* At the meeting of the Coatbridge Board on 30<sup>th</sup> October, 2013, it was agreed that this scheme would apply to all Coatbridge staff, including senior staff, with the exception of the Principal where a separate arrangement, based on his existing arrangement was agreed.

There was no mention at that September meeting or thereafter of the February letter to senior staff offering and seeking their agreement to a separate scheme. This was in part because the February scheme and the existence of a formal offer letter was not known by two of the board members attending the September meeting. It was known by others however.

### **3.1.3 Scott Moncrieff - Financial Due Diligence at Coatbridge**

Around the same time as the September meeting, details of the previously agreed scheme began to emerge in a financial due diligence report on Coatbridge undertaken by Scott Moncrieff.

Scott Moncrieff's report concluded that there was a voluntary severance arrangement in place between Coatbridge College and its Senior Management Team. Based on the information provided, the total cost of the agreed severance package is £693k. This potential liability was made known to the MMG and others.

#### **3.1.4 Response to Scott Moncrieff Report**

On 10 October 2013 the Council wrote to the Principal of Coatbridge seeking an assurance that the 21 months voluntary severance scheme was in accordance with "*standard good practice for mergers and represents good public value*" and requesting a response by 16 October.

In addition, on 10 October 2013 the Scottish Government wrote to the Chair and Principal of Coatbridge making reference to the correspondence from the Council and the Cabinet Secretary's concerns over an enhanced voluntary severance package.

On 11 October 2013 a joint statement was released by the EIS and Unison trade union officers at Motherwell, Coatbridge and Cumbernauld, together with the regional UNITE industrial officer which stated it was:

*"condemning payoffs to Coatbridge College Senior Management, using a preferential Voluntary Severance scheme which is not available to other, lower-paid members of staff..."*

*...The Senior Management - already highly-paid- have been offered 21 months' salary, whilst all other staff, some of whom earn less than the Scottish Government's preferred 'living wage', are being offered only 13 months"*

Some interviewees were under the impression that the 21 months scheme was somehow approved by the Scottish Government and Council. Whilst accounts vary on this point I consider that such approval was not and would not have been given in these terms. The Council has made it clear to the sector that it would only ever fund severance costs for which the payback period was a maximum of 12 months. It has also made clear that the severance schemes should be equal across all colleges merging. That said it was for individual colleges to agree the precise schemes put in place and if they offered enhanced schemes then they would require to be satisfied that they were in a position to afford these and that these were justified as a use of public funds. That is different to providing approval for any scheme.

### **3.2 Remuneration Committee Meeting - 23 October 2013**

At a meeting of Remuneration Committee on 23 October 2013 there was dispute amongst Coatbridge Board members as to whether a 21 month severance scheme had agreed to be offered to all senior staff at the 28 January 2013 meeting referred to above. Two board members specifically considered that the January meeting was only to agree a package for the Principal and that although wider application was discussed at a high level it was not agreed. Ultimately, it was agreed by a majority that this had been offered to all staff at that meeting. Two board members continue to dissent from this majority view.

### **3.3 Lanarkshire Model**

After obtaining legal advice, (the detail of which I have not seen), Coatbridge opened the voluntary severance scheme known as the "Coatbridge/Lanarkshire Voluntary Severance

Scheme” to senior managers at Coatbridge, with a closing date of 15 November 2013. I am told that under that scheme staff were offered *13 months’ salary based on their salary at 1<sup>st</sup> November and based on length of service*. This was a significant change to the previous scheme of 21 months with no service stipulation.

### **3.4 Findings and Recommendations**

I regard the governance surrounding the decision to agree and offer a voluntary severance package for senior staff to be very poor. Given the public sensitivities surrounding enhanced payments to senior staff in the public sector and the underlying need always to be prudent with public funds, a greater level of care should have been taken by the Board of Management of Coatbridge. The Clerk to the Board was also Director of Human Resources. This dual appointment creates a potential conflict of interest to the post holder in general terms and, quite acutely in circumstances such as this.

