

**From:** (redacted)

**Sent:** 30 June 2015 17:38

**To:** [CabinetSecretaryforEducationandLifelongLearning@scotland.gsi.gov.uk](mailto:CabinetSecretaryforEducationandLifelongLearning@scotland.gsi.gov.uk)

**Cc:** [DirectorofAdvancedLearningandScience@scotland.gsi.gov.uk](mailto:DirectorofAdvancedLearningandScience@scotland.gsi.gov.uk); [paulmckelvie@hotmail.com](mailto:paulmckelvie@hotmail.com)

**Subject:** Review of Glasgow Clyde College - Report

Dear Cabinet Secretary

Please find attached a letter with attachments I am sending on behalf of Paul McKelvie our Vice Chair.

One of the attachments is password protected. The password is (redacted).

Yours sincerely

(redacted) | Scottish Funding Council

T (redacted) | F (redacted) | E (redacted)

PA to Chief Executive | Neach-cuideachaidh pearsanta don

◆ Crd-Oifigear



Scottish Funding Council  
Promoting further and higher education

Comhairle Maoineachaidh na h-Alba  
A' brosnachadh foghlam adhartach agus àrd-ìre

30 June 2015

Angela Constance MSP  
Cabinet Secretary for Education and Lifelong Learning  
Scottish Government  
St Andrew's House  
Regent Road  
EDINBURGH EH1 3DG

Dear Cabinet Secretary,

I am writing on behalf of the Chair of the Council, Professor Alice Brown, who is on leave at the moment to give you the Scottish Funding Council's report of its review of Clyde College under section 7C(7) of the Further and Higher Education (Scotland Act) 2005.

The SFC carried out a review as a result of concerns we had about events at the College in February of this year. The report was substantially complete some weeks ago but we have delayed sending it to you as we have been aware that the Chair of Colleges Scotland has been working to seek a mediated resolution of some of the issues at the College. It is possible that had that been successful we would have wished to make different recommendations to those in the report as it now is. However, it now seems that the prospect of a mediated settlement is so remote that we feel it is appropriate to send you the report without further delay.

Our report is accompanied by a report on the evidence gathering exercise by our legal advisers DLA Piper. That report on the evidence has been seen by the chair of the College and the comments made by the College's legal advisers are attached as an appendix.

We would be happy to discuss the report further with you or with your officials.

Yours sincerely

PP Paul McKelvie  
Vice Chair

## **Glasgow Clyde College: the Scottish Funding Council's (SFC) review under section 7C(7) of the Further and Higher Education (Scotland) Act**

### **Report on the findings of the SFC's review**

#### **Executive summary**

1. We undertook this review using our powers under section 7C(7) of the Further and Higher Education (Scotland) Act 2005.
2. The reasons for carrying out this review were that we had concerns about: the governance and management at the college, particularly in relation to the suspension of the Principal; the Board's support for the Students' Association and the fitness of purpose of the College's constitution; and the application of HR policies and procedures. The remit for the review is attached at Annex A.
3. Under section 7C(8) of the Act, we are required to report on our review and make recommendations to Scottish Government.
4. In recent weeks there have been attempts to address some of the issues raised in the report through mediation. This would have given the Board itself an opportunity to address these issues. However, as there does not appear to be an immediate prospect of a satisfactory resolution through that route, we are sending you this report and our recommendations.
5. Whilst the evidence from our review highlights that there have been serious failures of governance at the College and these matters require to be addressed urgently, it should be emphasised that the Chair's role in leading the Board, and the actions and behaviours he exemplified, were critical in this failure.
6. The Board is not operating in an effective manner in its governance role; it is not challenging the Chair's actions and behaviours; it has failed to take proper responsibility for the actions taken and the evidence suggests that it is operating without seeking proper advice and support from its executive. We have been told, both directly from the Board itself and via the DLA fact finding report attached at Annex B, that this is a Board of volunteers with many other responsibilities and we recognise and appreciate that. Nevertheless, by taking up their membership of the Board they take on important legislative responsibilities for the stewardship of the College and therefore they have to meet national standards and be accountable for their actions.

#### **Recommendations**

7. **We consider that the Chair's conduct has put at risk the future finances, reputation and operation of the College as a result of his actions and is sufficiently serious to constitute mismanagement under section 24 of the**

Further and Higher Education Scotland Act 1992, as amended by the post 16 Education (Scotland) Act 2013. The Scottish Government should therefore take the necessary steps to remove the Chair of the Board. In view of the urgency of the situation and the increasing risk to the public purse and potentially [REDACTED], the Scottish Government should consider if it is appropriate to suspend the Chair due to the serious failures in governance immediately pending completion of the formal process of his removal.

8. Although the other Board members have been party to these serious failures of governance, our conclusion is that they believed they were acting in good faith to fulfil their role as a Board member by giving general support and encouragement to the Chair, rather than offering a challenge. We would recommend therefore that the remaining Board members have an opportunity to make the necessary improvements to remedy this. This would involve the Board in the development of an improvement plan focusing on the application of good governance processes and procedures and the demonstration of best practice in behaviours of Board members. This should follow the letter and the spirit of the Code of Good Governance for Scotland's Colleges which includes the nine key principles underpinning public life in Scotland. We would expect the Board to jointly agree its improvement plan with Scottish Government and include the involvement of other key stakeholders identified as appropriate. We would also recommend that the plan includes an agreed timeframe for the Board to evidence the required improvement to Scottish Government.
9. The Government should ask the interim Chair of GCRB, SFC and Colleges Scotland to put in place emergency arrangements to mitigate the risks that now remain, including a means to conclude the current process against the Principal without delay in a fair and transparent way and a means to protect the ongoing operation of the College's Students' Association.
10. Note that SFC will seek to reduce the risk of similar cases by taking forward the suggestions for improvement in the evidence gathering report to SFC by DLA Piper that has helped inform this report.

## **Glasgow Clyde College: the Scottish Funding Council's review under section 7C(7) of the Further and Higher Education (Scotland) Act**

### **Contents**

This report contains the following sections:

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## Section 1: Evidence

The DLA Piper fact finding investigation and our own examination of evidence have established the following:

### *Issues arising and actions taken prior to the suspension of the Principal*

11. The relationship between the Chair of Clyde College ('the Chair') and the Principal of Glasgow Clyde College ('the Principal') appears to have become difficult during February. One of the first instances identified in the fact finding report by DLA Piper was a phone call from the Chair to the Principal on 12<sup>th</sup> February regarding the future structure of the Students' Association and the Chair's views on the Student President<sup>1</sup>.
12. On the same day the Chair had phoned SFC and said he had concerns about the Student President, in particular his (the Student President's) criticisms of the Glasgow Colleges' Regional Board (GCRB) on which he was also a Student Board member, and the Chair said that the then Regional Chair in Glasgow had concerns that the Principal was providing support to the Student President<sup>2</sup>.
13. On the 17<sup>th</sup> February John Kemp, Senior Director, SFC, followed up the conversation of 12<sup>th</sup> February with an email including the following advice to the Chair<sup>3</sup>:  
  
*'I do not need to add that it is very important that colleges and the sector as a whole supports students' associations and their presidents and welcomes their independent voice. The engagement of students' associations in the widest possible aspects of college decision-making is very important and a policy that SFC and the Scottish Government has been promoting for many years. As I said on the phone, I have been out to see the Clyde College Students' Association in action and I was very impressed. I hope that what seems to be a very good students' association continues to flourish.'*
14. Another issue which appears to have caused the worsening of the relationship between the Chair and the Principal was a letter from the EIS in the College discussed at the 12<sup>th</sup> February Board meeting expressing concern at aspects of the College's management<sup>4</sup>. We have not seen that letter, but from the fact finding report by DLA Piper it seems that senior management considered that, at least in part, these concerns were historic or could be refuted or explained.

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<sup>1</sup> DLA report pg 9

<sup>2</sup> Note of telephone conversation between George Chalmers and John Kemp 12 February 2015 (GC had wanted to speak to LH)

<sup>3</sup> Email from John Kemp to George Chalmers 17 February 2015

<sup>4</sup> DLA report pg 9

Whilst there were references to bullying, no formal or informal complaints of bullying had been raised with HR at that time.

15. On the 13<sup>th</sup> February the Chair informed the Chief Executive of SFC that he had agreed a process whereby the relationship issues between the Principal and the Regional Board could be repaired. He explained that he had agreed with all the parties that he, the Chair of the Regional Board and the Principal would sit down together with another colleague from the Regional Board. If the Chair of the Regional Board would withdraw the comments about the Principal then she would accept that and that would be the end of the matter<sup>5</sup>. SFC understands that this meeting never took place.
16. The Chair raised his concerns about the Principal with the then Regional Chair (Chair of GCRB) a few days prior to 19<sup>th</sup> February. The then Regional Chair advised that legal advice be sought and recommended that [REDACTED] be involved in assisting on governance generally, as the then Regional Chair was out of the country himself<sup>6</sup>.
17. The Chair of GCRB said on 16<sup>th</sup> February, referring to conversations he had had with the Chair of Clyde that if the Chair of Clyde or his Board wanted to move they would need details. He said he hoped that it wouldn't be required but GCRB "had a dossier of evidence about the Principal's behaviour and that if she could not temper her behaviour then we would have to do something"<sup>7</sup>.
18. On 18<sup>th</sup> February, the Principal emailed the Chair and other members of the Glasgow Clyde College Board saying that she was obliged to provide Board members with advice where she saw potential risks for the Corporate Body in relation to the reputation of the College and a potential deleterious effect on learning and the use of public funding. She said she intended seeking advice from the College's legal advisers around governance issues in relation to propriety, processes, procedure, conflicts of interest and behaviours. She also said she was alerting the Chief Executive of the Funding Council<sup>8</sup>. The Chair responded on the morning of 19<sup>th</sup> February saying he would call a Board meeting as soon as possible<sup>9</sup>. To our knowledge the issues raised by the Principal have never been formally recognised nor followed up. In response to an enquiry from the SFC, the Chair wrote (on 4th March) that the Principal's email of 18th February was not being addressed by the College as far as he knew. He said there was no relationship between the Principal's email and the suspension in the sense that the email did not cause or contribute to his

<sup>5</sup> Note of telephone conversation between Laurence Howells and George Chalmers 13 February 2015

<sup>6</sup> DLA report pg 11

<sup>7</sup> Note of telephone conversation between Alice Brown and Henry McLelsh 16 February 2015

<sup>8</sup> Email from Susan Walsh to Laurence Howells 18 February 2015

<sup>9</sup> Email from George Chalmers to Susan Walsh, copied to SFC, 19 February 2015

decision to suspend the Principal. He said it was, however, evidence of the deterioration in the working relationship between the two<sup>10</sup>.

