

MORLEY COLLEGE LONDON



GOVERNING BODY

Minutes of a Meeting held at Morley College, 61 Westminster Bridge Road London SE1 7HT on Monday 3 June 2019 at 4.00 pm and re-convened at the same location on Tuesday 11 June 2019 at 5.00 pm.

Present:

Dr Stuart Edwards, External Governor (**Chair**)
Ms Pauline Egan, External Governor (**Vice-chair**)
Mr Martin Bamford, Student Governor
Miss Justine Brian, External Governor
Mr Nic Durston, External Governor
Ms Heather Fry, External Governor (Items 1-4 only)
Dr Andrew Gower, Principal and Governor
Mr Luke Howson, Staff Governor
Dr Steve Ketteridge, External Governor ((Items 1-4 only)
Ms Susan Lindsey, Student Governor (Items 1-4 only)
Ms Marilyn McMenemy, External Governor (Items 1-4 only)
Mr Victor Olowe, External Governor
Ms Sara Robertson-Jonas, Staff Governor (absent for items 4.20-4.30)
Mr Mash Seriki, External Governor (Items 1-4.23 only)
Dr Fiona Stephen, External Governor (Items 1-4 only)

In attendance:

Mr Marco Macchitella, Deputy Principal
Mr Nick Rampley, Vice-Principal
Mr Kevin Jones, Director of Finance
Ms Donna Clifford, Merger Project Manager
Mr Martin McNeill, Clerk to the Governing Body and Company Secretary (Items 1-4 only)
Ms Carmen Gray, Administrative Officer (Items 5-11 only)

Absent:

Ms Heather Smith, External Governor

RESOLUTIONS

- To publish the minutes of meetings of the Joint Transition Committee once they have been confirmed (Minute 3.2)
- To approve the terms of reference of the Joint Transition Committee subject to one amendment (Minute 3.2)
- To procure due diligence services separately from KCC (Minute 3.4)
- To endorse the negotiating strategy set out in the Principal's paper on financial 'asks' (Minute 4.14)
- To aim for the earliest possible merger date consistent with a full consultation process (Minute 4.15)
- To continue to work towards the merger but to take no decision to move to Stage 2b without substantial assurance as to the financial and funding 'asks' (Minute 4.29).
- To adjourn the meeting to 5.00 pm on Tuesday 11 June (Minute 4.30)

- To ask the Joint Transition Committee to consider the implications of a 1 December target date for completion of the merger(Minute 4.37)
 - To approve the scope of due diligence and to authorise the Project Manager to seek tenders from the firms listed in Minute 5.2 (Minute 5.6)
 - To approve the draft Joint Communications Strategy (Minute 6.1)
 - To approve the proposal to amend Article 4.2 and Article 15.2.15 of the College's Articles of Association and to submit the proposed amendment to a general meeting of the Company (Minute 9)
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1. Apologies for absence and quorum

Apologies for absence were received from Heather Smith and accepted. The Clerk confirmed that the meeting was quorate.

2. Welcome, introduction and declarations of interest

- 2.1. The Chair welcomed Donna Clifford to her first meeting with the Morley Board. She explained that she was working jointly for KCC and Morley to manage the merger process. There were no declarations of interest.
- 2.2. Summarising recent developments, the Chair reported that a useful meeting had taken place on 22 May with the Education and Skills Funding Agency (ESFA)'s Implementation Group. He had subsequently received a supportive letter from the Minister for Apprenticeships and Skills (Agenda Item 4a iv – Appendix 9) and another from the Greater London Authority (GLA) which, while confirming Morley's continued status as a Specialist Designated Institution (SDI) post-merger, similarly avoided giving any commitment to funding. On 31 May he had met a senior officer of the ESFA, who had confirmed that, while the business case for merger was due to be put before ministers in the next week, this might well be followed by further questioning, and it was by no means certain that there would be a decision by 17 June. He was, however, satisfied that the ESFA understood the cost of delay, and would seek to shorten processes wherever possible.
- 2.3. Looking ahead, the Chair said that he would be meeting the two ministers involved (from the Department for Education and the Home Office) on 5 June, together with the Save Wornington College (SWC) campaign group. The KCC Board would be meeting on 10 June, and would have to address the other options potentially available should the Morley merger not proceed: a one-site solution, or further steps towards insolvency.
- 2.4. It was likely that the Morley Board would also need to meet during the week beginning 9 June. The Joint Transition Committee (JTC) was due to meet on 17 June, which had been seen as the last date on which the two boards could decide to take steps towards a merger date of 1 November. It would be preferable for the Board to have considered before then what alternative course it might pursue if there were no firm response by that date, and how it would manage communications if the future of the merger remained uncertain.

