

## **CORRESPONDENCE FROM PAUL BROWN TO THE PUBLIC AUDIT COMMITTEE, DATED 17 NOVEMBER 2015**

### **Public Audit Committee – Coatbridge College**

I refer to previous correspondence between yourself and my former Partner Alasdair Peacock at DWF and note that you have requested some information from me which you believe would be of assistance to the Committee in advance of the meeting.

Having now obtained confirmation that those who instructed me (DWF) at the time have no objection to me disclosing information to the Committee, I respond to your questions as follows:-

- ? What communication was there between the Chair and Biggart Baillie on it being brought in to examine the process around severance.
  - On or around 11 October 2013 I received a call from John Doyle, Principal of Coatbridge College, who informed me that the Chair, John Gray, would be in contact with me to discuss a letter which the College had received from the Scottish Funding Council (SFC). I did not take any instructions from John Doyle. I received a call from John Gray and thereafter took all instructions from John Gray and the Board.
- ? What Biggart Baillie was asked to do and when and what documentation was made available.
  - We were asked to advise on the legality of the decision that the Rem Com made in January 2013 regarding severance payments and in light of the current position being adopted by the SFC (i.e. in October 2013) what, if anything, the College could do to review the offers to its senior management. I received various papers from the College regarding information made available at the time of the Rem Com meeting in January and the letter of 10<sup>th</sup> October from the SFC and related emails.

I note that the Committee would also require copies of certain documents. I attach a copy of the Report which was prepared by me for the Board of Management, which I believe is the report referred to at Columns 51 and 52 of the Minutes of the Committee meeting on 28 October 2015.

I also attach a copy of my letter of 12 November 2013 addressed to Thomas Keenan.

Regards,

Paul Brown

## **REPORT FOR THE BOARD MANAGEMENT OF PROPOSED REDUNDANCY PACKAGES**

I have been provided with a significant amount of material relating to the Federation and subsequent merger proposals as well as various papers relating to the decision taken by the remuneration committee to offer senior management a voluntary severance package providing them with 21 months pay in the event of their employment being terminated and them being unable to secure a satisfactory alternative role within the new College structure. From the paperwork provided, it appears that the College had obtained certain information from the Scottish Funding Council ("SFC") in advance of the Remuneration Committee Meeting ("RemCom") on 28 January 2013.

At the date of considering the issue relating to possible severance packages, the RemCom were in possession of the minutes of the Principal's Forum (16 November 2012) which was a meeting between principals of the 4 Lanarkshire colleges, Coatbridge, Cumbernauld, Motherwell and South Lanarkshire at which a discussion had taken place regarding severance packages in line with those which applied when the Edinburgh colleges merged and which were being considered by other colleges.

Essentially the position in Edinburgh was that members of staff were entitled to receive one month's gross pay for each full year of service up to a maximum of 21 months. The rationale for this was that the merger of the colleges in Edinburgh "*is to deliver a more efficient and effective college*". My understanding of this is the same rationale which is to be applied in Lanarkshire. Whilst the paper relating to the Edinburgh Board was not available to the RemCom at the meeting of 28 January, this was subsequently circulated to members of the RemCom by Lorraine Gunn. Ultimately, the minutes of the meeting on 28 January record that it was approved by the RemCom that the Principal would be entitled to a 21 months service severance payment plus an additional 3 month's severance for taking the College successfully through to merger. The Draft Minute notes that it was also agreed that the same model excluding the additional 3 months would be "afforded to College senior staff and that the committee understood why it was good practice to agree these arrangements now".

It was also noted that it was the committee's "*aspiration*" to afford the same model to all staff at the College. That would appear to have been the position as at 28

January and my understanding is that letters confirming this to that effect were subsequently issued to various members of the College's senior staff.

The Interim Chief Executive of the SFC, Lawrence Howells, wrote to the Principal on 10 October 2013 explaining that SFC's position as at the date is that they will fund a "*voluntary severance scheme*" which is common across the three colleges in the merger, and which relates to a payback period in one year – costs over and above this would have to be met from the College's own reserves.