### *Process, arrangements and actions relating to the suspension of the Principal*

19. On 19<sup>th</sup> February the Principal was suspended. The decision to suspend was made by the Chair. On 19<sup>th</sup> February prior to making that decision, he appears to have discussed the issue with the Vice Chair, Jim Hamilton [REDACTED] and Stephen Miller of Simpson & Marwick, lawyers who had been procured that day and from whom he received legal advice<sup>12</sup>. The decision not to use the College's own lawyers was taken to ensure fairness as the College's normal solicitors, Brodies, had a working relationship with the Principal<sup>13</sup>.
20. The contract with Simpson & Marwick was not procured or controlled well by the College. The College had to alert SFC that it had exceeded the limit under the financial rules to which colleges are subject for a non-competitive process (£25,000) by £30,000. It seems that the Chair identified three potential firms on the morning of 19<sup>th</sup> February (after discussion with [REDACTED], a GCRB member (Grahame Smith) and an independent solicitor<sup>14</sup>) and [REDACTED] then identified Simpson & Marwick from that shortlist, apparently because they were the first to answer the call. The Chair subsequently signed the purchase order. Some of the statements subsequently made – including in a letter from Simpson & Marwick to the Board – that the Chair had nothing to do with the appointment of Simpson & Marwick seem odd and contradictory<sup>15</sup>. The procurement and management of the Simpson & Marwick contract was done without using fully the expertise of the College management. This failure could have resulted in particular problems in relation to the control of costs on the contract, leading to the breach of the limit for non-competitive action.
21. The process and steps which led to the suspension of the Principal raises concerns. The initial part of the suspension meeting took place in a corridor, overheard by three people. In the verbal exchange the Principal was offered the option of taking leave instead of being suspended. There are two versions of the subsequent email to the Principal that followed this conversation. Only one of those – which the Principal did not see as it was sent to her college email address after she ceased to have access to this account – offered the option of leave instead of suspension. We are not clear why there are two versions of the email.

<sup>10</sup> Letter from George Chalmers to Laurence Howells 4 March 2015

<sup>11</sup> Letter to Andrew Millar from Eleanor Harris re procurement 12<sup>th</sup> May 2015 and DLA report pg 11

<sup>12</sup> DLA report pg 10

<sup>13</sup> DLA report pg 10

<sup>14</sup> Letter from Eleanor Harris to Andrew Millar 9<sup>th</sup> June 2015

<sup>15</sup> Email from the Deputy Principal to Linda McLeod; the 'I don't know statement at the board' the S Millar comment in his letter of 24 April 2015.



22. The decision to suspend the Principal was (according to later information sought by SFC from the Chair) because of concerns about 'her style of management and its impact on important internal and external relationships'. The relationships referred to here included concerns about the Principal's relationship with the GCRB and its staff<sup>16</sup>. The Principal has told DLA Piper that there is a lack of clarity about the specifics of these allegations. While Simpson & Marwick appear to have taken a clear view that suspension was recommended and warranted in the circumstances and said this verbally to the Board on 23<sup>rd</sup> February, this legal advice was not provided in writing. The Chair did not involve [REDACTED] in the suspension or disciplinary procedure of the Principal.
23. The Council was not given appropriate information about the Board's concerns relating to the Principal and the prospect that she may be suspended - as is required under the Financial Memorandum (FM) between the SFC and the College. Compliance with the FM is a condition of grant. As the College's major funder and as the sector's Accountable Officer, the Chief Executive of SFC would expect to be informed about a matter of this significance in advance.
24. Despite unequivocal assurances to SFC, in a letter on 4<sup>th</sup> March from the Chair, that no one outwith the College was involved in the decision to suspend the Principal or in advice on the decision<sup>17</sup>, the Chair spoke to the Chair of the GCRB, and the Acting Head of GCRB and others were present at a meeting on the 19<sup>th</sup> February to advise on the situation<sup>18</sup>. The Chair's unequivocal statement is hard to reconcile with the Chair of GCRB's statements on 16<sup>th</sup> February that "if George or his Board wanted to move they would need details and that he had a dossier of evidence about Susan's behaviour"<sup>19</sup>.
25. The extent to which the GCRB was involved in the decision to suspend is not clear, in part because of apparently conflicting evidence from the then Chair of the GCRB. One member of the GCRB resigned in part because she was not reassured by the (GCRB) Chair that he (or the GCRB) had not exerted undue influence in the suspension<sup>20</sup>.
26. There is a lack of clarity on whether the Board ratified the decision of the Chair to suspend the Principal or not. The Chair's letter to SFC said it did, as did the College's press statement, saying "The Board of Management of Glasgow Clyde College met this evening and ratified the decision of the Chair and Vice Chair to suspend the Principal on full pay pending a review."<sup>21</sup> The DLA Piper evidence

<sup>16</sup> Letter from George Chalmers to Laurence Howells 4<sup>th</sup> March 2015

<sup>17</sup> Letter from George Chalmers to SFC 4<sup>th</sup> March 2015 in response to a letter from LH on 30<sup>th</sup> February 2015

<sup>18</sup> Letter from E Harris to A Millar 8<sup>th</sup> June 2015

<sup>19</sup> Note of telephone conversation between Alice Brown and Henry McLeish – 16 February 2015

<sup>20</sup> Letter from Pamela Gillies to Angela Constance 2 April 2015

<sup>21</sup> Email from Heather Leigh to Laurence Howells 24 February 2015 10:32

gathering indicates it did not, but merely ratified the process. The evidence suggests, however, that whatever the status of the Board's decision, the only individuals who had the full facts regarding the suspension at the Board meeting of 23<sup>rd</sup> February were the Chair and a lawyer from Simpson & Marwick<sup>22</sup>.

27. The Board does not appear to have sought to take any action on the concerns expressed in the Principal's email of 18th February saying she was seeking advice on governance concerns or to have queried whether there was any relationship between those concerns and the Principal's suspension the following day.

#### ***Actions to exclude Student Board members from College Board meeting***

28. The Board excluded the student members from the Board meeting on 23<sup>rd</sup> February when – even using its own outdated constitution which had not been updated to reflect the Code of Good Governance for Scotland's Colleges which has been published in late 2014 - it did not have to do so. The fact that the Board Secretary chose to only read out part of the constitution and declared that it was quite clear that the College's constitution required them to be excluded resulted in the Board not being presented with an alternative approach, supported by the constitution.<sup>23</sup> The Board was using the version of the constitution it had even though that should have already been amended in the light of the Code of Good Governance for Scotland's Colleges. That code stipulates that student members should not be excluded unless there is a clear conflict of interest.
29. The Board was inconsistent in its treatment of staff and student members. The Board did not exclude the staff members when – given that one of the apparent allegations was about internal relationships and this related to a letter from the EIS in the college – there was a stronger case for doing so (as there was a potential conflict of interest) than for excluding the students.

#### ***Treatment of, and behaviours towards, Student Board members***

30. The exclusion of the students is part of a pattern of poor treatment of the student members. This has included:
  - i. The allegations made by the Chair to SFC in a phone call on 12<sup>th</sup> February in which the Chair indicated he was trying to find a way to prevent the Student President, who was also a student member on the Regional Board, criticising the GCRB as this was damaging relationships.

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<sup>22</sup> DLA report pg 11

<sup>23</sup> L Mc L note of Extra-ordinary meeting of the Clyde College Board Monday 23 February 2015

- ii. The treatment of the Student Board members at the meeting on the 23<sup>rd</sup> February witnessed by SFC staff<sup>24</sup>.
  - iii. The allegation in the DLA Piper fact finding report that some interviewees found the Chair to be dismissive of the perspective of students.
  - iv. Behaviour witnessed by SFC at an extraordinary Board meeting on 14<sup>th</sup> April. During the meeting SFC staff observed behaviour that seemed to be intimidatory and dismissive towards the Student President. He later confirmed that this was his view too. We also discussed a letter we had received from the President of NUS Scotland on 2<sup>nd</sup> April which referred to a 'theme of intimidating and undermining behaviour aimed at the student officers of the GCCSA'. We subsequently (on 20<sup>th</sup> April) wrote to the Chair on this issue, reinforcing points we made at the meeting, but have not received a reply.
  - v. The long and unnecessary delay (from February 2015 to May 2015) in agreeing the structure and funding for the Glasgow Clyde College Students' Association (GCCSA) for 2015-16, despite repeated assurances from SFC and the NUS that the plans were ones that we had no objection to.
31. This pattern of poor treatment of the student Board members has been felt very strongly by the Students' Association Executive and resulted in their refusal to nominate themselves for any of the sabbatical officer positions in the scheduled elections of the students' association in May 2015. This has put the sustainability of the college Students' Association at risk. Concern was noted by NUS in a letter to the Cabinet Secretary in May which reported that "driven out of a fear of personal attacks and recriminations, (student executive members) have refused on principle to nominate themselves for any of the students' association sabbatical positions, and could not, in all good faith, recommend participation to other students of the college." For these reasons no nominations were received for election to the Students' Association for 2015. Given the performance of this award-winning Students' Association over the last few years, this is very worrying.
32. The other members of the Board do not acknowledge that the identified poor treatment of the Student Board members in meetings has taken place. However, as members of the SFC Executive witnessed the behaviours (at the Board meetings on 23<sup>rd</sup> February and 14<sup>th</sup> April and which we subsequently wrote to the Chair about) we are confident that the account of behaviours given by some of those who spoke to DLA Piper but denied by others, is convincing. Furthermore, there is no evidence of any substantial effort by the Board to

<sup>24</sup> L Mc L note of Extra-ordinary meeting of the Clyde College Board Monday 23 February 2015

repair relationships, despite the SFC Chief Executive writing twice to the Chair (in February and in April) asking him personally to do so<sup>25</sup>.

***Operation of the Board during this period (February – June 2015) and decision making processes***

33. The Board appears to be operating, and responding on many of these issues, without seeking the support of the College's senior management team. We attended a Board meeting on 14<sup>th</sup> April at which there were no executive members present (including the Clerk). This has created a risk – which appears to have materialised – that the Board is not aware of and adhering to its own procedures. Another example of the Board not following its own procedures is at least one meeting (14<sup>th</sup> April) being held without an agenda being provided. The Chair and the Board also seem to have become over-reliant on lawyers rather than the College's own senior staff. For example in the prolonged decision-making process over the (relatively operational) issue of the Students' Association structure and constitution, the Chair commissioned significant amounts of legal advice without apparently involving the senior managers of the College and it was apparent to us that the Chair was not communicating effectively with the Acting Principal on the issue.
34. Perhaps related to the lack of clarity on the detailed allegations relating to the suspension, the investigation procedure has been prolonged, well beyond the period anticipated in the College's procedures and that anticipated in the Chair's letter to the SFC of 4<sup>th</sup> March.
35. The College procedures for suspension and disciplinary action appear to be robust. However, it appears from the fact finding report carried out by DLA Piper that there are a number of areas where the actions taken could be open to challenge. These are the fact that suspension appears to have been considered as automatic (rather than a considered response) in this case, the manner of the suspension (partly being carried out in a corridor and with two different emails of suspension, one of which the Principal could not have received) and the length of the suspension.
36. The College appears to have attempted to change aspects of its constitution at a meeting on 19<sup>th</sup> May to permit it to form a disciplinary panel. We understand that it is unclear whether proper notice was provided of this meeting or proper documentation provided in advance. We understand that the Government has sought assurances on this issue<sup>26</sup>. It is not clear why this action was taken at this late stage, particularly since the Chair was taking legal advice throughout on all aspects of the process to ensure compliance.