3. Proposed merger – Joint Transition Committee (JTC)

- 3.1. The Board received the minutes of the two meetings of the JTC, noting that the notice to dissolve/merge referred to in Minute 5.3 of the 7 May meeting was notice of a proposed dissolution, not a commitment, and that the year referred to in Minute 8.2 should have been 2019 not 2017.
- 3.2. The Board agreed that the minutes of the JTC should be published once confirmed, and approved its terms of reference subject to an amendment to Clause 2(l) to make

clear that the JTC's role was to seek assurance and report to the two Boards (rather than to provide assurance in all circumstances).

- 3.3. In answer to a question, the Project Manager confirmed that the Risk Register that had been considered by the JTC and that appeared (in a revised version) as Agenda Item 4a v was a Project Risk Register jointly owned by the two colleges..
- 3.4. The Board noted that the KCC Board had expressed a preference for separate commissioning of due diligence work, and would be scoping its requirements at its next meeting on 10 June. Governors recognised the advantages of KCC being seen to have made a wholly independent assessment of Morley as a merger partner, and the proposal for separate procurement of due diligence work (both financial and legal) was agreed.

4. Proposed merger – Stage 2a

- 4.1. The Principal drew the Board's attention to a number of changes in the financial 'asks' set out in the initial proposal.

Ask 1

- 4.2. There was no change in the Transition Grant that Morley was requesting. In answer to a question, the Principal confirmed that this grant would not be repayable unless Morley withdrew from the merger without good reason. He also confirmed that a number of preliminary expenses had been covered out of the Transition Grant already received by KCC; should the College decide not to proceed to Stage 2b, its irrecoverable costs would be confined to staff time costs and opportunity costs.

Ask 2

- 4.3. The requirement for funding support to cover the costs of the merger had increased by £90k, comprising £40k for additional support in integrating the two colleges' management information systems (which, fortunately, relied on the same software) and an additional £50k for organisational restructuring.

Asks 3 and 4

- 4.4. The funding requirement for the renovation of the North Kensington Centre had increased significantly from Morley's original estimate of £12.6 million. Since the original proposal had been prepared, a pre-feasibility study by the Department for Education (DfE)'s consultants, MACE, had shown the likely building costs to be in the region of £13.7 million. This figure had been increased by a further £1.5 million to reflect the cost of carrying out the works while the building remained in use.
- 4.5. In answer to questions, the Principal explained that the total investment of £15.2 million was intended to cover both the backlog of planned maintenance and the creation of modern learning spaces; he made clear, however, that no major rebuilding was contemplated, so that the end result would be a modernised 20th century building, not a 21st century facility.
- 4.6. Challenged on the estimate of costs, the Principal said that the cost shown in the original proposal had been a rough estimate, albeit informed by the views of Morley's architect following a visit to the North Kensington Centre. The College had subsequently co-operated with MACE on the pre-feasibility study. Should the DfE be reluctant to accept the calculations made by consultants that it had appointed, there was a £13,500 provision in Ask 1 for Morley to commission a full independent analysis.

Ask 5

- 4.7. The Principal reminded the Board that the original proposal had assumed that investment in the Chelsea Centre would be funded out of KCC's cash balances at

the date of merger. Given the deterioration in KCC's financial position (as reported to the Board on 19 March), this no longer appeared realistic and accordingly funding would have to be sought from the ESFA as part of the merger support package.

Ask 6

- 4.8. No change had been made to the estimate of savings to be delivered in advance of the merger date by KCC's cost reduction programme. A key element of this was a staff restructuring, which was currently the subject of consultation within KCC. The consultation period ended on 18 June.

