

UNIVERSITY OF ABERDEEN

UNIVERSITY COURT

**MINUTES OF EXTRAORDINARY MEETING HELD REMOTELY VIA MICROSOFT TEAMS
ON 21 AUGUST 2020**

Present: Maggie Chapman (In the Chair), Keith Anderson, Eleanor Bentley, George Boyne, Nuala Booth, Owen Cox, Jenny Fernandes, Louise Henrard, David MacFarlane, Iain Mackay, Lyndsay Menzies, Martin Mills, Anne Minto, Iain Percival, Esther Robertson, Joachim Schaper, Jenny Shirreffs, Diane Skåtun, Lindsay Tibbetts, Neil Vargesson, Cecilia Wallback and David Watts.

In attendance: Steve Cannon, Iain Torrance KCVO and Bruce Purdon (Clerk). From minutes 209 onwards David Beattie, Marion Campbell, Rob Donelson, Debbie Dyker, Karl Leydecker, Ruth Taylor and Richard Wells, and with Dr H Sveinsdottir (for minutes 223 to 226 only).

Apologies for absence were received on behalf of Colette Backwell and Gary McRae.

WELCOME AND THANKS

202 The Court welcomed Keith Anderson, Owen Cox and Louise Henrard to their first meetings of Court.

MEMBERSHIP OF COURT

203 The Interim Secretary reported that, as the Court had been advised by circulation, Colin Duncan had resigned as a member with immediate effect. The Interim Secretary shared with Court, orally, the letter he had received from Mr Duncan. The Court noted its thanks and appreciation for the significant contribution that Mr Duncan had made to the University in a variety of ways, including as a member of Court and several sub-committees, and as a member of the Business Committee of the General Council.

OSCR REPORT ON THE PAYMENTS TO THE FORMER PRINCIPAL

204 The Court received and discussed the OSCR Report on the Payments to the Former Principal (*copy filed with the principal copy of the minutes*) which had been first received and circulated in July 2020. The Court also received and noted a copy of the OSCR guidance on the duties of charity trustees which it had asked that all members be reminded of.

205 The Court formally noted the findings of the OSCR Report which, while acknowledging the urgent and challenging issues in the academic leadership of the University that arose in the summer of 2017, concluded that there had been a number of failings in the decision making of the Remuneration Committee and its accountability to Court, and that the members of the Committee had not exercised the required standard of care and diligence when agreeing the terms of the settlement with the former Principal. The OSCR Report had further concluded that this amounted to a breach by the charity trustees who were members of the Committee of their trustee duty to act in the interests of the charity and that, in terms of the 2005 Act, a breach of this duty was to be treated as misconduct in the administration of the University. OSCR had considered taking formal action but had concluded that it was not necessary or proportionate to do so because the present charity trustees were actively taking measures to put into practice recommendations resulting from this report and the related report from the SFC. The Court noted that OSCR had closed their inquiry on the understanding that the University reviewed its governance procedures and culture and implemented improvements in practice where necessary. The Court noted that the OSCR, therefore, expected to receive the outcome of that review and any action plan arising from it.

- 206 The Court noted that the working group established by Court to consider the findings of the SFC review had reported in June and the Court had approved its recommendations which addressed many of the findings arising from the OSCR review. It was not, therefore, considered necessary to reconvene that working group but the Court noted that the University's ongoing review of governance would respond to any further findings arising from the OSCR review, together with those already identified in the SFC report and the recommendations of the Court's working group in response to it. The Court was also reminded that the SFC report also required the University to undertake an externally facilitated review of its governance procedures and culture and to provide assurance to SFC about the actions and outcome resulting from that.
- 207 In discussion, the significance of the report and the importance of Court addressing its findings and demonstrating to OSCR and other stakeholders that this had been done was emphasised by a number of members. It was noted that an appropriate reporting tool to track this would be prepared as part of the wider governance review. The relevance of the report to the role and recruitment of the next Secretary was also noted. It was also suggested that the governance review consider if the agendas of Court and, potentially its sub-committees, should have as a standing item a reminder of the duties of charity trustees, in addition to regular review of their remits and delegated authority.