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<sup>25</sup> Letter from Laurence Howells to George Chalmers 25 February 2015

<sup>26</sup> Letter from Aileen McKechnie to George Chalmers 11 June 2015

37. The allegations made against the Principal have been described in fairly generic terms. The view of our legal advisers is that because of the apparent lack of specificity with regard to the allegations against the Principal, which has persisted despite the Principal asking for further detail, and the manner of the suspension, the College will face a challenge in defending its actions in the event of a claim.
38. We have not seen any evidence that the Board has properly considered the risks – financial, operational and reputational – of the suspension and the delays in the process since then. We asked the College for a copy of its risk register. The register we were given (dated 17<sup>th</sup> March, a month after the suspension) does not contain any risks relating to the suspension.
39. Throughout the process a small minority of Board members have attempted to raise concerns and issues with the Chair and the Board. These concerns have now led to two Board members lodging complaints with the Commissioner for Ethical Standards<sup>27</sup>.

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<sup>27</sup> information from Government

## Section 2: Findings

### Strand 1: Governance issues in respect of the provisions, procedures and arrangements relevant to the suspension of the Principal

40. The reasons given for the suspension by the Chair were precautionary 'pending the completion of a disciplinary investigation into her style of management and its impact on important internal and external relationships.'<sup>28</sup>
41. The Chair informed us on 4 March 2015 that his concerns were about the Principal's style of management related to: his own relationship with the Principal; the relationship with the Regional Board and its staff; 'evidence of a culture of bullying and possibly also fear within the internal relationships in the College'; and concerns expressed by the previous Chair of the college<sup>29</sup>.
42. Whilst allegations of bullying had been raised, no formal (or informal) complaints of bullying had been raised with HR at that time<sup>30</sup>.
43. The College's disciplinary procedure states that disciplinary issues should be resolved wherever possible without the need to take formal action. It also states that precautionary suspension (where the employee may pose a danger to themselves or to others) is to be an exceptional rather than routine action<sup>31</sup>.

A. No evidence has been provided by the Chair that the Principal was a danger to 'themselves or to others' and therefore the suspension seems to have been inconsistent with the College's own policy.

44. On 19<sup>th</sup> February the Chair, Vice-Chair, Board Secretary and [REDACTED] met with Simpson & Marwick to advise on the situation<sup>32</sup>.
45. On 26<sup>th</sup> February the Chief Executive of SFC asked the Chair in a letter 'Given that SFC was first informed of the suspension by the Chair of the Regional Board, what role did any external person or body (except the College's solicitor) have in the decision to suspend and initiate an investigation or in the provision of advice on these matters?' The Chair's response on 4 March was 'none'<sup>33</sup>.

<sup>28</sup> Email from George Chalmers to Martin Fairbairn 20 February 2015 10:27

<sup>29</sup> Statement from George Chalmers 4 March 2015

<sup>30</sup> DLA report pg 9

<sup>31</sup> DLA report pg 15

<sup>32</sup> Letter from Eleanor Harris to Andrew Millar re procurement 12<sup>th</sup> May 2015 and DLA Piper report Timeline

<sup>33</sup> Statement from George Chalmers 4 March 2015 in response to LH letter of 26 February

46. Whilst this is not a matter for the Glasgow Clyde College, given that the GCRB and its staff were one of the main complainants about the Principal, [REDACTED] should have removed [REDACTED] from the meeting as soon as it became apparent that the meeting was to discuss an issue in which [REDACTED] had a conflict.

B. Given that GCRB and its staff were one of the main complainants about the Principal that led to the suspension, the Chair's inclusion of [REDACTED] in the group that met Simpson & Marwick on 19<sup>th</sup> February could have biased the process, and certainly has led to a perception of bias. This could risk the rigour of the disciplinary process.

C. The Chair's inaccurate statement to SFC in his letter of 4<sup>th</sup> March that no external person or body (except the College's solicitor) had any role in the decision or in providing advice on it, further risks the perception that there was in fact undue influence on the part of the Regional Board on the process.

47. The College was subject to some considerable operational, financial, legal and reputational risk from the moment the Chair took the decision to suspend the Principal. The scale of the risks associated with the suspension has increased as time has passed. While all suspensions and/ or disciplinary procedures are stressful, the nature and length of the suspension appears to be having an adverse impact on [REDACTED]<sup>34</sup>.

48. The College is required by the FM with the Scottish Funding Council to have effective risk management arrangements<sup>35</sup>. This is also emphasised in the Code of Good Governance for Scotland's Colleges. For example: C8 in the Code says 'The board must ensure that sound risk management and internal control systems are in place and maintained. It must ensure there is a formal on-going process for identifying, reporting, evaluating and managing the college's significant risks and review the effectiveness of risk management, business continuity planning and internal control systems.'

49. We asked the College on 9<sup>th</sup> June for a copy of its current risk register. The register we were given (dated 17<sup>th</sup> March, a month after the suspension) does not contain any risks relating to the suspension<sup>36</sup>. Given the exceptional nature of this risk we would have expected the suspension to have been at the top of the College's corporate risk register at this point.

<sup>34</sup> DLA report pg 16

<sup>35</sup> Financial memorandum with the Fundable Bodies in the College Sector pg 9

<sup>36</sup> Glasgow Clyde College Risk Register 17 March 2015, current as of 9 June 2014

D. One month after the suspension, the Board had not formally considered the risks of the suspension despite the high and increasing level of risk involved and this being a key responsibility of the entire Board.

**Strand 2: HR Provisions, process, arrangements followed regarding suspension of the Principal**

50. The Chair reports that the difficulties with his relationship with the Principal started around the 12<sup>th</sup> February about the time of the EIS letter (which we have not seen)<sup>37</sup>. On the same day there was allegedly a difficult and aggressive phone call from the Chair to the Principal regarding the future structure of the Students' Association and the Chair's views on the Student President.
51. On the 13<sup>th</sup> February the Chair informed the Chief Executive of SFC that he had agreed a process whereby the relationship issues between the Principal and the Regional Board could be repaired<sup>38</sup>.
52. The decision to suspend the Principal was made by the Chair on the 19<sup>th</sup> February. This action was taken very quickly, with legal advice being procured, a lawyer briefed and the suspension enacted all during one day. The legal advice was never put in writing<sup>39</sup>.

E. The fact that the Chair's own concerns only date from 12<sup>th</sup> February 2015, one week prior to the suspension, suggest that the Chair did not seek to resolve these concerns informally to a sufficient extent (as he had informed the Chief Executive of the SFC he was doing over the relationship between the Principal and the GCRB) and that the Principal was given no appropriate opportunity to address the concerns.

53. The Chair and the Vice Chair had a sensitive conversation with the Principal in a corridor within earshot of other staff. The existence of two similar but different emails confirming the suspension, one of which the Principal could not have received, is of concern<sup>40</sup>.

<sup>37</sup> DLA report pg 9

<sup>38</sup> Note of a telephone conversation between Laurence Howells and George Chalmers 13 February 2015

<sup>39</sup> DLA report pg 10

<sup>40</sup> DLA report pg 10 and 11



F. The way in which the suspension was communicated by the Chair to the Principal was inappropriate.

54. The College's disciplinary procedure states that suspension is intended to be as short as possible<sup>41</sup>. We understand that the suspension will now have lasted for 5 months before the disciplinary hearing. This is an exceptionally long period and hard to reconcile with the speed of action taken to initiate the suspension. If the case for the suspension was so strong that action needed to be taken immediately, it is not clear why it has taken so long to conduct the investigation and set up the hearing.

G. The suspension appears exceptionally long, particularly given the Chair's claim that the case was so strong that action needed to be taken immediately, and therefore potentially not in accordance with the College's procedures.

### Strand 3: Exclusion of Student Board members from College Board meeting

55. The Board excluded the student members from the Board meeting on 23<sup>rd</sup> February when – even using its own outdated constitution – it did not have to do so. The fact that the Board Secretary chose to only read out part of the constitution, and declared that it was quite clear that the College's constitution required them to be excluded, was very unfortunate<sup>42</sup>.

56. At the same time the Chair permitted the staff members to stay even though he knew that they did have a potential conflict of interest in relation to the reasons for the suspension.

H. It is unfortunate that the student members were asked to leave the Board meeting on 23<sup>rd</sup> February when they had no real conflict of interest, whilst the staff members were allowed to stay, even though the Chair knew they did have a potential conflict of interest in relation to the reason for the suspension.

<sup>41</sup> DLA report pg 16

<sup>42</sup> Note of Extra-ordinary meeting of the Clyde College Board Monday written by Linda McLeod

## Other issues: Subsequent treatment of Student Board members

57. The vigour with which the Chair has pursued the apparent allegations about the management style of the Principal following the EIS letter (discussed at the Board on 12<sup>th</sup> February) is inconsistent with the lack of action on the allegations of intimidating and undermining behaviour against the student members of the Board (raised in a letter to the SFC<sup>43</sup> by the President of the NUS Scotland<sup>44</sup>, discussed at the Board on 14<sup>th</sup> April and reiterated in a subsequent letter from the Chief Executive of the SFC on 20<sup>th</sup> April). The Chair and the Board seem not to recognise the impact of the Chair's behaviour and their collective behaviour on the Student Board members, despite this being pointed out to them on several occasions.

1. The Chair and the Board's response to accusations of bullying made by the EIS against the Principal and their response to the accusations of the intimidatory behaviour of the Chair made by the Students' Association is inconsistent. In the case of the Principal these allegations were part of the reason for her suspension; in the case of the Student Board members these complaints have been largely ignored.

58. On 12<sup>th</sup> February and on the following two days, the Principal received from the Chair an allegedly difficult call regarding proposals for the future structure of the Students' Association where the Chair made specific remarks about the Student President. On the same day the Chair spoke to John Kemp at SFC complaining about the behaviour of the Student President in criticising the former Chair of the Regional Board.

59. On 17<sup>th</sup> February John Kemp followed that conversation up with an email including advice to the Chair on this issue<sup>45</sup>. The treatment of Student Board members at and in the margins of the Board meeting of 23<sup>rd</sup> February was poor and the Chief Executive wrote to the Chair asking him personally to consider how he could improve his approach in the future<sup>46</sup>. SFC witnessed, commented on and followed up in writing similar poor behaviour at the Board meeting on 14<sup>th</sup> April. Our follow up letter again asked the Board to improve on this aspect. The DLA fact finding report notes similar evidence from others<sup>47</sup>.