Independent, professional advice should have been sought on the matter of developing a severance scheme and this could have included different options for the Board to consider. That scheme should have been developed in a manner both proportionate and relevant to Coatbridge’s circumstances. I do not regard the “Edinburgh scheme” as the accepted norm within the Scottish further education sector. That scheme was developed to suit the needs of Edinburgh College at the relevant time. It is misleading and inaccurate to portray this as a sector norm.

It is difficult not to conclude that the scheme was designed to reward the outgoing Principal for his considerable accomplishments in turning the college around from being a low performing college to a high performing college. The board members to whom I have spoken felt strongly that there was justification for such a package based on the significant achievements and in light of the fact that the college had sufficient funds to make the payments given, in part, its successful commercial income streams. However I consider that the college, as a body that is significantly (though not entirely) funded by the public purse should not regard itself as having the same freedom to determine severance packages as the private sector and that this was an error of judgement. The reclassification of incorporated colleges by ONS as public bodies as of April 2014 should help address this point.

There should have been concerted action by all three colleges in designing a common scheme. To have colleges that were shortly going to merge with different severance packages would be very divisive and it proved to be so.

There is also no evidence that the scheme was properly financially scrutinised, particularly when a number of people have stated to me that it was the Board’s intention to apply its provision to all staff. The lack of robust paperwork to accompany the scheme setting out options, advantages and disadvantages and financial costings (as is routine in the sector) may be more consistent with the view that the January meeting was an initial discussion rather than a final determination.

The minutes of the meeting of 28<sup>th</sup> January were not circulated until October; some 8 months later. Two senior board members disagreed with the minute that the committee had agreed to extend the 21 month deal to senior staff being adamant that the committee only agreed a severance payment to the principal in the event that he did not get a suitable post in the merged college. Such a delay in minuting a key decision of the board is not only poor governance but, in this case, is particularly regrettable given that formal offer letters implementing the scheme were issued to senior staff in February 2013.

When the existence of the severance scheme for the senior staff became publicly known, it has been described to me that senior staff felt under siege by staff colleagues, trade unions

and staff of the other merging colleges. Staff felt that the senior staff were feathering their own nests. Of course it is my understanding that senior staff were offered the 21 month scheme but they did not themselves seek or lobby for it at this point. Indeed senior staff appear to have regarded that letter as a letter of comfort should they be unsuccessful in obtaining a post in the merged college although all were intent at that stage on being part of the merged college. However, it is also clear to me that offering a 21 month package to senior staff would not necessarily provide a real incentive for staff to commit to a future in a new role in the merged college.

**I would recommend that the Council considers making it a requirement that colleges considering a voluntary severance scheme for any staff should seek independent professional advice in furtherance of the objectives set by the colleges and ensuring best value for money. Such advice should be provided for scrutiny by the board and/or Remuneration Committee prior to making any decision.**

**I would also recommend that any voluntary severance scheme drawn up by colleges in any circumstances (merging or otherwise) are provided for comment and guidance to the Council. I understand that other colleges seeking to merge have undertaken this step in the past.**

**I am conscious that the updated Financial Memorandum to be issued by the Council partly as a consequence of changes to ONS classification of incorporated colleges is likely to circumscribe the severance arrangements which any incorporated college can enter in the future. However, the Council should keep operation of its new Financial Memorandum under close scrutiny to ensure that this is working in practice in an appropriate manner.**

**I recommend that the Council considers requiring that Members of Boards of Management, particularly on remuneration committees, attend specific training on compensation /severance packages (whether in context of merger or more generally).**

#### **4. SECTION 4 - RESTRUCTURING OF SENIOR MANAGEMENT TEAM FOLLOWING THE RETIRAL OF PRINCIPAL**

##### **4.1 Overview**

It was always understood that the current depute principal would take over as Acting Principal to take the college through to merger and that position was confirmed at the Board meeting on 23rd October.