Ask 7

- 4.9. The request for additional Adult Education Budget (AEB) funding now related to the years 2022-5, as the North Kensington Centre was not expected to be fully operational before August 2022. The request was primarily addressed to the GLA, as 94 per cent of students were expected to be residents of Greater London.
- 4.10. The Principal drew governors' attention to the supportive letter from the Mayor to the Secretary of State (Item 4a iv Appendix 7), and tabled a subsequent letter that he had received from the GLA (Item 4a i Appendix 1), confirming the Mayor's intention to continue funding the merged college on the same basis as now. This letter did, however, make clear that the GLA was not in a position to make a commitment in advance of the next comprehensive spending review.
- 4.11. In addition to GLA funding, Morley would have opportunities to win additional work from the Royal Borough of Kensington and Chelsea (RBKC), through its adult and community learning budget, and from University of the Arts London (UAL).
- 4.12. The Board recognised that a firm commitment to future AEB funding was unlikely to be available in advance of merger, but took comfort from the supportive stance of the GLA and other potential funders.

Ask 8

- 4.13. Ask 8 was for an additional £1.5 million to ensure that the merged college could maintain an adequate cash balance of £3 million at all times. Like Ask 5, this was necessary because of the worsened financial position of KCC, which was no longer expected to hold as large a cash balance at merger date as had originally been expected. The terms on which this funding was made available would be the subject of further discussions with the ESFA and GLA.
- 4.14. Having reviewed the eight 'asks', the Board agreed to endorse the negotiating strategy summarised in Section 2 of Item 4a i. Before agreeing to move to Phase 2b, the Board would need a high degree of assurance on Asks 1 to 5 and on the availability (freehold or at a peppercorn rent) of the Wornington Road building; and a recognition by all parties that further negotiation would be necessary around Asks 6 to 8 to manage the risks to which Morley might otherwise be exposed.
- 4.15. The Board also agreed that, while it might not be in a position to take a decision by 17 June as envisaged, it wished to move ahead towards the earliest possible merger date that could be achieved following a full consultation process.
- 4.16. The Director of Finance then presented the outcomes of the financial modelling exercise, including the underlying assumptions (Item 4a ii Appendix 1). He explained that, for 2019-20 and the first two complete years post-merger (2020-21 and 2021-22) he had prepared financial plans for the two colleges separately, using the ESFA's financial planning template. These showed Morley continuing gradually to improve its financial position, albeit with some pressure on cash as the capital investment programme continued, while KCC ran out of cash during 2020-21.

Governors noted that the KCC position was significantly worse than in the original proposal, as a consequence both of the slippage in the merger timetable and of the additional losses incurred by KCC in 2018-19.

4.17. The next step had been to merge the plans for the two colleges and to make a number of adjustments on the assumption that the merger went ahead on 1 November 2019. These adjustments included:

- the ending of rental payments for the North Kensington Centre;
- the introduction from 2020-21 of a new adult curriculum; and
- some savings in staff and other costs as a consequence of merger.

4.18. Finally, the plans had been rolled forward for another three years, until 31 July 2025, on the assumption that the College was successful in obtaining additional AEB funding from 2022-13 to support a greatly enhanced offer at the refurbished Kensington Centre (as detailed in Ask 7). The projections showed the merged college achieving a bottom-line surplus (after depreciation and finance costs) of £359k in 2023-24 and over £1 million in 2024-25.

4.19. The Director of Finance confirmed that the plans were based on the fundamental assumption that the revised financial 'asks' would be met to the Board's satisfaction, and on six or seven other assumptions:

- that the starting point was realistic;
- that the step-up in provision at North Kensington from year three was achievable through a new curriculum and effective marketing;
- that the GLA would grant the growth requests for additional AEB (this was the basis of Ask 7);
- that average class sizes at Chelsea and North Kensington would be similar to those at Waterloo;
- that the growth assumptions for advanced and higher learning were achievable;
- that revenue from 16-19 provision would be sustained; and
- that renovation of the North Kensington Centre would be completed on time.

4.20. Having considered these assumptions and questioned the Director of Finance further, the Board agreed that they appeared at this stage to be realistic and that in each case proper account had been taken both of risks and of opportunities. Further testing would still, however, be necessary to enable the Board to gain greater assurance before taking a decision. This was particularly important in relation to the availability of additional AEB funding and the renovation of the North Kensington Centre; in the latter case, the Board needed to be satisfied not only that the work would be completed on time but also that it would be completed to a satisfactory standard.