DECLARATIONS OF INTEREST

- 208 David Watts declared an interest as a member of the Senate in Mins 219-222. Anne Minto declared an interest as Chair of the Development Trust in Mins 212-214. David MacFarlane and Lindsay Tibbetts declared an interest in Mins 212-214. Eleanor Bentley declared an interest in Mins 227-230.

MINUTES

- 209 The Minutes of the meeting held on 30 June 2020 were approved.
- 210 The Court noted the updated action log (*copy filed with the principal copy of the minutes*).

MATTERS ARISING

UPDATE ON PAYMENT MADE TO THE FORMER PRINCIPAL

- 211 The Court received an oral update on the request the University had formally made to the former Principal to repay £119k of the monies paid to him. This included a report on a meeting that had been held with the former Principal at his request at which the University was represented by two independent members of the Court. The former Principal had agreed to consider the request and had been asked to provide a response by 21 August. The Court noted that no response had been received.

DATA BREACH

- 212 The Court received a paper which provided details regarding a recent security breach of information in the alumni/donor database, held in a back-up system by Blackbaud, the Raiser's Edge CRM provider (*copy filed with the principal copy of the minutes*). While a large number of universities and other organisations had been similarly impacted by the cyber-attack on Blackbaud, the matter had been referred to the Information Commissioner jointly by the Development Trust and the University who were considered to be joint data controllers in this context. The paper detailed the extent of the breach and the actions taken to date by the Development Trust and University in response, including communicating with the individuals whose data could potentially have been compromised. The advice and assistance provided to individuals in response to the data breach would be circulated to Court.
- 213 In discussion, it was confirmed that the retention of some individuals' financial information, unencrypted, had been in error and had been rectified. A number of members noted, however, the risks of data and GDPR breaches and emphasised the importance of a full review of processes and procedures being undertaken to reassure both Court and the ICO. While working together on the responses would be important, both the Development Trust and the

University needed to also be cognisant of their separate status as charities/entities and to distinguish on where responsibility for addressing any issues lay respectively.

214 Following discussion, the Court noted that:

- (i) In addition to the report made to the ICO, the data breach would be reported to the OSCR by both the Development Trust and the University;
- (ii) The data breach would be considered further by the Audit and Risk Committee at its October meeting;
- (iii) A third-party audit of University procedures in relation to GDPR compliance would be undertaken and a report to the Audit and Risk Committee and thereafter Court would be provided. The Development Trust would be undertaking separate audit arrangements reporting to the Development Trust Board.

ORAL REPORT FROM THE SENIOR GOVERNOR

215 The Court received an oral report from the Senior Governor on recent meetings she had undertaken on behalf of the Court and the University. The Senior Governor noted, with great sadness, the passing of Dr Ronnie Scott Brown, a distinguished alumnus, a former key member of the Court and a great friend and supporter to the University. The Court recorded its condolences to Dr Scott Brown's family.

216 The Senior Governor reported on a number of developments in the sector, noting in particular that the debate around the future of the USS pension scheme was intensifying and that this was likely to be a key issue that the Court focused on in the year ahead.

ORAL REPORT FROM THE PRINCIPAL

217 The Court received an oral report from the Principal in which he gave an update on the preparations for the new academic year in the context of the continuing pandemic. This had been made yet more challenging over recent weeks as a result of the current localised lockdown in Aberdeen and the consequences of both Scottish and UK Government decisions with regard to school-leaver qualifications. It was also noted that for many international students, access to air transport to the UK was in short supply but the University was seeking to reassure them that they would be able to take up their studies online until such time as they were able to travel to Aberdeen. At this stage, however, levels of deferrals and withdrawals from study were comparable with prior year which was encouraging. The Principal noted the positive discussions that had taken place with local trade union representatives regarding restrictions on pay. He noted, however, that the outlook for the year ahead remained highly unpredictable and potentially very challenging.

218 In discussion, it was agreed to take on board a suggestion that University communications to staff acknowledge that working from home in terms of loss of access to books/journals caused disruption for humanities staff as well as for science staff who may have lost access to research facilities.

REVIEW OF GOVERNANCE

219 The Court received a working draft report on the review of governance undertaken by the Interim University Secretary (*copy filed with the principal copy of the minutes*).