Prior to demitting office on 1 November 2013, the outgoing Principal of Coatbridge appointed Francis McGeachie as Depute Principal. This appointment was intimated to staff but no formal letter of appointment was issued to him. This process was contrary to the policies of the Coatbridge Board of Management whereby senior appointments are normally reserved for the Board of Management itself and posts are advertised. It also contravened the Board of Management's equal opportunities policy. I am aware from the interviews I carried out that other Faculty Directors wished to be considered for this post.

On taking up post on 1 November 2013 the Acting Principal submitted a report recommending that the post of Depute Principal should not be filled and that the existing senior members of staff share out the duties amongst them.

Discussions then took place between the Acting Principal and new Chair (the previous Chair also retired on the 31<sup>st</sup> October) on acting up payments to the senior staff for undertaking additional responsibilities. Given that the Board had now agreed to rescind the enhanced deal to senior staff, excluding the former principal, the Acting Principal proposed acting up salaries to partly compensate for that change. It is not entirely clear to me how this proposal was presented and discussed. I understand it to be members of the Remuneration Committee but I have not been provided with a formal minute of the meeting that took place. Delegated powers had already been given to the Chair by the Board of Management at its meeting on 23rd October, 2013 to "*carry-out the required restructuring in order to ensure the continuous operation of the College* " and accordingly this meeting may have been the Chair operating under his delegated powers. At this discussion information was sought from the Principal of NCL as to what was paid in other colleges and what he considered the sector norms to be. Lesser sums were agreed after that meeting.

##### **4.2 Findings and Recommendations**

In my view there was a clear lack of leadership in developing appropriate management arrangements to take Coatbridge through to merger. This may be partly as a consequence of the departures of the Principal and Chair at key points in the process and the rapidly changing circumstances which prevailed at this time.

If the post of depute had to be filled, then given that there were several potential candidates then it should have been advertised, albeit internally to a restricted pool, and a selection made through normal appointment procedures. This was another factor that had an adverse effect on staff morale. There were three Faculty Directors who wished to be considered for this post and the only fair way to select the successful candidate should have been a restricted, open interview process. Two other members of staff were quite rightly upset by the apparent suggestion that the depute post was to be filled without any open selection process.

It is also unfortunate that there was then a decision not to recommend that the post be filled at all and instead that the responsibilities be split among remaining staff. My impression is that this arrangement seems to have been driven by the desire to carve up the depute's salary among remaining senior staff in order to partially compensate senior staff for the loss of their

previous enhanced package. This is bizarre and unusual and in my view a further example of poor decision-making and governance.

**I recommend that in circumstances where there is no single individual who could step into a post on an interim basis that the Council considers issuing guidance that senior interim or acting posts be advertised, albeit to a restricted pool. Some form of transparent (though expedited) process, particularly, recognising that for senior staff a merger is a time of uncertainty and change, is of paramount importance.**

**I also recommend that the Council keeps under review the way in which it provides assistance and support to colleges in the months before a merger at a time when senior staff and leadership are (inevitably and understandably) distracted by the professional and personal impact of the process.**

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## 5. SECTION 5 - NCL MERGER PROCESS

### 5.1 Overview

The NCL merger process was very comprehensive. They appointed an experienced firm of project managers, Frontline Consultants Limited, to advise and assist with the process. This included a very detailed project plan and communications strategy. The communications strategy included printed material, question and answer scripts, bespoke websites and face to face meetings.

In addition, NCL commissioned a Cultural Review of Coatbridge, Cumbernauld and Motherwell Colleges which was prepared by Roger Mullin.

The Review was published in September 2013, and of particular relevance are the responses received to Mr Mullin's survey from management staff on the issues of respect, collaboration and fairness. Mr Mullin's findings in this regard are replicated below:

Statements	Percentage of all respondents agreeing		
	Coatbridge	Cumbernauld	Motherwell
I believe my immediate colleagues are highly professional	87%	100%	95%
There is good cooperation and collaboration within the college	81%	93%	76%
My views and opinions are respected within the college	77%	100%	77%
As an employee of my current college, I feel I am treated fairly	79%	100%	85%

It may be noted that some of the findings in terms of respect and fairness were lower at Coatbridge than at Cumbernauld and Motherwell.