It goes on to state that all three Colleges agreed a severance scheme on 9 September and that SFC expects that all Colleges should be treated equally.

Further, it states that "*There have been no discussions between SFC and Coatbridge College Management or Board in relation to a separate voluntary scheme for Coatbridge College Senior Management Team*".

Whilst that may be the case in relation to discussion on or around 9 September, in January 2013, there were in fact discussions between Mark Batho, the then Chief Executive of SFC and John Gray, Chair of Coatbridge College, regarding severance arrangements. Mark Batho's email to John Gray confirms that whilst he would "encourage" the Board to keep payment to within a year, these are ultimately matters for the Board or RemCom to determine.

A variety of guidance exists for members of higher education governing bodies in the UK with which I am sure the Board are very familiar. One of the principal tenets of this is that the Board require to be prudent with public funds and make "*proper use of public funds in determining severance arrangements*". Further guidance was issued on this by the Scottish Further Education Funding Council and this was referred to by Mark Batho and I understand considered by RemCom in their deliberations in January.

What the SFC guidance confirms is that colleges are able to manage their own financial affairs subject to the SFC encouraging "*good managerial practice and safeguarding public funds*". The SFC recognise however that colleges are "*legal autonomous bodies responsible for setting the terms and conditions of their staff including financial settlements and other arrangements relating to severance*".

In acting in a "*prudent way that achieves value for money*" there must be a clear allocation of responsibility to named individuals or committees and in the current situation, it would appear that the RemCom has that delegated authority and that

on agreement being reached by the RemCom, as I understand where other decisions of RemCom had been reached, the implementation of policies is left to the executive team in the College under the authority of the Chair.

The SFC specify anything which is beyond the levels indicated in the Financial Memorandum should be **discussed** with the SFC's Chief Executive "*prior to approving a proposed severance package*". Mark Batho's email of 24 January confirms that the SFC have not issued formal guidance on the amount of settlements but that SFC have not been providing support for voluntary severance arrangements beyond payback of one year. Whilst Mark Batho has said that he would "*encourage you strongly to stay within these parameters for the voluntary severance arrangements...*" these matters are, of course, ultimately a decision for the Colleges Board of Management or the Committee which has been empowered to deal with the matter.

The Guidance goes on to provide detail on negotiating terms and determining matters as "*being in the management's interest*". It further specifies that the college should ensure that it achieves best value for money. My understanding is that at the RemCom on 28 January, the SLC backed proposal, which seems to have been based on that which was approved for the Edinburgh College merger, was disclosed and discussed and that the principles of the Edinburgh College merger were also discussed. The SFC Guidance does suggest (in paragraph 29) that the Colleges may find it "*useful*" to "*seek comparative information from other Colleges within the sector*". The information obtained from the Edinburgh College merger clearly confirmed that payments of up to 21 months were able to be made and would suggest that it is not unreasonable for the Board of Coatbridge College or the RemCom to determine that 21 months was a reasonable payment to be made.

That said, the difference between the Coatbridge proposal and the SLC Federation "proposal" and the Edinburgh Scheme is that those arrangements propose a maximum of 21 months pay but based on one month per year of service rather than being a set amount of 21 months pay. Nevertheless, my understanding is that this was agreed on the basis that the SFC would meet the cost of 12 months of this payment and that the College would therefore only have to fund the difference and further, the rationale for the proposal was to keep the current senior management team intact and motivated in what would be a difficult

and uncertain time in the lead up to and transition into a federation and/or merger, the latter now being the chosen route for Coatbridge College.

My understanding is that John Gray had presented a paper to the Board particularly relating to a severance arrangement for the Principal, John Doyle, highlighting the rationale of a focused Principal involved in the day to day management of the College. I believe that the same logic can apply to other members of the senior management team and indeed, my understanding is that this is the basis on which it was agreed that a full 21 month payment would be made to the senior management team.

I am advised that this arrangement was approved by the Colleges internal and external auditors.