220 In presenting the report to Court, the Interim University Secretary emphasised that the report was a working draft and was intended as a stimulus for discussion and further development. It was also emphasised that the University was obliged by SFC and the OSCR to undertake such a review, with external facilitation, and to report the outcome to them. While the outbreak of the pandemic had put the process of external facilitation on hold, given that both the SFC and OSCR reviews had now reported, and the likelihood of continuing disruption from the pandemic, that process of external facilitation would resume.

221 There followed an extended discussion of the content of the report, the principal points of which were recorded as follows:

- members welcomed the breadth of the report and that it sought to challenge Court to discuss a range of issues, particularly in light of the criticisms of the OSCR and SFC reviews. It was agreed, however, that it would be helpful if the report could include an executive summary of the recommendations together with a mapping of how the findings of the OSCR and SFC reviews were being addressed, by both the governance review and the recommendations from the Court's working group (in response to the SFC findings) that had already been agreed by Court in June 2020;
- some members agreed with the report's commentary that behaviours and culture were as important, if not more so, as procedures and policies were to achieving good governance;
- more clarity was requested in the report's articulation of the difference between corporate governance and the governance of the university as a charity and its legal status;
- it was suggested that the scope of the review should be extended beyond Court to include the Senate and the General Council as two of the constitutional pillars of the university's governance structure;
- a range of views were expressed on the issue of the size and composition of Court. A number of members noted that the current composition had only been introduced in 2017 following an extensive period of discussion and consultation and that it would be premature to commence a further review or changes at this point. It was also suggested that making changes to the staff representation on Court at this time, given the financial uncertainties arising from the pandemic and potential decisions that might be required, would not be helpful. A number of members, however, did consider the Court's size to be too large to be truly effective, although some felt it was more important to ensure there was the right skills mix of members. In response to the comments, it was confirmed that the differing views on the matter were why the issue had been included in the paper. It was also clarified that any suggested changes to staff representation were hypothetical but the author envisaged that if a reduction were to be considered, it would be with an equivalent accompanying reduction in the independent membership to achieve a reduction in size, meaning the overall proportion of staff:non-staff would remain the same;
- the publication of a new Code for Audit Committees was noted and it was suggested that the composition of the Audit Committee should be reviewed to include more independent members of Court rather than co-opted lay members who had fewer opportunities to engage with the business of the University and issues in higher education;
- the report's suggestion of there being a deputy chair/senior governor was felt by some to be unnecessary and that the role of the Secretary could be refocused on governance instead. It was also noted, however, that a deputy chair was generally common practice in other Scottish institutions;
- it was clarified that the review had not intended to suggest that the contribution of independent members was not valued or was insufficient but that it had been suggested to the reviewer that at times in the past, staff and independent members had not had a shared understanding of the organisational culture of the University. The report only intended to note that this point was made and to suggest that the University needed to do more to enable all members to understand its organisational culture and provide greater opportunities to engage with, and be visible to, the community. The phrasing of this section of the report would, however, be revised to present this more clearly;
- a number of members felt that the idea of live-streaming or open meetings of Court, while transparent, would result in less robust discussion and scrutiny and would diminish good governance rather than enhance it;
- a number of members felt the presence of senior management team members at meetings was helpful and if they were not to attend, this would inconsistent with live-streaming/open meetings should Court pursue that;
- corrections to the descriptions of the membership of UCTL and the PG/UG committee were noted and would be made;
- the importance of induction for student members and helping them to understand where and how they could contribute to good governance was noted;
- the potential for greater use of digital technology within Court, in particular to assist decision making by circulation of Court, was noted;
- the emergency powers group was felt to be unnecessary when it was evident that Court could be convened remotely if required. It was also suggested that if decisions were being taken by circulation, 'drop-in' briefings regarding these could be offered to members with senior management;

- further consideration was required as to whether Court was covering all the relevant business in its agenda – wellbeing of staff and students was suggested as an example of an issue that Court had not discussed in depth.

222 Following discussion, members were encouraged to provide further comments to the Interim University Secretary. The Court then noted that:

1. The report would be developed further, taking into account the feedback that had been received, and brought back to the next meeting, with an action plan;
2. The Governance and Nominations Committee would oversee the next steps in the review and the process of external facilitation would be taken forward.

RESPONSE TO SFC REVIEW OF COHERENT & SUSTAINABLE PROVISION

223 The Court received a draft response from the University to the SFC call for evidence in regard to a review of coherent provision and sustainability in Further and Higher Education (*copy filed with the principal copy of the minutes*). The draft response had been requested by SFC by 10 August 2020 and the University had provided an interim response by that date pending approval by Court.

