

Item: 7

Education, Leisure and Housing Committee: 7 June 2023.

Orkney College – Review of Governance Arrangements.

Joint Report by Corporate Director for Strategy, Performance and Business Solutions and Corporate Director for Education, Leisure and Housing.

1. Purpose of Report

To consider revised governance arrangements in respect of Orkney College.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 16 February 2022, when considering actions being taken in regard to a business planning review of Orkney College, as well as other relevant issues, the Education, Leisure and Housing Committee recommended that a short-life working group, to conclude by the end of 2022, with a remit to inform a draft detailed business review and business plan for Orkney College, be established.

2.2.

That, on 5 July 2022, when considering appointments to the College Management Council Sub-committee, the Council resolved that the Corporate Director for Strategy, Performance and Business Solutions should review the composition and operation of the College Management Council Sub-committee, and submit a report to the Education, Leisure and Housing Committee no later than May 2023.

2.3.

Options regarding future governance in respect of Orkney College, as detailed in section 5 of this report, with the preferred option being establishment of a stakeholder group.

It is recommended:

2.4.

That the College Management Council Sub-committee be disestablished.

2.5.

That an Orkney College Stakeholder Group, acting as a strong link into the communities that Orkney College serves, providing local oversight and ensuring information passes between the College and local stakeholders, be established, with the following core membership:

- Five Elected Members of the Education, Leisure and Housing Committee (including Chair and Vice Chair of the Committee).
- Four Business Community representatives.
- Four Community/Third Sector representatives.
- Two Student representatives.
- One Staff representative.
- Two representatives from the University of the Highlands and Islands.

2.6.

That existing members of the College Management Council Sub-committee, where currently in post, should be appointed to the Orkney College Stakeholder Group, for the period up to July 2024.

2.7.

That the Terms of Reference for the Orkney College Stakeholder Group, as set out in section 4.3 of this report, be approved.

2.8.

That the Corporate Director for Strategy, Performance and Business Solutions and the Corporate Director for Education, Leisure and Housing should submit a joint report, to the meeting of the Education, Leisure and Housing Committee to be held in June 2024, reviewing the terms of reference and operation of the Orkney College Stakeholder Group, together with proposals for the appointment of members and term of office.

2.9.

That the Chair of the Education, Leisure and Housing Committee, as Chair of the governing body of the local academic partner, be appointed to UHI's Partnership Forum.

3. Introduction

3.1.

On 16 February 2022, the Education, Leisure and Housing Committee considered actions being taken in regard to a business planning review of Orkney College, as well as other relevant issues. As a result, the Committee recommended:

- That a short-life working group, to conclude by the end of 2022, with a remit to inform a draft detailed business review and business plan for Orkney College, be established.
- That the Executive Director of Education, Leisure and Housing should submit a report, to the Education, Leisure and Housing Committee in early 2023, advising of the outcome of the detailed business review for Orkney College and presenting a business plan.

3.2.

On 5 July 2022, when considering appointments to the College Management Council Sub-committee, the Council resolved that the Corporate Director for Strategy, Performance and Business Solutions should review the composition and operation of the College Management Council Sub-committee, following receipt of expressions of interest in respect of vacancies for business and community representatives, and submit a report to the Education, Leisure and Housing Committee no later than May 2023.

3.3.

On 7 March 2023, the Council noted:

- That, on 25 October 2022, the Council resolved that the constitutional arrangements for the College Management Council Sub-committee be temporarily amended for the period up to May 2023, by increasing the numbers of both the business and community representatives from three to four, by which time the outcome of all the outstanding reviews relating to Orkney College should be known.
- That the outstanding reviews relating to Orkney College were due to be reported through the Committee process during June 2023.

3.3.1.

The Council subsequently resolved that the term of appointment of the four business representatives and the four community representatives on the College Management Council Sub-committee be extended until such time as the outcome of the reviews relating to Orkney College, including a review of the composition and operation of the Sub-committee, were reported to the relevant Committees, and thereafter to Council, currently expected to be July 2023.

4. College Governance

4.1.

The main functions of college governance, usually undertaken by the governing body, include:

- Approving the strategic direction of the college.
- Approving annual estimates of income and expenditure (the budget).

- Scrutinising performance of the quality of the college's performance and improvement plans.
- Monitoring performance of the college's financial plan.
- Recruiting, appointing and reviewing the performance of senior postholders.

4.2.

The college leadership team, directed by the Principal, is responsible for the development of plans and performance of the college within the bounds set and agreed by the governing body.

4.3.