However, I compared these figures with Mr Mullin's research in the Cultural Review of Ayr, Kilmarnock and James Watt (Ayrshire) Colleges, published in April 2013, in which the same questions were put to management staff in those institutions. Those figures were as follows:

Statements	Percentage of all management staff agreeing		
	Ayr	Kilmarnock	James Watt (Ayrshire)
I believe my immediate colleagues are highly professional	89%	86%	100%
There is good cooperation and collaboration within the college	89%	77%	50%
My views and opinions are respected within the college	71%	82%	67%
As an employee of my current college, I feel I am treated fairly	75%	85%	33%

On the basis of the above I do not consider there were any underlying systemic issues at Coatbridge in terms of the areas which Mr Mullin's survey explored in September 2013.

## **5.2 Application / Interview Process for positions at NCL**

In addition, an independent HR consultant was engaged to develop job descriptions and senior posts were open to all applicants. The proposed senior management structure was also put out to consultation.

The interview panels were representative of the three merging colleges. The interview panel for the position of Vice Principal consisted of:

- A representative from **each** of the three college boards;
- The Principal Designate;
- The Regional Lead.

The interview panel for the Assistant Principal roles consisted of:

- A representative from **one** of the three college boards;
- The Principal Designate;
- The Regional Lead.

The composition and seniority of the panels appear appropriate, fair and reasonable. The process used to score all applicants was competency based and objective.

## **5.3 Findings and Recommendations**

Overall, I consider the merger process - both in terms of communication and recruitment strategies - was very sound and that NCL should be congratulated for such a transparent and fair process.

Mergers will always be a stressful time for staff, particularly senior staff. Disquiet and uncertainty originated, and was exacerbated, from the decision of Coatbridge to join the merger and then to depart from that position within the space of two weeks, only to later re-join the merger some six months later.

Ideally there should have been a single agreed date for the colleges to merge. When Motherwell and Cumbernauld decided to merge, they should have invited Coatbridge and South Lanarkshire to join them if they chose to do so, thereby creating equal opportunity for all staff in the merger process.

A two stage merger was not ideal as a starting point. The delay in entering into the merger meant Coatbridge had no say about the Principal and much other work had been undertaken, relationships formed and work streams progressed. Staff at Coatbridge felt that they were at a disadvantage in the merger process both in terms of influencing policies and systems and in respect of job opportunities. A number of interviewees made reference to the fact that they were regarded as outsiders by staff from the other colleges.

This was not a good basis for establishing a new organisation where senior staff in particular were keen to be involved and help shape the new organisation.

However I find no fault with the process for conducting the interviews for senior roles within NCL and consider these to have been fair and objective.

**I recommend that the Council considers carefully advice and guidance to the sector to avoid multiple vesting dates for mergers where these can be avoided.**

**I recommend that the Council recommends all material actions of merging colleges in the run up to merger should be agreed in unison to ensure equality of treatment to stakeholders.**

**I recommend that the Council considers requiring the Regional Chair attend as an observer at board meetings of relevant colleges in the run up to the merger to help information sharing, consistency of decision-making and approach. The Regional Chair can also provide additional and useful guidance given their knowledge of the sector.**

**I recommend that peer support between Principals, SMTs and Boards of merging colleges should be improved. The Council should consider putting in place training to the Board of Management / Senior Management Team on “what to expect” throughout a merger process to help understand the "soft" as well as "hard" issues that arise in this process and that lessons continue to be shared and learned.**

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## 6. SECTION 6 - DUTY OF CARE TO STAFF IMPACTED BY MERGER

### 6.1 Overview of the duty of care to senior staff

The Board of Management of a college is empowered to enter into contracts, including contracts for the employment of lecturers and other staff<sup>9</sup>.

Employers have a duty of care to their employees, which means that they should take all steps which are reasonably possible to ensure their health, safety and wellbeing.