At this point Sara Robertson-Jonas left the meeting

4.21. The Board was pleased to receive SQW's report following completion of the market evaluation study and to note the conclusion that there was likely to be demand for an enhanced adult learning offer in West London, and specifically for the curriculum that Morley proposed to deliver at each of KCC's two centres. The Board also considered the report of progress with stakeholder engagement and agreed that there was sufficient evidence of internal and external stakeholder support to justify continued working towards merger.

4.22. The Board then considered the Merger Risk Register and agreed that the main risks had been identified, had been correctly assessed and were being appropriately managed. Governors noted, however, that Risk 4 – that finance and funding ‘asks’ were not met – was more complex than was immediately apparent. The preceding discussion of ‘asks’ had shown that, while it would be obvious whether or not Asks 1, 2 and 5 had been met, judgement would need to be exercised in relation to Asks 6, 7 and 8. And in relation to Asks 3 and 4, it was possible for the College and the DfE to agree on the scope of the works to be carried out (thus technically meeting the ‘ask’) but for that agreement not to be executed in a way that met the College’s requirements. That would have an impact on curriculum and quality, on the College’s finances and on its reputation.

4.23. It was agreed that the Merger Risk Register should be amended to ensure that these risks were recognised and that suitable mitigating actions were put in place. In relation to the renovation of the North Kensington Centre, these might take the form of an agreement on compensation arrangements should DfE fail to deliver to specification and on time, or, alternatively, the transfer of control over the building and its renovation to Morley (on terms that recognised the additional management cost and risk that Morley would be taking on).

At this point Mash Seriki left the meeting

4.24. The Board then considered the decision-making process to be followed. The Principal confirmed that KCC, as the dissolving college, needed to give at least four months’ notice of its proposal to dissolve. Although this notice was not irrevocable, KCC would wish to ensure that Morley was committed to the merger (albeit subject to some conditions) before publishing the formal proposal. If the merger date were to be 1 November, the latest date for publication was 1 July.

4.25. KCC had argued that the publication date should be earlier than 1 July to allow consultation to begin in mid-June. Although colleges were only required to consult for a period of a month, KCC believed that a longer period of consultation was necessary and that the consultation should not begin during, or close to the start of, the holiday period, which for many North Kensington residents began in early July. 17 June had therefore been identified as the latest date for Morley to decide that it was ready to proceed. If that deadline were missed, it would not in KCC’s view be appropriate to publish the proposal and begin the consultation until 1 September, which would necessitate a 1 February merger date.

4.26. Following discussion, governors agreed that the consultation could begin before negotiations on the financial and funding ‘asks’ had been concluded, provided that they had the necessary assurance on Asks 1 to 5 and the availability of the North Kensington Centre, and were satisfied that agreement was likely to be reached on the remaining Asks 6 to 8. It was not essential that every detail should have been agreed before the proposal was published: indeed, some solutions might only emerge in the light of the responses to the consultation.

4.27. Governors went on to confirm that it was still their wish to proceed with the merger if the financial conditions could be met. They had received assurance that there was latent demand in Kensington and Chelsea for the sort of provision that Morley proposed to offer, and a generally positive response from local stakeholders. While the unstable political environment made it hard to be sure of continuing support from government, there seemed at the moment to be a will to make the merger happen; there would be an opportunity to test this at the meeting with ministers on 5 June.

4.28. Governors recognised that the merger presented some significant risks should the assumptions turn out to be optimistic or should it prove more difficult than

expected to secure the necessary quality improvements. They remained, confident, nevertheless, that the Morley management team had the skills and capacity to effect a turn-round. The merger presented opportunities as well as risks, including the opportunity to build a stronger, more responsive and more innovative college for the long term. The Deputy Principal added that, while the projected growth rates were higher than those that Morley had seen in recent years, similar results had been achieved by other colleges with a clear vision and effective marketing.

- 4.29. In conclusion, the Board agreed that work should continue towards the merger, but that no decision should be taken to move to Stage 2b until it had received substantial assurance in relation to the financial and funding 'asks'. In the mean time, the financial assumptions should be subjected to further testing.
- 4.30. Taking account of the time and the volume of business still to be considered, the Board resolved to adjourn the meeting until Tuesday 11 June at 5.00 pm, which was the date and time most convenient for the largest number of governors.