I understand that various meetings of the Merger Committee have now taken place and that since September representatives of Coatbridge College have been in attendance at these meetings. My understanding is that at the Merger Committee meeting on 12 August, it was agreed that there would be a common Voluntary Severance Scheme for all 3 Colleges involved in the merger but at that stage, there were no representatives from Coatbridge on the Merger Committee, nor does it appear that the Merger Committee were aware of the existing Coatbridge arrangement. The common arrangement proposes payments based on length of service up to a maximum of 13 months' salary for any employee with over 14 years' service. It would appear that this has now been agreed by the Merger Committee as a proposal but this is at odds with what was proposed and agreed by the RemCom of Coatbridge College.

My understanding is that an extraordinary Board meeting of Coatbridge College took place on 6 August 2013 and severance arrangements were discussed. My understanding is there was reference to a maximum 21 months proposal for Coatbridge College but that further discussion took place on the issue of a proposed joint arrangement. However, my understanding of the principal purpose of that meeting was to agree the proposal for merger.

In the letter from Laurence Howells of 10 October 2013, he states that there have been no discussions with SFC however, from the information provided, it appears that discussions took place in January with Mark Batho.

Laurence Howells also seeks "*assurance that the Voluntary Severance Scheme is in accordance with standard good practice for mergers and represents good public*

*value*". Ultimately, this was a decision for Coatbridge College and in particular the RemCom to take and to demonstrate that it "represents good public value".

In summary, in my opinion, the Board of Coatbridge College or indeed the RemCom have not done anything which was ultra vires in proposing these severance arrangements. It appears that at the time of the decision being made, the RemCom were fully aware of the SFC guidance and indeed had sought guidance from the Chief Executive of the SFC as well as examining comparative arrangements for other Colleges, particularly Edinburgh College, which had previously been accepted by the SFC as an appropriate severance arrangement. The fact that the SFC do not currently agree with this, does not mean the decision taken at that time was beyond the powers of the RemCom.

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12 November 2013

When calling, please ask for: Paul Brown

Dear Tom

**VOLUNTARY SEVERANCE ARRANGEMENTS**

I refer to previous correspondence in connection with the Board's instructions to my firm on the proposed voluntary severance arrangements put in place by Coatbridge College. In particular to the proposed arrangements for the Principal and the senior management team. Having examined the paperwork provided by yourselves, I am satisfied that the Remuneration Committee did not act *ultra vires* or otherwise unreasonably in the arrangements which they entered into with the Principal and the senior management team following the Remuneration Committee's deliberations in January. Having reviewed the relevant guidance and comparisons given to these matters by the Remuneration Committee and the comparison with arrangements at other colleges which had existed prior to and at that time, I am satisfied that the decisions reached by the RemCom were decisions which they were entitled to reach.

I note from the terms of the letter from the SFC of 22 October that you are being encouraged to take into account the "*latest developments*" in determining voluntary severance arrangements for staff going forward however, the position which was adopted by the RemCom at the end of 2013 was in my opinion based on the guidance that existed at that time and indeed the discussion with the SFC at that time. In that regard, whilst the SFC may wish to take a different position at this stage, this does not alter the fact that when the current arrangements were put in place, they were justifiable.

With regard to the Principal, the arrangements as agreed by the RemCom at that time were in my opinion justified and, having been intimated to him, were legally binding on the Principal. I understand the arrangements for the senior management team have now been amended for further consideration and the application of the proposed severance scheme for Lanarkshire Colleges and that this arrangement has now been proposed for the senior management team. I believe that the scheme as recently agreed by the RemCom and as applied to the staff members does meet the SFC's current requirements.

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I note the comments of the SFC in relation to potential personal liability for Board members, however, I do not believe that any Board member could be held personally liable as the decisions taken by the RemCom in January are decisions based on the information available and in my opinion, in accordance with the guidance available from the Government and the Financial Memorandum. I do not believe that it could reasonably be argued that any RemCom member had acted other than *"honestly, diligently and in good faith"*.

My understanding is that you will have obtained confirmation from the internal external auditors directly that they too are satisfied with the arrangements which you have put in place.

Should you require any further information, please let me know.

Kind regards.

Yours sincerely

Paul Brown

Partner