60. Ultimately the Students' Association Executive have all concluded that none of them could work with 'an openly hostile chairman' and therefore none of them

<sup>43</sup> Letter from Laurence Howells to George Chalmers 25 February 2015

<sup>44</sup> Letter from Gordon Maloney to Laurence Howells 2 April 2015

<sup>45</sup> Email from John Kemp to George Chalmers 17 February 2015

<sup>46</sup> Letter from Laurence Howells to George Chalmers 25 February 2015

<sup>47</sup> DLA report pg 19

will stand for election as sabbaticals while the current Chair remains at the College<sup>48</sup>. As a result of this no students have stood for election to any of the sabbatical posts for 2015. It is now too late for elections to be held until the autumn. The Clyde Students Association is very effective and has won Scottish awards and is now nominated for UK wide awards.

J. The Chair's relationship with the Student Board members, and therefore the Students' Association, has broken down and, despite guidance and feedback over the last months he has taken no effective steps to improve the situation.

#### Other issues: general operation of the Board

61. The Board has held several Board meetings without members of the senior executive being present and even without a Clerk present and on at least one occasion without an agenda. The Chair did not involve the senior executive team in the appointment of Simpson & Marwick. The Chair did not involve [REDACTED] in the suspension or disciplinary procedure of the Principal<sup>49</sup>. The Chair took legal advice about the Students' Association (apparently without involving the executive). This was a matter that the college executive would normally have managed operationally and with the minimum of difficulty, cost or time but which took three months to resolve and £8,000 of legal fees<sup>50</sup>.
62. We understand that it is unclear whether proper notice was provided or proper documentation provided in advance of the meeting of 19<sup>th</sup> May at which the college attempted to change aspects of its constitution. We understand that the Government has sought assurances on this issue<sup>51</sup>.
63. We are also concerned that the Board has not shown – as far as we are aware – any wish to investigate the governance concerns expressed by the Principal immediately prior to her suspension.

K. Basic aspects of the Board's functioning – eg providing agendas for meetings; the presence of a Clerk to take a note of meetings; adequate circulation of papers whenever possible; encouraging the effective contribution of all Board members; and fostering constructive relations between Board members – need to be improved.

<sup>48</sup> Email from John Templeton to Barclay McCrindle 15 May 2015

<sup>49</sup> DLA report pg 15

<sup>50</sup> Letter to Chief Executive of SFC from Eleanor Harris, 1 May 2015.

<sup>51</sup> Letter from Alleen McKechnie to George Chalmers 11 June 2015

L. The Chair and the Board seem to have acted during this period without making proper use of its senior executive team. Had they done so, they might have avoided some legal costs, a number of procedural pitfalls and some of the difficulties in relation to the Students' Association.

64. Most Board members did not challenge or even question the Chair's decision to suspend the Principal or seek to have any evidence provided to justify his decision to suspend. They are clear that most of them took at face value the advice given by the legal adviser. Some Board members have challenged throughout the process, but seem not to have been listened to.
65. Any Board has to get the balance right between accepting the leadership of its Chair and providing appropriate challenge, and between accepting professional advice and questioning and testing that advice. This is a difficult balance, but in this case it has been unfortunate in that the College now faces a very difficult situation with considerable legal, financial, operational and reputational risks.

M. It seems that, whilst we accept Board members were acting in good faith in following legal advice, they were insufficiently challenging of the Chair's judgements and actions and tested insufficiently the professional advice provided. However, SFC witnessed at two board meetings the challenge that was given by a small number of the board members.

### Section 3: Summary of Findings

#### **Strand 1: Governance issues in respect of the provisions, procedures and arrangements relevant to the suspension of the Principal**

- A. No evidence has been provided by the Chair that the Principal was a danger to 'themselves or to others' and therefore the suspension seems to have been inconsistent with the College's own policy.
- B. Given that the GCRB and its staff were one of the main complainants about the Principal that led to the suspension, the Chair's inclusion of [REDACTED] in the group that met Simpson & Marwick on 19<sup>th</sup> February could have biased the process, and certainly has led to a perception of bias. This could risk the rigour of the disciplinary process.
- C. The Chair's inaccurate statement to SFC in his letter of 4<sup>th</sup> March that no external person or body (except the College's solicitor) had any role in the decision or in providing advice on it, further risks the perception that there was in fact undue influence on the part of the Regional Board on the process.
- D. One month after the suspension, the Board had not formally considered the risks of the suspension despite the high and increasing level of risk involved and this being a key responsibility of the entire Board.

#### **Strand 2: HR Provisions, process, arrangements followed regarding suspension of the principal**

- E. The fact that the Chair's own concerns only date from 12<sup>th</sup> February 2015, one week prior to the suspension, suggest that the Chair did not seek to resolve these concerns informally to a sufficient extent (as he had informed the Chief Executive of the SFC he was doing over the relationship between the Principal and the GCRB) and that the Principal was given no appropriate opportunity to address the concerns.
- F. The way in which the suspension was communicated by the Chair to the Principal was inappropriate.
- G. The suspension appears exceptionally long, particularly given the Chair's claim that the case was so strong that action needed to be taken immediately, and therefore potentially not in accordance with the College's procedures.

### **Strand 3: Exclusion of Student Board members from College Board meeting**

- H. It is unfortunate that the student members were asked to leave the Board meeting on 23<sup>rd</sup> February when they had no real conflict of interest, whilst the staff members were allowed to stay, even though the Chair knew they did have a potential conflict of interest in relation to the reason for the suspension.

#### **Other issues: Subsequent treatment of Student Board members**

- I. The Chair and the Board's response to accusations of bullying made by the EIS against the Principal and their response to the accusations of the intimidatory behaviour of the Chair made by the Students' Association is inconsistent. In the case of the Principal these allegations were part of the reason for her suspension; in the case of the Student Board members these complaints have been largely ignored.
- J. The Chair's relationship with the Student Board members, and therefore the Students' Association, has broken down and, despite guidance and feedback over the last months he has taken no effective steps to improve the situation.

#### **Other issues: general operation of the Board**

- K. Basic aspects of the Board's functioning – eg providing agendas for meetings; the presence of a Clerk to take a note of meetings; adequate circulation of papers whenever possible; encouraging the effective contribution of all Board members; and fostering constructive relations between Board members – need to be improved.
- L. The Chair and the Board seem to have acted during this period without making proper use of its senior executive team. Had they done so, they might have avoided some legal costs, a number of procedural pitfalls and some of the difficulties in relation to the Students' Association.
- M. It seems that, whilst we accept Board members were acting in good faith in following legal advice, they were insufficiently challenging of the Chair's judgements and actions and tested insufficiently the professional advice provided. However, SFC witnessed at two board meetings the challenge that was given by a small number of the board members.

## Section 4: Conclusion and Recommendations

### Conclusions

66. We are required to report on this review and make recommendations to Scottish Government.
69. Whilst the evidence from our review highlights that there have been serious failures of governance at the College and these matters require to be addressed urgently, it should be emphasised that the Chair's role in leading the Board, and the actions and behaviours he exemplified, were critical in this failure.
70. The Board is not operating in an effective manner in its governance role; it is not challenging the Chair's actions and behaviours; it has failed to take proper responsibility for the actions taken and the evidence suggests that it is operating without seeking proper advice and support from its executive. We have been told, both directly from the Board itself and via the DLA fact finding report, that this is a Board of volunteers with many other responsibilities and we recognise and appreciate that. Nevertheless, by taking up their membership of the Board they take on important legislative responsibilities for the stewardship of the College and therefore they have to meet national standards and be accountable for their actions.
71. The Board seems to have embarked on a process in which, by passing a significant degree of responsibility to the Chair and its legal advisors, it has created significant financial and reputational risks for the College and put at risk the operations of the College.

### Recommendations

72. We consider that the Chair's conduct has put at risk the future finances, reputation and operation of the College as a result of his actions and is sufficiently serious to constitute mismanagement under section 24 of the Further and Higher Education Scotland Act 1992, as amended by the post 16 Education (Scotland) Act 2013. The Scottish Government should therefore take the necessary steps to remove the Chair of the Board. In view of the urgency of the situation and the increasing risk to the public purse and to ██████████, the Scottish Government should consider if it is appropriate to suspend the Chair due to the serious failures in governance immediately pending completion of the formal process of their removal.
73. Although the other Board members have been party to these serious failures of governance, our conclusion is that they believed they were acting in good faith to fulfil their role as a Board member by giving general support and

encouragement to the Chair, rather than offering a challenge. We would recommend therefore that the remaining Board members have an opportunity to make the necessary improvements to remedy this. This would involve the Board in the development of an improvement plan focusing on the application of good governance processes and procedures and the demonstration of best practice in behaviours of Board members. This should follow the letter and the spirit of the Code of Good Governance for Scotland's Colleges which includes the nine key principles underpinning public life in Scotland. We would expect the Board to jointly agree its improvement plan with Scottish Government and include the involvement of other key stakeholders identified as appropriate. We would also recommend that the plan includes an agreed timeframe for the Board to evidence the required improvement to Scottish Government.

74. The government should ask the interim Chair of GCRB, SFC and Colleges Scotland to put in place emergency arrangements to mitigate the risks that now remain, including a means to conclude the current process against the Principal without delay in a fair and transparent way and a means to protect the ongoing operation of the College's Students' Association.
75. Note that SFC will seek to reduce the risk of similar cases by taking forward the suggestions for improvement in the evidence gathering report to SFC by DLA Piper that has helped inform this report.



## Terms of reference for the review of governance and management at Glasgow Clyde College

### Introduction and objective

The Scottish Funding Council ("the SFC") has advised the Chair of Glasgow Clyde College ("the College") that it intends to initiate a review of specific aspects relating to the governance and management of the College.

The overall output of the review is to provide a report and, where appropriate, recommendations for action to the Scottish Ministers.

### Procedure

The SFC is using its powers under the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"), as amended, including by the Post 16 Education (Scotland) Act 2013. Section 7C(7) of the 2005 Act provides:

*'The Council may, whenever it considers appropriate, review whether a college which is assigned by order under subsection (1) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).'*

The provisions, procedures and arrangements outlined in section 7(2) include, 'suitable':

- (a) Provision in relation to the governance and management
- (d) Procedures for considering and resolving any grievances arising from the carrying on of the body's activities'

Also relevant is section 7C(8) of the 2005 Act, which provides:

*'On completing a review, the Council must provide a report of the review to the Scottish Ministers which—*

- (a) sets out the conclusions which it has reached;
- (b) explains why it has reached those conclusions; and
- (c) makes any recommendations for action in consequence of those conclusions as it considers appropriate.'