The meeting was adjourned at 6.30 pm and reconvened on Tuesday 11 June at 5.00 pm at the same location. Sara Robertson-Jonas then rejoined the meeting. Heather Fry, Steve Ketteridge, Susan Lindsey, Mash Seriki and Fiona Stephen were unable to attend the adjourned meeting and their apologies were accepted.

- 4.31. The Chair summarised the outcomes of the meeting that he and the Principal had attended on 5 June at Westminster, chaired by the Rt Hon Anne Milton MP (Minister of Apprenticeships and Skills), and involving the Rt Hon Nick Hurd MP (Minister for London and for Grenfell Tower victims work), David Jeffrey (ESFA) and members of SWC. The meeting had been requested by SWC in order to seek resolution of the issues around the ownership, renovation and continuing use of the North Kensington Centre and to encourage progress in decision making on the merger.
- 4.32. Ministers had expressed optimism about the prospect of Treasury approval for a funding package being available before the summer recess. That would mean that the biggest decision in financial terms, on the purchase and renovation of the North Kensington Centre, would have been made before any ministerial reshuffle. Governors noted that, in any case, the government commitment to deliver a positive outcome for the people of North Kensington seemed likely to survive any change of minister, or even of government.
- 4.33. Governors were pleased to note that a constructive relationship was developing with SWC, based on a recognition that the Morley proposal was currently the only realistic solution to the learning needs of the North Kensington community. While SWC had expressed some concerns about the current staff restructuring at KCC, it was generally understood that this process was being led by KCC, not by Morley. In answer to a question, the Principal said that the restructuring appeared to be driven primarily by a need for efficiency savings rather than any long-term strategy, and did not involve any change in the KCC curriculum.
- 4.34. Against this background, the Board noted that the focus of ministers and the North Kensington community was primarily on the Wornington Road building, rather than on the viability of the merged college that would be operating from that building. The ESFA was, however, aware of Morley's concerns about cash flow and income should adequate revenue funding and working capital not be secured.
- 4.35. The Director of Finance said that he was undertaking increasingly more detailed modelling to enable Asks 7 and 8 to be quantified more accurately. The results of this work would be considered at the Finance, Resources and Fundraising Committee meeting on 25 June. The Clerk was asked to extend an invitation to that

meeting to all members of the Governing Body. The possibility of a subsequent workshop session to review the options in detail was also mooted; the Project Manager confirmed that the Joint Management Implementation Group had considered a number of different scenarios, which could be subjected to further scrutiny by governors.

- 4.36. Governors had already recognised (see Minute 4.26 above) that they might receive a satisfactory response to Asks 1 to 5 while still lacking assurance in relation to Asks 7 and 8 (Ask 6 was different, as it depended on KCC rather than on funding bodies, although the impact of it not being met was similar). In addition, issues might arise from due diligence that would cause Morley to identify a requirement for greater assurance from funding bodies. These bodies would therefore need to maintain some flexibility during the pre-merger period.
- 4.37. The Board then considered again the timing of the notice to dissolve and the formal consultation. It was agreed that, as it now appeared unlikely that the necessary commitments from the DfE and others would be given before 17 June, the JTC meeting on that date should consider the option of beginning the consultation in mid-July and keeping it open until late September, with 'roadshows' (see Minute 6.3 below) scheduled for September. On that basis, while a 1 November merger date would be ruled out, 1 December (or another date in late November or early December) might be feasible.

5. Proposed merger – Stage 2b

- 5.1. The Board was pleased to receive a comprehensive report from the Project Manager indicating that all relevant information would be verified either through the due diligence process or through a review process to be undertaken jointly by the two colleges.
- 5.2. The Principal told the Board that, following discussions with KCC, and with due consideration of any past involvement that any firm might have had with KCC or its partner organisations, two shortlists of potential tenderers had been drawn up. RSM (Morley's current external auditor), Grant Thornton (Morley's former internal auditor) and PricewaterhouseCoopers LLP (PwC) had been identified as potential providers of financial due diligence; and Bates Wells Braithwaite (BWB), Eversheds Sutherland and VWV as potential providers of legal due diligence. BWB and Eversheds Sutherland were the College's current legal advisers. In answer to a question, the Principal said that the invitations to tender would not exclude the possibility of a single firm providing both financial and legal due diligence.
- 5.3. The Chair reported that governors who had not been able to attend the adjourned meeting had sought assurance that a number of specific areas would be reviewed, including:
- continuity of provision and the status of offers already made to prospective students;
 - health and safety certification;
 - any conditions attached to trusts, prizes or bursaries;
 - the authority of KCC under its governing documents to enter into the merger on the terms envisaged, and any implications for the legal status of Morley;
 - the compatibility of IT systems and software
 - contracts currently in force;
 - insurance arrangements;
 - the ownership of KCC's property; and