The duty of care, including that owed to senior staff, can manifest itself in a variety of contexts:

- The employer has a duty to take reasonable care of the health and safety of employees. In addition to the duty this arises under statute (as a result of the Health and Safety at Work etc Act 1974), the employer must also take reasonable steps to provide a safe workplace and a safe system of work.
- An employer's health and safety duty extends to mental health as well as physical health<sup>10</sup>. The employer is not obliged to do everything within its power to prevent injury; it need only take reasonable precautionary steps<sup>11</sup>.
- There is an implied duty to provide a suitable working environment. The employer must *"provide and monitor... so far as is reasonably practicable, a working environment which is reasonably suitable for the performance by [the employees] of their contractual duties"*.
- The duty is broader than the health and safety duty. This could extend to an employer taking reasonable steps to protect employees from unacceptable behaviour such as bullying or unauthorised interference in work duties<sup>12</sup>.
- There is an implied term of mutual trust under which *"the employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee"*<sup>13</sup>.
- To establish a breach, it is not enough for the employee to show that the employer's actions have destroyed or seriously damaged trust and confidence, or were calculated or likely to do so. The employer must have had no "reasonable and proper cause" for the actions in question.

### 6.2 Findings and Recommendations

While I am not legally qualified to advise on the duty of care and the relevant legal tests, it is my considered opinion that the Coatbridge Board of Management discharged its duties in respect of the duty of care in a reasonable manner as required by law. In particular I consider

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<sup>9</sup> Section 12, 1992 Act.

<sup>10</sup> Walker v Northumberland County Council [1995] ICR 702

<sup>11</sup> Dutton & Clark Ltd v Daly [1985] ICR 780

<sup>12</sup> Moores v Bude-Stratton Town Council [2000] IRLR 676

<sup>13</sup> Malik & anor v Bank Of Credit & Commerce International SA (in compulsory liquidation) [1998] AC 20

the following to evidence that the duty to have been recognised and discharged by members of the Coatbridge Board of Management:

- A management leadership course had been developed for appropriate staff for a number of years.
- During the merger period additional external training was arranged to help staff prepare CV's and advise on interview techniques.
- The recognition by the Coatbridge Board of Management that assistance was required after a number of senior management staff were absent from work through illness indefinitely during the period between October - December 2013 that external support should be sought. This ultimately resulted in a request in December 2013 that the Principal of NCL take over management responsibility of Coatbridge.
- While not strictly relevant to the Coatbridge Board of Management, thereafter under the operational responsibility from the Principal of NCL and with the support of staff from the Council's Further Education Directorate Coatbridge moved forward to vesting date without further incident albeit with three senior staff off ill.
- The commissioning of the culture study (discussed at paragraph 6.1.1) and the overall high percentages in returns received from management staff in terms of professionalism, co-operation/collaboration, respect and fairness.
- The commissioning of Frontline Consultants Limited, an experienced firm of consultants with extensive experience in mergers in the further education sector in Scotland, to assist in the merger. This resulted in the preparation of an extensive merger communication plan and use being made of internal publications such as "The View", a staff newsletter, to assist in briefing staff as to the merger process.

However although I consider the duties to have been discharged there are improvements that can be made in future to the way in which merger processes are managed. In addition to recommendations made elsewhere in this report:

**I recommend that a College Principal or Chair of the Board should be obliged to alert the Council or Regional Chair in the run up to a merger if more than 3 senior individuals are off sick/absent for any length of time. While I would hope the circumstances experienced at Coatbridge are unique, it is clear that a number of key senior staff reporting illness simultaneously had an adverse impact on the operation of the College.**

**I recommend that peer support between Principals, SMTs and Boards of merging colleges should be improved. This could include training to the Board of Management/Senior Management Team on "what to expect" throughout a merger process and that training could include a helpful section on how to support senior staff throughout such a process.**

## 7. SECTION 7 - OVERALL FINDINGS AND SUMMARY OF RECOMMENDATIONS

- 7.1 Due to the historic distrust amongst the Principals in Lanarkshire, a merger was never going to be an easy process. The initial approach to the Scottish Government by Coatbridge regarding a merger and the subsequent agreement between Cumbernauld and Motherwell to merge without consulting the other two colleges compounded the feeling of animosity between the Colleges. When Coatbridge decided to leave the merger, it created a lot of unrest amongst staff.