In carrying out the review it is appropriate that the SFC take all necessary advice and receive appropriate support as required. The Chair of the Board has indicated that the College will co-operate fully in the review.

On this basis the SFC has instructed DLA Piper Scotland LLP, its principal legal advisors, to provide support and assistance to the SFC in undertaking the investigations set out below. Those investigations will inform the SFC's review and its report.

## Scope

The review will focus on three key areas:

- (i) review of the provision made in relation to the governance and management of the College. In order to focus and gain an understanding of these matters, the review will consider:
  - the provisions, procedures and arrangements which were followed in respect of the recent decision dated February 2015 to suspend the Principal
- (ii) review of procedures and arrangements for considering and resolving grievances within the College having regard in particular to general human resources (HR) provisions, processes and arrangements at the College and consideration of their fitness for purpose both in terms of complying with employment law and good practice. In order to focus and gain an understanding of these matters, the review will consider:
  - the manner in which such HR provisions, processes and arrangements were followed in relation to suspension of the Principal; and whether from that case any learning points exist to provide additional guidance to the college sector.
- (iii) review of the provision made in relation to the governance and management of the College and, specifically, the provisions, procedures, arrangements and support for the participation of student members within the College board. In order to focus this aspect of matters, the review will consider:
  - whether the ability to exclude student members from any element of Board meetings (with particular reference to the College board meeting on 23 February 2015) is appropriate or consistent with the College's 'constitution'. In this context it will also consider the fitness of purpose of the College's 'constitution', and the appropriateness of the College's actions in terms of interpreting the 'constitution' in practice.

Points (i)-(iii) above will be considered and evaluated in terms of relevant legislation and appropriate guidance, and, where appropriate, the Code of Good Governance for Scotland's Colleges.

There are three strands to the investigations to be made for the purposes of the SFC's review. As indicated above, DLA Piper will be appointed to assist with this investigation:

***Strand 1 – Investigation into the governance and management of the College and provisions, procedures and arrangements relevant to the suspension of the Principal***

This strand will involve a desk based review of any relevant information or documents and speaking to key individuals pertinent to both the existing processes and arrangements within the College which are relevant to any decision to suspend the Principal and the extent to which these were followed in practice. These individuals include: the Chair of the Board, other Board members; the Principal; and possibly the Secretary to the Board and any other individual. This will allow the gathering and collating of information and evidence to inform the review to be undertaken by the SFC.

***Strand 2 – Investigation into the governance and management of the College and provisions, procedures and arrangements for HR matters.***

This part of the investigation will involve a desk based consideration of the College's HR policies, procedures and processes: in general and, more specifically, how they were applied to the suspension of the Principal. This will also involve speaking to the Head of HR and other appropriate personnel about how the policies are generally applied in practice and will be considered against compliance with employment law and good practice.

***Strand 3 – Investigation of the provision made in relation to the governance and management of the College and, specifically, the provisions, procedures and arrangements regarding the participation of student members within the College board***

As with Strand 1, this part of the investigation will involve both desk based work and speaking to key individuals who understand the arrangements within the College for the participation of student members at Board meetings with particular reference to the circumstances at the College board meeting on 23 February 2015. The individuals will include: the student members of the Board; the Chair; other board members; the Secretary to the Board; others present at the Board meeting on 23 February 2015; and any other individuals considered appropriate.

**Review report**

Following consideration of the investigation including any information and advice provided by DLA Piper Scotland LLP, the SFC will then undertake its review and then provide a report of the review to the Scottish Ministers, which shall:

- (a) set out the conclusions which the Council has reached;
- (b) explain why it has reached those conclusions; and
- (c) make any recommendations for action in consequence of those conclusions as it considers appropriate.

## Timescales

DLA Piper will present the outcome of its work and relevant legal advice to the SFC by 30 April 2015.

The SFC will complete its review and provide its report to the Scottish Ministers by 15 May 2015. The SFC reserves the right to publish the report in whole or in part.



Report of Fact Finding Exercise to Support the  
Scottish Funding Council's Review of Processes,  
Procedures and Governance at Glasgow Clyde  
College

DLA Piper Scotland LLP  
June 2015

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## PART 1 - BACKGROUND & REMIT

### Background

The Scottish Funding Council (the "Council") became aware in or around February 2015 of a difficult situation with Glasgow Clyde College (the "College") including the Principal of the College, Susan Walsh. Ms Walsh was suspended by the College pending an investigation into aspects of her management style. The Council became concerned about the process being followed in respect of the suspension and investigation, as well as related matters including the treatment of student members of the College Board of Management. There has been considerable media and political interest regarding the outcomes of the College's investigations.

For this reason, and given the serious nature of the issues, the Council has determined to undertake a review of these matters within a short timescale and has sought assistance from DLA Piper Scotland LLP ("DLA Piper") to provide support and assistance to ingather information, interview witnesses and provide opinion and advice.

DLA Piper Solicitors are the Council's retained lawyers who provide legal advice and support on a variety of matters including governance and employment. DLA Piper is contracted to provide this report and any related advice solely to the Council and no other party.

### Remit

The terms of reference and remit from the Council and provided to DLA Piper are attached at Annex 1 for information. The Council's role in undertaking this review is informed by its statutory powers and responsibilities - notably for ensuring the proper and robust governance of colleges and accountability for the spending of public money. The remit of this investigation has been carefully scoped to reflect the role of the Council in this matter and, in turn, the role of DLA Piper as supporting advisers engaged by the Council.

The Council determined to conduct a review of the governance and processes under section 7C(7) of the Further and Higher Education (Scotland) Act 2005 (as amended) (the "2005 Act"), which states *"The Council may, wherever it considers appropriate, review whether a college which is assigned by order under subsection (1) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).*

The "suitable provisions, procedures and arrangements" include:

- (a) provision in relation to the governance and management; and
- (b) procedures for considering and resolving any grievances arising from the carrying on of the body's activities.

The Council considered it appropriate to instigate a review under section 7C(7) given its concerns at the manner in which the investigation has taken place, and the lack of prior notice to the Council as regards what must have amounted to material concerns regarding the Principal's management style and performance, which contravenes the Financial Memorandum between the College and the Council.

Under section 7C(8) of the 2005 Act the Council must provide any report on the review to the Scottish Ministers, setting out the conclusions it has reached, why it has reached these conclusions and any recommendations, as the Council considers appropriate.

### Timescales & Reporting

DLA Piper will provide its Report to the Council by Friday 5th June 2015. DLA Piper has reported on a regular basis to the Council on progress.

### Access to Information

DLA Piper has been given access to relevant information and personnel for the purposes of conducting this review. In view of the challenging timescales, the information-gathering process necessarily has had to be focussed and must not be regarded as comprehensive. We have aimed to interview an appropriate spread of individuals including Board members, members of the Executive and others relevant to the scope of the review.

### Wider Context

It is important to bear in mind the timing and wider context in which this review has been undertaken. The College is the product of a three way merger process between Anniesland College, Langside College and Cardonald College with the latter acting as what is commonly termed the "host" entity. Consistent with other sector mergers, there has been a period of significant change and adjustment for staff and students. However, a further dynamic has been the new regional structure in Glasgow which has introduced a new layer of governance and oversight into the further education sector and is peculiar to the Glasgow region. This new structure is still developing and finding its feet, as are the individuals who play a role in the new structure. This is an important factor which has contributed in part to some of the relationship and governance difficulties which are at the heart of the current situation.



## PART 2 - OUR METHODOLOGY

### Introduction

DLA Piper was asked to provide advice and support to the Council by gathering information relevant to the review through the conduct of interviews with relevant persons and by reviewing various elements of the College's Constitution and internal HR processes and policies. These interviews were conducted on a confidential basis in order to ensure a frank and open discussion with interviewees. However the focus of the interviews was to identify key themes, concerns, behaviours and approach and then to report to the Council on these at a higher level without identifying individuals or attributing comments to specific persons (where it is possible to do so).

Our feedback and reporting to the Council has also to bear in mind the Council's focus for its own review, which is to identify and address any concerns within the management of the College and also to identify lessons which can be learned by the sector on matters of governance and process.

### Our Approach

There are two distinct but interlinked elements or strands to this review:

- collation of information from interviewees; and
- a review of the processes, procedures and governance of these matters, how these have been applied in practice at various levels within the College and the governance and management oversight of these.

In terms of collating information from interviewees we wanted to provide confidential means for individuals to speak with us to share information relevant to the review.

The interview team spoke with 23 individuals during the review period up until 20 May 2015. A list of interviewees is attached at Appendix 1. The interview notes collected from this exercise are held by us in confidence and are legally privileged. The terms of most of the notes, and in particular the notes relating to the majority of College Board members, are intended to be specifically agreed by those interviewees and this exercise remains in progress at present.

### *Methodology*

We conducted a desk-based assessment of the College's processes and governance documents and considered the following:

- **College Governance Documents**

College Code of Conduct for Board Members

College Constitution and Standing Orders of the Board of Governors dated 1st August 2013

College Board Handbook for Members

College Organisational Structure

College - Board of Governors Skills Matrix

An example College Board Agenda of Standing Items

- **College Policies and Procedures**

College Public Interest Disclosure Procedure

College Anti-Harassment Policy (Staff)

College Anti-Harassment Procedure (Staff)

College Grievance Procedure

College Consensual Relationships Policy

College Collective Dispute Procedure

College Dignity at Work Policy

### **Collating and Using the Information Collected**

We have endeavoured to speak with all those individuals who were considered to be relevant; who contacted us; and many of those who we believed played a part in this process. To the extent possible we have sought to verify key pieces of information provided and obtain different perspectives in an effort to make our feedback as robust and appropriate as possible in the circumstances. Where we have not had time or opportunity to verify points raised, we have explicitly stated this. Again we would reiterate that this process has inevitably had to be constrained given our reporting deadline.

This report covers the evidence we gathered from interviews and our desk-based survey of procedures. The Council will use this and other evidence in its own review.

### **Structuring Our Report**

We have structured our Report in three main parts to deal with the information collected and our findings in respect of this. This structure has been applied to the three strands of the Council's remit:

**Strand 1:** Governance issues in respect of the procedures, provision and arrangements for the suspension of the Principal;

**Strand 2:** HR provision, processes and arrangements followed regarding the suspension of the Principal; and

**Strand 3:** Exclusion of Student Board members from College Board meetings.

Our related recommendations, based on the interviews we have carried out and which we consider the Council should review in terms of "*lessons learnt*" across the sector from our process is contained in Part 6 of the report,

### Handing our work over to the Council

The work contained in this document will now be reviewed and considered by the Council to inform its report to the Scottish Ministers.

#### Update - 26 June 2015:

On 9 June 2015 a copy of this document was also shared, on the Council's instruction, with Brodies LLP, solicitors to the College, in order that the College and Board could review and comment upon the content.

A note was thereafter produced by Brodies LLP, dated 16 June 2015, setting out the College and Board's comments in response to this document. The Council determined that this note should be appended to the DLA Piper document and this is now included at Annex 4.