- any environmental issues related to any KCC sites.
- 5.4. The Project Manager confirmed that all these areas would be covered within the scope of due diligence. She was also able to assure the Board that close attention would be paid to staffing and sub-contracting issues at KCC. There would be an opportunity at the tendering stage for the College to identify priority areas for review.
- 5.5. Asked when due diligence should be undertaken, the Project Manager said that this would normally precede consultation, but in the unusual circumstances of this particular merger it was reasonable for the two processes to overlap. She advised that KCC staff were familiar with the process of responding to requests for information, but counselled against relying on obtaining rapid responses during August, when many staff would be on holiday. She considered nevertheless that the six weeks provided in the project critical path should be sufficient.
- 5.6. Governors noted that the Transition Grant that the College would receive before commissioning any due diligence work included £125k to cover the relevant costs. The Project Manager advised that this amount should be sufficient to allow for a thorough review both of KCC's financial position and of the business case, as well as legal due diligence. Following further discussion, the Board agreed to approve the scope of due diligence and to authorise the Project Manager to seek tenders from the firms listed in Minute 5.2 above. No contracts would be entered into until the availability of the Transition Grant was confirmed.

6. Joint Communications Strategy

- 6.1. The Board approved the draft Joint Communications Strategy, recognising that this was work in progress and that changes would be necessary as the merger proceeded. The Project Manager was asked to give early attention to the following issues:
- Key messages should include an explicit statement of the benefits that the merger would bring to local communities.
 - The 'risks and responses' section should take account of the role that middle managers could play in communicating the strategy and ensuring a consistent message.
 - The list of key stakeholders needed to include HE partners such as Ravensbourne University London and the University of West London as well as other partners with whom KCC was already working; some attempt should also be made to differentiate different types of stakeholders and, where appropriate, to assign priorities.
- 6.2. The Project Manager reported the view of the KCC Board that the formal consultation document should be based on the 'Working Together' document issued in March (Item 4a iv Appendix 1); this highlighted the benefits of the proposed merger for staff, students and communities. The KCC Board had made clear that, while it would be KCC that would formally be issuing the consultation document, it should include a joint statement from the two colleges. The Board supported this approach.
- 6.3. The Project Manager went on to describe the 'roadshows', which would provide opportunities for face-to-face discussions about the merger. These roadshows would be held at Westminster Bridge Road; the Stockwell Centre; the North Kensington Centre; the Chelsea Centre; and at four community centres in Kensington and Chelsea. It was agreed that staff and student advocates for the merger should be identified and asked to take part.

7. Property Strategy

See confidential minutes

8. Patrons, fellows and awards

See confidential minutes

9. Articles of Association

Having considered the report, the Board agreed to approve the proposal to amend Article 4.2 and Article 15.2.15 of the College's Articles of Association and to submit the proposed amendment to a general meeting of the Company.

10. Other business

None

11. Date of next meeting

Confirmed as Monday 15 July 2019 at the Stockwell Centre, 1 Studley Road, London SE4 6RA at 5.30 pm, preceded by a Board Development Session at 4.30 pm.

The meeting ended at 7.00 pm

Martin McNeill
Clerk to the Governing Body

Confirmed as a correct record at the meeting held on 15 July 2019

and signed by.....(Stuart Edwards) (Chair of that meeting)

SCHEDULE OF OUTSTANDING ACTIONS

Minute	Action	Responsible	By when	Progress
3/11 June 2019				
4.23	To amend the Project Risk register to recognise the risk of the North Kensington renovations not being completed on time or to a satisfactory standard	Project Manager	30 June 2019	
4.35	Invite all governors to 25 June meeting of FRF Committee	Clerk	21 June 2019	
6.3	Identify staff and student advocates to participate in roadshows	Project Manager	31 July 2019	