After Coatbridge agreed to rejoin and details of the voluntary severance deal for senior staff became known it put significant pressure on the senior staff. This factor and comments, which I understand to have been made by senior figures within Coatbridge about the prospects of securing posts at NCL, meant that senior staff started to feel vulnerable about obtaining a suitable post in the new structure. The scheme previously offered appears then to have been removed by the Board. Senior staff had to endure all the personal animosity from having a separate deal, although most of the senior staff had never asked for it and which through its existence they felt could damage their prospects of obtaining a suitable post and this offer appears (at least in the views of the staff and certain other stakeholders) to have been rescinded. This was further compounded by the restructuring exercise carried out by the Board following the retirement of the Principal. I do recognise however that the scheme was voluntary and senior staff had the option to apply for it or seek a new post in the merged college.

The cumulative effect of these events and in my view, the manner in which the senior team had operated and been led under the outgoing Principal appear to have caused the senior management team to collapse resulting in a team of seven being reduced to two. It is difficult to come to any further conclusions on the specific impact upon senior staff of these matters given that the reasons for the absence of some senior staff was not objectively assessed by occupational health as was required under the Coatbridge rules.

It is of great credit to the two senior staff who remained to carry Coatbridge through to merger and their efforts were greatly appreciated by staff. At this point, the management of Coatbridge effectively transferred to NCL, additional senior staff were brought in to assist and the college successfully continued to merger. **Whilst it is true to say that Coatbridge had many successes to be proud of, there were nonetheless weaknesses in governance and leadership which had a negative impact at a key moment in their evolution.**

### 7.2 Summary of Recommendations

My recommendations made in each of the previous sections are now summarised below for ease of review. These recommendations should be read in context of my overall findings which are that:

- The merger process for NCL was, in my view, in general conducted robustly, transparently and taking account of good sector practice.
- There were mechanisms in place to support staff including senior staff at a time of transition and change within the college and that the board of management did discharge its duty of care generally in a reasonable way.
- However there are specific instances of poor governance and decision-making which appear to have had a cumulative and negative impact on senior staff. Whilst I recognise this was a period of rapid change and some uncertainty within the college nevertheless

certain decisions, practices and behaviours fell short of what I would expect in a well governed college.

- Whilst the circumstances prevailing at the time were unique and may be unlikely to be repeated in other colleges there are always lessons to be learned and some improvements that could be made to processes and practices for any future colleges facing merger.

#### **Recommendation 1: Independent Advice for Any Voluntary Severance Scheme**

That the Council considers whether it should be a requirement that colleges considering a voluntary severance scheme for any staff should seek independent professional advice in furtherance of the objectives set by the colleges and ensuring best value for money. Such advice should be provided for scrutiny by the board and/or Remuneration Committee prior to making any decision.

#### **Recommendation 2: Council Guidance and Comment on Voluntary Severance Schemes**

That any voluntary severance scheme drawn up by colleges in any circumstances (merging or otherwise) are provided for comment and guidance to the Council.

#### **Recommendation 3: Review of New Council Financial Memorandum**

The Council should keep operation of its new Financial Memorandum under close scrutiny to ensure that such requirements are working in practice in an appropriate manner.

#### **Recommendation 4: Training on Compensation/Severance for Boards**

The Council should consider requiring Members of Boards of Management, particularly on remuneration committees, attend specific training on compensation/severance packages (whether in context of merger or more generally)

#### **Recommendation 5: Requirement to Advertise Certain Interim Senior Posts**

For circumstances where there is no single individual who could step into a post on an interim basis the Council should consider issuing guidance that all interim or acting post should be advertised, albeit to a restricted pool. Some form of transparent (though expedited) process, particularly recognising that for senior staff a merger is a time of uncertainty and change, is of paramount importance.

#### **Recommendation 6: Guidance on Single Vesting Dates**

The Council should consider carefully advice and guidance to the sector to avoid multiple vesting dates for mergers where these can be avoided.