## PART 3: STRAND 1 - GOVERNANCE ISSUES IN RESPECT OF THE PROVISIONS, PROCEDURES AND ARRANGEMENTS RELEVANT TO THE SUSPENSION OF THE PRINCIPAL

### Overview

This section is focussed on Strand 1, relating to the governance issues arising in respect of the provisions, procedures and arrangements which are relevant to the suspension of the Principal of the College, Susan Walsh. We intended to gather facts through a desk based exercise of any relevant Constitutional and governance documents as well as conducting a range of interviews in person and on the telephone with relevant parties.

### Information Gathered

The majority of the 23 individuals interviewed had information or views relevant to this Strand 1. The interviews comprised standard and tailored questions around governance, processes, Board operation as well as questions regarding the actual circumstances as to the suspension of the Principal and that individual's knowledge and involvement in the process. We have been sensitive to the fact that the College has received legal advice during this process and that relevant information has been regarded as legally privileged and thus has not been shared with DLA Piper (and nor indeed with most Board members given their potential role in the disciplinary process which is discussed further below).

We also reviewed the College's Constitution, and note that in Part II of the Constitution under Delegations to the Chair of the Board it includes (at para 5.1.8) the following authorisation:

*5.1.8 to initiate disciplinary action against the Principal or to suspend the Principal with pay in circumstances which may result in disciplinary action being taken against the Principal*

### Feedback

Primary themes and issues arising from our interviews and review of relevant documentation are:

#### General Governance

- In the almost universal opinion of interviewees, the College Board has (up until February 2015) operated effectively with the interaction between Board members and the executive management team being constructive, robust and challenging, as would be expected.
- Constitutional advice and support was largely regarded as being provided by the Secretary to the Board although a large number of interviewees referred to the Principal as being "very good" on governance and noted that she played an active role in advising on governance also. Although many Board members had received some form of governance training in their roles on previous Board this had not been provided at the College (although an induction pack had been provided).
- The first difficult Board meeting has been identified as 12th February 2015 where a letter from EIS representatives was tabled, setting out concerns regarding a variety of matters

including management style and allegations of bullying. To our knowledge no formal complaints have been made in relation to these matters.

- Most Board members were unaware of there being concerns (held mainly by the Chair) regarding the Principal and her style of management and leadership prior to suspension.
- Board members and some others were aware that there were tensions between the Principal and the former Chair of the Glasgow Regional Board, Henry McLeish, specifically regarding comments that we understand to have been made by Henry McLeish at a Regional Board meeting during December 2014 regarding the performance and approach of the Principal of the College and the Principals of the other Glasgow colleges. Whilst this indicated a potential issue between the Principal and the former Chair, nevertheless the Principal's position appeared to be supported by the College Chair and other Clyde board members.
- One Board member had an awareness of other concerns regarding leadership by virtue of that person's position although we have not been provided with any specific information regarding this (on the basis that such concerns / information were subject to legal privilege and formed part of the disciplinary investigation).
- The general perception of the Principal's style of leadership by the Board and by employees and the senior management team was that it was robust, but also clear and fair. Most of the senior management team regarded the Principal as a supportive and effective leader. Most of the Board did not contradict this though had less direct experience of working with the Principal. One or two Board members referred to certain issues with the Principal's approach and style but these appear to be more recent concerns.

#### Concerns Regarding the Principal

- Matters appear to have become more difficult during February 2015 between the Principal and Chair in particular with what appears to be a very marked and swift decline in their working relationship. The first occasion identified was on 12th February when the Principal received what has been described as a very difficult and aggressive call from the Chair regarding proposals for the student association structure and making remarks regarding the Student President. There were further subsequent calls between the two in the following days again about the same topic which were, in the Principal's view equally aggressive and in which we are advised the Chair said he did not trust the Principal or her judgement. The Chair equally indicated conversations with the Principal were becoming difficult and had asked the Vice-Chair to sit in on one call.
- A further tension seemed to be apparent at the 12th February Board meeting when the Board received a letter from EIS representatives expressing material concerns regarding aspects of the College's management. This letter was regarded as a surprise by almost all Board members. Senior management considered that at least in part the letter raised concerns that were historic and that many other points were refutable or could at least be explained. Whilst allegations of bullying had been raised no formal (or informal) complaints of bullying had been raised with HR at that time.
- The Chair confirmed that the difficulties in the relationship started around about the time of the EIS letter. The concerns were raised with the Regional Chair who recommended that legal advice be sought a few days prior to 19th February. The Regional Chair also recommended that the adviser to the Regional Board be involved in assisting on governance generally (as the Regional Chair himself was out of the country).

- Given the ongoing investigation being conducted by the College, initially by Simpson & Marwick and now, through APUC involvement, by Thorntons, Solicitors (which has now evolved into a disciplinary process) we have not been privy to any details regarding the specific concerns as to the Principal's leadership that has led to the suspension and process that has followed. However, the Principal has stated that she is not clear as to the precise nature of the allegations raised against her and this is true both at the point of suspension and throughout the remainder of what is now an almost 4 month process. Part of this process has been the independent investigation referred to in this paragraph which has included a large number of interviews. The interview with the Principal lasted for approximately seven hours and we are advised by the Principal (though we have not spoken with Simpson & Marwick) that despite lengthy questioning she remains confused and unaware of any specific or material allegations made against her. There is further comment in Part 4 regarding this process.

### Decision to Suspend

- The decision to suspend the Principal was made by the Chair under express delegated authority set out in the Constitution of the College<sup>1</sup>. This decision was taken following the receipt of legal advice from a specialist employment lawyer from Simpson & Marwick who was engaged on the same day as the Principal was suspended. It was deemed preferable not to use the College's normal lawyers, Brodies, to obtain legal advice for this issue as the Principal had a working relationship with Brodies and in the event that the Principal was reinstated it was considered this may have introduced a difficulty in the relationship. We regard this as an understandable concern. However we would also note that Simpson & Marwick had little time to come to the College, to familiarise themselves with the full facts of the matter and the College's Constitution in all the circumstances. Again we would reiterate that we have not seen any legal advice nor do we know what information was provided to Simpson & Marwick as part of this process.
- That said, Simpson & Marwick appear to have taken a clear view that suspension was both recommended and warranted in the circumstances. We do not know what the content of that advice was in any detail but the broad position was confirmed by several Board members we have spoken with as the position adopted by Simpson & Marwick before the Board in its meeting. This was also the clear view expressed by the Chair. We note that no legal advice was put into writing. Whilst we would not necessarily have expected legal advice to be provided in writing on the day of suspension, we consider it unfortunate that legal advice was not subsequently requested and provided in writing for the audit trail.
- The manner in which the Chair communicated the news of suspension to the Principal herself raises some comment and concerns. It seems undisputed that the Chair and Vice-Chair had a sensitive conversation with the Principal regarding, at the very least, the potential for suspension in a corridor within earshot of other support staff. We have been advised by at least three individuals that a large part of this conversation was overheard. Precisely what transpired during this short interchange seems to be more in dispute.
- The Principal is clear that in this interchange she was offered either to take voluntary leave or that she would be suspended. She indicated that she stopped the conversation there to seek representation and left to go into an office. The Principal has advised that the Chair then followed her and proceeded to suspend her. This contradicts the statements by the Chair and

<sup>1</sup> Appendix 4 to the Glasgow Clyde College Constitution sets out the College's Delegation Scheme. Paragraph 5.1.8 of Appendix 4 provides authorisation to the Chair of the Board to "initiate disciplinary action against the Principal or to suspend the Principal with pay in circumstances which may result in disciplinary action being taken against the Principal".

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Vice-Chair which state that they verbally raised the issue of voluntary leave only in the corridor which the Principal refused to take. We do not require to determine the precise facts and circumstances here. It is not unusual for accounts to vary slightly when there is clear stress and tension at a difficult time.

- There is also conflict in respect of the follow up email confirming suspension sent by the Chair to the Principal. Rather oddly there appears to be two versions of the email: the first sent by the Chair to the Principal on 19th February at 17:33 which was provided to us by the Principal, and which states that the Principal is to be suspended immediately. The second version was provided by Simpson & Marwick to the Principal some time thereafter (and in turn to us) and this was a forwarded version of an e-mail containing substantively the same text, albeit timed at 17:58, again on 19th February.
- The latter e-mail had not previously been seen by the Principal, who by that point had left the building and could no longer access College IT systems. We therefore can only presume that it had been sent to the Principal. The difference in the two e-mails is the inclusion in the latter message of the sentence: *"I suggest you leave now to think about that (the suspension) and let me know before 9am tomorrow whether your absence is to be treated as voluntary leave of absence or suspension."*
- This may be a point to be raised by other parties in a separate context but the existence of two similar but different e-mails, presumably both claiming to be the original, is disconcerting and hard to understand.
- We are advised by all involved that following this advice from Simpson & Marwick, no further specification of the legal advice was provided or explanation of the factual circumstances and reasons for suspension provided to other Board members. We understand the Vice-Chair was consulted and involved in the discussion with Simpson & Marwick and the Chair but there is conflicting views in terms of precisely what the Vice-Chair did or did not know regarding the reasons for the suspension. We have therefore taken the view that the only individuals who appear to have had the full facts regarding suspension were the Chair and a lawyer from Simpson & Marwick.
- There are further conflicting views in terms of the involvement and influence in the process leading up to suspension by the Regional Board. We were informed on the one hand that the former Chair of the Regional Board was fully aware of the issues and had been consulted by the College Chair prior to action being taken. The former Chair of the Regional Board was out of the country on business at the relevant time but the Adviser to the Regional Board attended the meeting with the College Chair in an advisory capacity and, in the views of some interviewees, may have been representing the former Chair of the Regional Board. Conversely, we have been advised by a number of interviewees that this position was disputed by the former Chair of the Regional Board himself. We have not interviewed the former Chair of the Regional Board and therefore we cannot draw any clear conclusion on this point, other than to express dissatisfaction that in a matter of this sensitivity views and expectations were not entirely aligned.
- The importance of the Regional Board's knowledge and input is twofold. First it is a governance point in that the College Chair considered that he owed a reporting duty on governance issues to the Regional Board and thus it was right and proper to advise him of the concerns and proposed handling of the situation. This becomes important specifically when considering that there was a lack of reporting prior to suspension to the Council of the immediate situation.

