

Public Audit Committee

2013/14 audit of Coatbridge College: Governance of severance arrangements

Submission from Office of the Scottish Charity Regulator

1. Introduction

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act') as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of over 23,800 charities in Scotland.

The Public Audit Committee has issued a call for written evidence relevant to the Committee's consideration of the governance around the severance arrangements for those who left Coatbridge College in preparation for the merger with Cumbernauld College and Motherwell College. OSCR welcomes the opportunity to provide evidence, from our perspective as charity regulator. In preparing our evidence we have considered our overall vision, which is of *charities you can trust and that provide public benefit*, underpinned by the effective delivery of our regulatory role.

We wish in particular to highlight to the Committee the duty that the trustees of Coatbridge College had to act in the interests of the charity when making decisions and ask that the Committee consider this additional aspect when reviewing the issues.

2. Written evidence

2.1 OSCR's regulatory role

OSCR was established with the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). OSCR has a number of functions which are set out under the 2005 Act:-

- To determine whether bodies are charitable
- To keep a public Register of charities
- To encourage, facilitate and monitor compliance by charities with the provisions of the Act
- To identify and investigate apparent misconduct in the administration of charities and take remedial or protective action in relation to such misconduct.
- To give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR's functions.

2.2 The duties of charity trustees

Coatbridge College was registered as a charity with OSCR – charity number SC021186. It was removed from the Scottish Charity Register on 31 July 2014 at the point of the merger, and OSCR did not receive its 2013-14 accounts as it would have when it was still a charity. The newly merged body, New College Lanarkshire is registered under charity number SC021206.

The charity trustees or 'board of management' have general and specific duties under the 2005 Act. These are outlined in section 66 of the 2005 Act which states:-

66 Charity trustees: general duties

- (1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular-
 - (a) Seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
 - (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
 - (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee-
 - (i) put the interests of the charity before those of the other person, or
 - (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.
- (2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.

Where a charity trustee breaches the duties imposed by section 66 this can be considered misconduct and OSCR have powers to take action accordingly. Whilst charity trustees can delegate authority they retain ultimate control for the actions of a charity.

2.3 Areas of concern for OSCR

The section 22 report prepared by Audit Scotland raises a number of concerns around the severance arrangements for some of the senior management team, an additional member of staff and the Principal at the time of the merger. As well as the payments there are also concerns raised around the decision making process, including the information provided to and considered by the Remuneration Committee.

On reviewing the discussion held at the Public Audit Committee held on Wednesday 9 September 2015 it is clear that the Auditor General for Scotland is of the opinion that the payments made were in excess of those required under the usual severance arrangements, that information was potentially withheld from the remuneration committee, particularly around the Scottish Funding Council's concerns over the packages and that the Principal failed to deal appropriately with a conflict of interest.

These are areas where OSCR has a regulatory interest as they apply to the conduct of the trustees when Coatbridge College was a registered charity. The information contained within the section 22 report suggests that there was a potential breach of the section 66 charity trustee duties.

There are two main areas for concern:-

The fact that severance packages awarded to some members of staff exceeded those required under the agreed severance package raises the issue that charitable funds may have been misused. Charity assets should be utilised for the purposes of the charity, and while it is recognised that the fair and reasonable remuneration of employees is necessary, additional or inflated severance packages may be a breach of trustee duties. The fact that these packages were specifically advised against by the Scottish Funding Council compounds our concern.

Secondly the report raises serious concerns about the governance and conflict of interest procedures of the charity. There is a suggestion that information was deliberately withheld from the remuneration committee and that the Principal particularly did not act correctly when faced with a conflict of interest. This again may indicate a breach of trustee duties.

Although the College has been removed from the Charity Register following the merger, OSCR does retain powers under section 34 of the 2005 Act which allow application to the Court of Session to retrospectively disqualify trustees of a charity, notwithstanding that the charity no longer exists.

3 Conclusion

OSCR welcomes the opportunity to submit written evidence surrounding the governance and severance arrangements of the Board of Management of Coatbridge College.

We wish to particularly highlight to the Committee the duty that the trustees had to act in the interests of the charity when making decisions and hope that this information is useful to the Committee in its consideration. Should there be any questions on this evidence please contact Claire Stuart (Accounting Advisor) at claire.stuart@oscr.org.uk.