#### **Recommendation 7: Key Decisions Agreed in Unison**

The Council should recommend that all material actions of merging colleges in the run up to merger should be agreed in unison to ensure equality of treatment to stakeholders

#### **Recommendation 8: Regional Chair as Observer**

The Council should consider requiring the Regional Chair attend as an observer at board meetings of relevant colleges in the run up to the merger to help information

sharing, consistency of decision-making and approach. The Regional Chair can also provide additional and useful guidance given their knowledge of the sector.

**Recommendation 9: Improved Peer Support**

Peer support between Principals, SMTs and Boards of merging colleges should be improved. The Council should consider putting in place training to the Board of Management/Senior Management Team on “what to expect” throughout a merger process to help understand the "soft" as well as "hard" issues that arise in this process and that lessons continue to be shared and learned.

**Recommendation 10: Council Support and Guidance Prior to Merger**

The Council should keep under review the way in which it provides assistance and support to colleges in the months before a merger at a time when senior staff and leadership are (inevitably and understandably) distracted by the professional and personal impact of the process.

**Recommendation 11: Requirement to Alert Multiple Senior Level Absences**

The Council should consider requiring a College Principal or Chair of the Board to alert the Council or Regional Chair in the run up to a merger if more than 3 senior individuals are off sick/absent for any length of time.

**Recommendation 12: Improved Peer Support**

Peer support between Principals, SMTs and Boards of merging colleges should be improved. This could include training to the Board of Management/Senior Management Team on “what to expect” throughout a merger process and that training could include a helpful section on how to support senior staff throughout such a process.

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## APPENDIX 1: LIST OF INTERVIEWEES

The following individuals were interviewed in person (or in one case via video-link) in the course of the review. Names are listed in the order that they were interviewed and are listed next to the most pertinent role they had in respect of the merger:

Bill McGeachie	Brother of Francis McGeachie
Kenneth McGeachie	Brother of Francis McGeachie
Louise Franklin	Sister of Francis McGeachie
Margaret Lynch	Cousin of Francis McGeachie
Anita McGeachie	Widow of Francis McGeachie
Alan Hughes	Senior Executive, Frontline Consultants - Project Managers of the New College Lanarkshire Merger
Sharon Drysdale	Regional Outcome Manager for the Lanarkshire area, Scottish Funding Council
Roger Mullin	Further Education Consultant and author of Cultural Review of Coatbridge, Cumbernauld and Motherwell Colleges
John Gray	Former Chair of Board of Management, Coatbridge College
Margaret Cook	Former Vice-Chair of Cumbernauld College
John Doyle	Former Principal, Coatbridge College
Alex Muirhead	Former Chair of Board of Management, Motherwell College
Julie Grant	Former Learning Support Manager and support representative on Board of Management, Coatbridge College
Brian Gilchrist	Assistant Principal (Organisational Development) at New College Lanarkshire
Linda McTavish	Regional Lead for Further Education in Lanarkshire
Clare Flynn	Head of Faculty, Care & Science, New College Lanarkshire
Kate Lonergan	Further Education Directorate, Scottish Funding Council
Alex McLean	Further Education Directorate, Scottish Funding Council
Martin McGuire	Principal, NCL
Jacqui McGarvey	Former EIS Trade Union representative, Coatbridge College
Lorraine Gunn	Former Director of Human Resources and Clerk to the Board of Management, Coatbridge College

Tom Bradshaw	Former Member of Board of Management, Coatbridge College
Janice McAulay	Former Finance Manager, Coatbridge College
Margaret Rose Livingstone	Former Acting Principal, Coatbridge College
Pat Lafferty	Former Faculty Director, Coatbridge College
John Kemp	Director – Colleges and Post-92 Universities, Scottish Funding Council
Sarah Jane Linton	Former Faculty Director, Coatbridge College
Derek Banks	Former Finance Director, Coatbridge College
Tom Keenan	Former Chair of Board of Management, Coatbridge College
Carole McCarthy	Former Member of Board of Management, Coatbridge College
Paul Gilliver	Former Member of Board of Management, Coatbridge College