- Second, there are views held that there was influence brought to bear by the former Chair of the Regional Board on the College Chair to address concerns he and others had regarding the conduct of the Principal. Again, given the process we are not able to comment in any detail on these issues but again the conflicting views means no firm conclusions on this can be reached robustly. We have not interviewed the former Chair of the Regional Board and the Adviser to the Board has not engaged with us to agree to be interviewed in this process.
- However, it is clear that whilst there may have been some reporting to and involvement of the Regional Board there was equally a lack of engagement with the Council regarding suspension. The Chair considers that the Council was aware at a high level of some concerns regarding the Principal but it does not appear to be disputed that the Council was not aware of the fact such concerns had reached a critical point warranting immediate suspension. In the Council's view this contradicts Paragraph 19 of Part 1 of the Financial Memorandum, which requires the Chief Executive Officer of the institution to inform the Council's Accountable Officer without delay of *"any circumstance that is having, or is likely to have, a significant adverse effect on the ability of the institution to deliver its education programmes, research and other related activity, including delivery of its Outcome Agreement with SFC"* and of any *"serious weakness"* and is not consistent with general accepted practice in the sector where other colleges have sought the input, advice and support of the Council prior to and during any similar process.
- Irrespective of the requirements of the Financial Memorandum, some Board members took the view that the College's main reporting obligation in terms of the suspension would now be to the Regional Board. Moreover, whilst we can understand (though we do not necessarily agree with) the rationale for not advising Board members of the reasons for suspension, that same rationale does not apply to the Council which would play no part in that process. We consider that some information could have been provided in confidence to the Council without prejudicing the investigation. This may have obviated the need for this review.
- College Board members have stated strong views in terms of the Council's involvement and input post any decision to suspend the Principal. The general view (though not shared by the student members and certain staff Board members) is that the Council has not been supportive to the College Board and instead has intervened in an issue which is for the College to deal with in a manner that has been disruptive and unhelpful.
- Other views expressed to us by, for example, the student members and certain staff Board members; members of staff more generally; and senior management indicated other concerns. For example, several individuals remarked to us that they have found the Chair intimidating during and outside of Board meetings, that his style can be threatening and that he could be dismissive of the perspective of students. Some individuals expressed concern regarding his particular interactions with the Student President and it is clear to us that there were, certainly latterly, difficulties and friction in that relationship. Many Board members did not agree with these points when asked and indicated that they considered the Chair to have acted appropriately at all times during Board meetings.
- A difficult and exacerbating factor in this matter is the amount of media reporting of the difficulties both in relation to the Principal and in the wider college. It is clearly difficult for any Board to control the media or third parties speaking to the media. However, it is unfortunate that a press statement (which was ultimately acknowledged to be inaccurate by some Board members, including the Chair, on the basis that it referred to ratification of the decision to suspend as opposed to ratifying the process of suspension) had to be sent out regarding the Principal's suspension notwithstanding that the press was alleged to have had the story already.



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- ✓ The length of the investigation process is a concern given that there was considered to be enough evidence to warrant suspension. Why then did an investigation take so long? We appreciate there may have been difficulties and associated delay within the College in terms of identifying a Board member to determine the outcomes of the investigation. Was the scope of the investigation broadened and was this made clear to the Principal?

## PART 4: STRAND 2 - HR PROVISIONS, PROCESSES, ARRANGEMENTS FOLLOWED REGARDING SUSPENSION OF THE PRINCIPAL

### Overview

This section is focussed on Strand 2 relating to the HR provision, processes and arrangements followed regarding the suspension of the Principal. We have conducted a desk based review of the following employment procedures as well as taking into account comments made from our interviews with relevant parties.

### Information Gathered

We have focused upon considering the procedures which are in place within the College and the application of these to the situation, as described by the interviewees, as these will be relevant to any employment proceedings which might be undertaken by the Principal against the College arising from her suspension and/or any disciplinary action which may be taken. We recognise that both the College and the Principal are in receipt of legal advice in respect of the process and its application and our review does not extend to offering guidance with regard to the process itself or the potential next steps as both issues are beyond the scope of our review.

At the time of preparing this report it is our understanding that the disciplinary procedure has not been completed, although the matters have been investigated, with enquiries being made by external counsel on behalf of the College, and during which time the Principal remains suspended. Whilst this has not been confirmed in documentation, we have been advised that the disciplinary hearing has been provisionally fixed to take place on 20th July 2015.

We also reviewed the College's Constitution and note that in Part II of the Constitution under Delegations to the Chair of the Board it states at 5.1.8:

*5.1.8 to initiate disciplinary action against the Principal or to suspend the Principal with pay in circumstances which may result in disciplinary action being taken against the Principal.*


### Feedback

Our main observations on the materials reviewed and the comments made by interviewees are as follows:

- The disciplinary procedure and dignity at work procedures are unexceptional, insofar as they are comprehensive, well-drafted and consistent with the types of procedure which we would expect to be in operation in an organisation of this size and nature. The Director of Organisational Development is responsible for the procedures in place and for their review and implementation. However at no stage prior to the suspension of the Principal was either a copy of the procedure requested and/or advice sought on the requirements of the procedure from the Director. Furthermore, the College's advisors who provide advice on employment issues (Brodies) were not, to the knowledge of this Director, consulted either.

- The disciplinary procedure itself is detailed and seeks to identify the principles underpinning the disciplinary process, together with the individuals who are responsible for taking action at various stages of the process itself. In accordance with best practice objectives, the procedure makes clear that, whilst the College is entitled to take disciplinary action, the objective of the procedure is not punitive, or to be viewed or used as a dismissals procedure, but rather is intended to secure an improvement in the conduct and behaviour of employees.
- The procedure takes into account the ACAS Code on Disciplinary and Grievance Procedures (the "Code") as reference is made to the Code itself within the process, including the express recognition that a failure to follow the procedure could expose the College to a successful claim of unfair dismissal and/or an increase in the amount of compensation awarded. This is relevant as, whenever considering whether or not an organisation has acted reasonably, a tribunal will consider not only whether the organisation has complied with its own procedures, but also whether the rules of natural justice, which are enshrined in the Code, have been complied with. The College procedure has been drafted to ensure that these rules are incorporated into the relevant steps with the intention of ensuring that, in the event of a dispute, if the disciplinary procedure has been followed then the resulting decision cannot be challenged on the grounds of procedure.
- The disciplinary procedure requires the following steps to be considered and/or taken:
  - Informal discussion - disciplinary issues should be resolved wherever possible without the need to take formal action;
  - Suspension (either of a precautionary nature, where the employee may pose a danger to themselves or to others, or where suspension is necessary to safeguard the process) - this is to be an exceptional, rather than a routine, action and should only be taken where certain safeguards have been complied with. Suspension is not part of the disciplinary process itself and is not a disciplinary sanction;
  - Investigation - this is to precede any formal action and at the end of the investigatory process the procedure makes clear that disciplinary action may not automatically ensue;
  - Disciplinary meeting (if required);
  - Disciplinary warning/action (if required);
  - Appeal.
- From interviews with relevant staff it was apparent that there is a good understanding of both the principles behind the procedure and the way in which these should be applied by employees. For example, the Vice-Principal demonstrated a clear understanding of the disciplinary process as it might apply to individual employees and also was aware that suspension would be a matter of last resort, and carried out in consultation with senior personnel ahead of any decision to suspend a member of staff.
- At each stage of the procedure relevant individuals are identified as being the designated person(s) to take certain actions. However, there is a recognition that in certain circumstances the procedure may require adjustment to address unusual or specific circumstances, including where disciplinary action is taken in respect of the Principal. In such circumstances then meetings are to be conducted by a Panel of the Board of Management (excluding student and staff members). This is significant as procedures in place in most organisations will not seek

to make distinctions of this nature and which take into account specific circumstances. As it is clear that consideration has been given to such matters, this in turn makes any deviation from the process more difficult to justify, on the grounds that the procedure has already anticipated certain more unusual scenarios and made express provision for these.

- A number of those interviewed have indicated their concerns that the procedure has not been complied with. Having reviewed the procedure and applied this to the facts, it is clear that - whilst at this stage the procedure has not been followed to the point of imposing any sanction (and this report relates simply to the suspension of the Principal) - there are a number of areas where the actions taken could be subject to challenge. In particular:
  - The procedure specifies that suspension will not normally be imposed "*unless it is felt necessary to protect the interests of the College, the employee concerned or other employees*". Employees have indicated that suspension has only been effected as a last resort, but there is evidence that suspension was considered to be an automatic, rather than a considered, response;
  - The evidence of those interviewed is that the suspension took place in a corridor, and consequently could have been witnessed by unconnected third parties. Whilst suspension is not a disciplinary action, it may be incorrectly perceived to be suggestive of blame or inappropriate conduct, and having become public knowledge can be extremely damaging to the individual who is suspended, regardless of the ultimate outcome;
  - Suspension is also intended to be "*as short as possible*" and normally the maximum anticipated period is suggested as being 15 working days. In this instance the suspension will have been in place for approximately 5 months if the disciplinary hearing does take place on 20th July 2015. While the suspension process sits apart from the College's disciplinary procedure, in our experience and on the information available the period of 5 months appears exceptional in terms of suspension of a member of senior management.
- Taking all of the above into account, the suspension appears to have been invoked by the Board in a manner which has not properly taken into account the requirements of the procedure, and furthermore the Principal has been suspended for a lengthy period. Whilst such matters may potentially be explained and addressed - and suspension is not part of the disciplinary process itself - the public nature of the suspension, and period of time during which it has been in place will be relevant factors for consideration by an employment tribunal with regard to the reasonableness and fairness of the process.
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- In addition to the Disciplinary Procedure a Dignity at Work Procedure is in place, the stated purpose of which is to ensure that all employees are able to work within an environment which is free from harassment and/or inappropriate behaviour from others. In order to achieve this objective, obligations are placed on employees to conduct themselves properly at all times. Employees who consider that they have been exposed to harassment are guided to make use of the appropriate procedure in order to raise their concerns. At the same time employees are advised of the potential sanctions which might be applied in the event of harassment, including disciplinary action up to and including dismissal. It is clear that the Principal considers that her rights under this procedure have been infringed, albeit as the

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allegations appear to involve a Board Member, and not an employee, the sanctions which are referred to would not be applicable in these circumstances. This should not, however, prevent the College from seeking to protect its staff.