224 The Court discussed whether the review was likely to become focused on more short/medium term issues arising from the pandemic rather than the long-term future of tertiary education in Scotland. Some members also noted, with disappointment, that the review appeared to rule out the consideration of certain policy issues altogether.

225 The Court agreed that it would be helpful to provide more information on the range of work that the University was engaged in to increase articulation with the further education sector. It was also noted that the review was of the tertiary education sector and that it would be important to address the role of universities in contributing to it rather than that of higher education alone.

226 The Court approved the draft response subject to the inclusion of the further information noted above.

MEMBERSHIP OF GOVERNANCE AND NOMINATIONS COMMITTEE

227 The Court received a paper on the membership of the Governance and Nominations Committee (*copy filed with the principal copy of the minutes*). The paper outlined that there were two vacancies for independent members and a vacancy for the role of Chair, following the resignation of Mr Duncan, which was to be undertaken by an independent member.

228 The Court noted that normal practice was to seek nominations for vacancies and for these to be considered by the Governance and Nominations Committee and recommendations brought to Court. Nominations had previously been sought for one of the vacancies but not the new vacancy. However, given that the vacancies were on the Governance and Nominations Committee and that one of them related to the position of Chair, the Court was asked to approve appointments on an interim basis to enable the Committee's forthcoming meeting in September to proceed and business for Court in September, including recommendations on the membership of other committees, to be progressed. In addition, the Chair of the Committee was a member of the selection panel for the University Secretary and Chief Operating Officer which was due to meet imminently.

229 The Court, therefore, approved the following appointments on an interim basis:

- Chair and Independent Member of the Committee: Ms Eleanor Bentley on an interim basis;
- Independent Member: Mr Gary McRae on an interim basis.

230 The Court also noted there was a further vacancy for an independent member following the conclusion of Mr Iain Mackay's membership of the Committee.

ELECTION OF STAFF MEMBERS TO COURT

- 231 The Court received a paper on the Election of Staff Members to Court (*copy filed with the principal copy of the minutes*). The paper considered whether the nominations and elections process, which had been postponed earlier in the year, should proceed in September and October 2020 or be postponed for a further period given the continuing circumstances of the pandemic, in particular that some staff would remain on furlough during that period. The Court noted that if it opted to postpone the elections, then further consideration would need to be given to whether the period of appointment of the incumbents should be extended again for a short period of time to ensure there was no gap in the representation of staff on Court.
- 232 In discussion, it was clarified by members of the Senior Management Team that the University was able to communicate with staff on furlough leave and that they would, therefore, be able to participate in the nominations and elections process. A range of views were expressed on the implications of a large number of new members of staff joining the Court in November at the point where it potentially might need to consider some very complex issues and the challenge this might present to them and the work of the Court. Mr MacFarlane noted his particular concern regarding this point and that his preference was, therefore, for a further short extension to the appointment of the incumbents. However, a number of members felt that on balance, the elections should proceed but that there should be no gap in the staff representation on Court at this critical time for the University.
- 233 The Court agreed that the nominations and elections process should be taken forward and concluded by 31 October 2020.

ROUTINE BUSINESS FOR INFORMATION

USS CONSULTATION ON DEBT MONITORING

- 234 The Court received, for information, a paper which provided details of the latest USS consultation regarding the proposed debt monitoring framework and the University's response to the consultation (*copy filed with the principal copy of the minutes*).

REPORT ON BUSINESS CONSIDERED BY CIRCULATION

- 235 The Court received a paper to homologate items of business it had approved by circulation (*copy filed with the principal copy of the minutes*). The Court noted the items approved had been:
- Strategic Planning Forecast Return to SFC
 - Collective Agreement: Variation to Staff Terms and Conditions of Employment 2020-21 and 2021-22.

DATE OF NEXT SCHEDULED MEETING

- 236 The Court noted that the next scheduled meeting would be on Wednesday, 30 September 2020 9am to 3pm.

Note by Clerk: Due to Covid-19 restrictions a signed copy of the minutes could not be arranged. These are, however, confirmed by the Clerk as the agreed record of the meeting.

Date: 30 September 2020