- In both cases the procedures are not contractual. This is not unusual. The procedures are intended to provide guidance and a framework for action and it would be unrealistic for any procedure to expressly anticipate and/or make provision for each and every potentiality. To try to do so would make the procedures unwieldy and difficult to apply.
- The simple fact that the Principal and her advisors might be able to identify that the procedures may not have been followed to the letter will not automatically entitle her to found a claim for breach of contract. Furthermore, as any procedure cannot address every possibility, and each case will turn on its own facts, it is not unusual or unreasonable for variations of such procedures to be required and an employment tribunal would recognise this. However any variation must be capable of being explained.
- What is key is that the principles of natural justice be maintained, namely that the person to whom the process is being applied is aware of the potential case against them; that they have an opportunity to respond to the case against them and, if relevant, to appeal against any decision reached/sanction imposed. Similarly the procedures must be applied fairly and consistently, failing which it may be open to an employee to claim that any shortcoming entitles them to claim unfair dismissal as any variation from an established procedure will need to be explained to satisfy the requirement for "reasonableness". At this point in time, whilst the situation might be unusual, suspension of a Principal is not an action which is unheard of in the sector, and [REDACTED] indicated that, whilst she might not have dealt with such an incident [REDACTED] is aware of such action and would have been able to take appropriate advice had this opportunity been afforded to [REDACTED]. The fact that no such opportunity was provided is of concern.
- At this stage a primary area of concern which has been raised by those interviewed and which is apparent from the documentation provided is the apparent lack of specificity with regard to the allegations made against the Principal. These have been described in fairly generic terms and it would appear that the Principal has sought further detail regarding allegations which does not appear to have been provided. This, together with the fact and manner of the suspension indicate that the College will face a serious challenge to defend its actions in the event of any claim.
- Whilst it is possible that procedural irregularities may be corrected on appeal and, at this stage of the process, disciplinary action has not yet been completed, the length of the suspension before taking action will have a serious impact upon the ability to demonstrate that any resulting procedure is reasonable, in the absence of an explanation as to the reasons for the manner of and length of suspension.

## PART 5: STRAND 3 - EXCLUSION OF STUDENT BOARD MEMBERS FROM COLLEGE BOARD MEETING

### Overview

This section addresses Strand 3 relating to the exclusion of student Board members from a College Board meeting on 23rd February 2015 at which the decision to suspend the Principal was discussed (but only at a high level given the decision to withhold details from all Board members). We intended to gather facts through a review of constitutional documents and conducting interviews with a range of people in person or on the telephone.

### Information Gathered

Of the 23 individuals we interviewed, the majority had information or views relevant to this Strand 3.

We also reviewed the College's Constitution and Byelaws and in particular Article 15.3 in the Section headed Conflicts Of Interest which states:

#### 15.3 *Students*

*Unless invited to remain by resolution of the other members of the Board present, the Students' Association representatives shall withdraw in the event of there being discussion on any disciplinary measures relating to him/her or the terms and conditions of employment, appointment, promotion, suspension or dismissal of or any other disciplinary measure relating to any employee of the College and shall not vote on any question relating to the matter*

We also reviewed the Code of Good Governance and the provisions in relation to Student Engagement at Section B - in particular the following:

- "B.1 *The Board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions.*
- B.2 *The Board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, the students' association and as appropriate staff and trades unions in relation to the quality of the student experience. Consultation is essential where significant changes are being proposed."*

### Feedback

Much of the context and feedback for Strand 3 relates to Strand 1 given that the Board meeting in question was an emergency Board meeting called as a consequence of and to advise on the suspension of the Principal.

The key themes and areas of feedback are:

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- In general terms prior to the meeting on 12th February most Board members believed the relationship between the student Board members and the Chair to be good and constructive. The Principal noted that she felt that the Chair did not however value the input of student members as much as he should have and gave examples of behaviours such as talking over student members, hurrying their points, and disregarding them. This perspective did not seem to be shared by Board members.
- The Board meeting was called at short notice but the invites were extended to all members including the student representatives.
- Before the Board meeting commenced we understand that the Secretary to the Board read out a part of the Constitution and asked the student members to leave the meeting.
- The ability to ask the student members to leave in terms of the constitution appears to have been identified by Simpson & Marwick. [REDACTED] confirmed that this legal advice was followed without question. When asked about this in more detail [REDACTED] confirmed she did not think it appropriate to read out the entire provision in the Constitution which gives the Board the right to allow student members to remain. [REDACTED] considered it normal practice to ask student members to leave meetings when matters were sensitive but this seems at odds with the views of other Board members and indeed Principals of other colleges (though it is recognised that the Constitution does give them this right).
- We understand from the student members that they were shocked and upset to be asked to leave, and also confused. However, the Student President returned to the meeting to question the basis on which the Constitution had been read out as it had omitted the first line that states the Board may allow student members to stay. In the student members' views this was a deliberate and misleading omission that deprived the Board of the right to take a key decision and deprived the student members of the right to participate. The Board appeared not to wish to change its mind. However, on the second occasion the student members returned to the meeting the Chair apologised for upsetting one student member.
- We are aware of the negative reaction by the wider student body to the news that the student members were excluded from the Board meeting. This culminated in a vote of no confidence in the Chair as determined by the student body executive team (with the Student President withdrawing from that vote) in the days following the Board meeting. A student protest took place outside the College. We are also aware that relations between the Chair / Board and the student body have remained in poor state with numerous letters being drafted to other stakeholders to outline the concerns that, in short, are that the Board and Chair do not value student members, and that they have been poorly treated and subject to intimidation.
- Board members, when questioned, voiced surprise at this reaction and the suggestion of poor treatment but other executive team members indicated a greater understanding of the students' position.
- In general terms we understand that prior to 12th February meeting the interaction between the Board, the Chair and the student members was healthy and normal but this declined rapidly after the 23rd February meeting, not just between the Student President and the Chair but also with other Board members. There has been no explicit reason offered for this but it appears to be a simple question of trust breaking down at a stressful time.

**PART 6: SUGGESTIONS FOR ENHANCING GOOD PRACTICE ACROSS THE SECTOR**

On the basis of the information gathered and feedback received in respect of the three strands discussed above we have set out the "lessons learnt" for the sector during this process below:

**STRAND 1 - GOVERNANCE ISSUES IN RESPECT OF THE PROVISIONS, PROCEDURES AND ARRANGEMENTS RELEVANT TO THE SUSPENSION OF THE PRINCIPAL**

- Legal advice on matters of this materiality and significance should be received in writing (even if after the event) for the audit trail and should include a proper risk assessment of the College's exposure.
- The Council considers that the terms of the Financial Memorandum made clear that the College should have contacted it to advise of the imminent suspension. The College did not consider it was under an obligation to so advise. Accordingly, the Council may wish to consider making the terms of the Financial Memorandum more specific regarding a requirement to alert the Council in advance of taking any action to suspend a Principal in any circumstances to ensure all parties are entirely clear as to what is expected of them.
- Stronger governance support to the College may have helped with certain of the matters that have arisen. When appointing Clerks/Secretaries, Colleges should have a clear understanding of their skills and experience.
- It has been a recurring theme of this and other sector reviews that in instances of conflict or alleged poor behaviour by Chairs of Colleges and to a lesser extent Vice-Chairman and Principals, that individuals lack obvious avenues to take to raise concerns/initiate any internal process. The Council should revisit, perhaps with Colleges Scotland, whether the sector needs a clear, uniform approach to such difficult situations such as a clear, external complaints process that is regarded as robust, independent but confidential for all parties.
- We appreciate the position taken by the Chair, on legal advice, that Board members were to be protected from the reasons for suspension as they may need to play a role in any future investigation/disciplinary process. This is not a point that is particular to college Boards. In other sectors and for other clients we have advised that the Board identify a pool of members that are ring-fenced for such purposes. However, this then leaves at least a small number of other Board members to participate in any first hand decision making. This, in our view, would have been a better governance approach than the Chair making an autonomous decision (with legal advice). It would have helped mitigate any discomfort evidenced by certain, but not all, Board members, that they were entirely in the dark regarding the suspension and process to follow and from a good governance perspective it ensures several minds contribute to a decision to ensure it has, and is perceived to be, balanced, fair and measured and not the decision of one person.
- We recommend the Council considers whether it would be appropriate for guidance to be given on this point to the sector either by the Council or Colleges Scotland.
- Equally, the Council could have subsequently been advised of the reasons for suspension earlier than the 4th March, at which stage the Chair, in response to a request from the Council dated 26th February, provided some high level indications as to what were considered to be issues surrounding the Principal's style of management. The Council was not a party to any appeal. Nor were any staff requested to provide witness statements. Had proper



communications been made to the Council then this may have helped obviate the need for this review.

- A final point to make (though this has already been flagged to the College by the Council and is being addressed out with this Review) is the manner in which legal advisers are appointed and the control of the legal spend. The Financial Memorandum allows for urgent appointments to incur up to £25,000 in legal fees without any form of competition. In this case the legal fees incurred by Simpson & Marwick were significantly in excess of this. This is not a matter to address further in the report other than to suggest that in any emergency situation where colleges may need to seek legal (or other) advice and may not have clear visibility at the outset of spend then it would be prudent for them to have access to a framework where they could quickly and simply call off legal (or other) services that have already been subject to competition. The Scottish Government's new legal framework will offer this possibility as does the current APUC legal framework, for example. It would be helpful for these options to be made well known to colleges in the event that they find themselves in a similar situation.

#### **STRAND 2 - HR PROVISIONS, PROCESSES, ARRANGEMENTS FOLLOWED REGARDING SUSPENSION OF THE PRINCIPAL**

- Whilst the internal processes in place for dealing with routine employee issues are well drafted and robust, consideration should be given to the establishment of a protocol for dealing with issues involving senior personnel and / or Board members which is applicable across the sector. This would give the Council the ability to have awareness of any issues in advance and to provide independent advice and support to avoid some of the issues that have arisen on this occasion.
- Where senior employees are involved, not only are the financial implications greater, but also the media attention which can ensue may exacerbate such financial exposure as it might support submissions by dismissed employees that their ability to secure alternative employment has been prejudiced. A protocol applicable to the sector as a whole could take steps to mitigate this risk / exposure.
- For example, as suspension is not a disciplinary issue, provision could be made for any suspension of a Principal or senior employee to require certain approvals (Board approval and Council notification / approval) which will allow the opportunity to provide independent advice and guidance, and allow appropriate arrangements for press / PR statements to be prepared.
- Likewise, a clear process whereby employees in the sector (and others) are able to raise issues relating to Board members and / or individuals who are not employees could provide the Council with advance notice of any problem areas.

#### **STRAND 3 - EXCLUSION OF STUDENT BOARD MEMBERS FROM COLLEGE BOARD MEETING**

- It is unfortunate that the student members were asked to leave the Board meeting on 23rd February when in fact any sensitive information was being withheld from all Board members in any event. The discussion was at a very high level and thus it seems to DLA Piper that it would not have been to the detriment of the discussion or the process to have student members stay, as was permitted by the Constitution. This option was clearly not communicated to the wider Board in time and so it is unfortunate that neither the lawyer from Simpson & Marwick nor the Board Secretary considered this point. This has led to what

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appears to be a hugely unfortunate adverse spiralling of relations between the Chair / Board and the student executive. Much of this appears to be about perception of the Board's approach to its own powers under the Constitution. It seems to us that the situation could have been handled more sensitively in this instance.

- The Constitution of the college is updated sooner than later to reflect the Code of Good Governance which includes provisions regarding ongoing dialogue and engagement with student members. Whilst we are advised that the College was awaiting publication of guidance from Colleges Scotland in respect of the Code of Good Governance, nonetheless it is clear from other colleges that the content of the Code was well consulted upon and understood by the sector sufficiently to allow amendments to be made.