There are other functions which could be more suited to an advisory board, such as:

- Understanding the impact of the college on the communities it serves.
- Advising on initiatives that might help meet the business and social needs.
- Feeding into curriculum delivery that helps meet industry needs.
- Overviewing performance of the college in support of quality improvement plans.
- Developing valuable contacts in the community, including employers.

4.4.

Orkney College has been governed by a variety of different bodies since its inception in 1995. Since then, each successive governing body has forged strong ties within the community, creating a proactive and responsible organisation attuned to the business and cultural needs of Orkney. This has often led to the creation of courses needed to upskill certain sectors of the Orkney workforce to meet the economic needs of the county and to bridge gaps in education provision.

5. Options for Governance of Orkney College

5.1.

The short-life working group, referred to at section 3.1 above, met on several occasions during late 2022/early 2023 and discussed, at length, governance surrounding Orkney College.

5.2.

Orkney College is part of Orkney Islands Council: the Council employs the staff and owns the assets and liabilities of the college. Orkney College is also an assigned college to UHI, as the Regional Strategic Body, whereby UHI is responsible for administering funds for the provision of fundable further and higher education by the College. Within this context of co-parenting, it is essential to the operation of Orkney College that all parties understand:

- What the various responsibilities are with regard to college governance, both in the context of the college forming part of the Council, and the requirements of UHI and the Scottish Funding Council.

- Who bears these responsibilities.
- How these responsibilities are discharged.
- The relationships between governance and the management role of the College Senior Leadership Team.

5.3.

Accordingly, various options for college governance were considered, including:

- Status Quo.
- Establish the existing Sub-committee as a Committee.
- Amalgamate the existing Sub-committee with the Education, Leisure and Housing Committee.
- Disestablish the Sub-committee and establish a stakeholder group.

5.4. Status Quo

5.4.1.

As set out in section 4.1 above, there are various functions which a governing body is required to undertake. Currently, with the exception of recruiting, appointing and reviewing senior postholders, these should be undertaken by the existing College Management Council Sub-committee.

5.4.2.

Whilst the present arrangements conform with existing Council governance structures, there is a perceived delay in decision-making, given the Sub-committee has no executive authority and governance is spread across three levels – the Sub-committee, the Education, Leisure and Housing Committee and, ultimately, the full Council.

5.4.3.

The College also has to respond to the governance requirements of UHI, mainly in relation to financial reporting. In this regard, Orkney College must comply with the [Code of Good Governance for Scotland's Colleges](#).

5.4.4.

However, the existing arrangements are not operating effectively as a college governing body, with the non-elected members in particular, feeling disenfranchised by the process as well as being uncomfortable with the strict governance processes which a Council sub-committee requires to follow.

5.4.5.

For these reasons, the status quo is not recommended.

5.5. Establish existing Sub-committee as Committee

5.5.1.

Existing membership of the Orkney College Management Council Sub-committee comprises the following:

- Five Elected Members of the Education, Leisure and Housing Committee, one of which must be the Chair or Vice Chair of the Committee.
- Three Business Community representatives (with voting rights).
- Three Community/Third Sector representatives (with voting rights).
- Two Student representatives (with voting rights).

5.5.2.

Following a recruitment exercise in 2022 to fill vacancies for business and community representatives, given the exceptional calibre of the candidates, the above membership was temporarily increased to include four business and four community representatives, pending the outcome of this review.

5.5.3.

Establishing the existing Sub-committee as a standalone committee would have the advantage of discharging the main responsibilities of a college governing body without being part of a committee with a wider focus.

5.5.4.

However, as set out in section 10 below, at least two-thirds of a Committee must be Members of the Council. Accordingly, with 10 non-elected members, as at present, there would need to be a minimum of 20 Elected Members, basically the full Council. A committee with a membership of approximately 30 is not considered practical and would be an outlier in the current Committee structure.

5.5.5.

Alternatively, the number of non-elected members could be reduced which would lead to the potential loss of dedicated individuals who are committed to the successful operation and development of the College. A process would need to be identified to achieve this reduction, noting that the individuals were all appointed within the last 12 months.

5.5.6.

For these reasons, establishing the existing Sub-committee as a Committee of the Council is not recommended.

5.6. Amalgamate Sub-committee with existing Education Committee

5.6.1.

Amalgamating the existing Sub-committee, both remit and membership, within the remit of the Education, Leisure and Housing Committee, would fall foul of the same membership restrictions as outlined in section 5.5 above. This would be further compounded by the fact the Education, Leisure and Housing Committee already has five other non-elected members, namely the three religious representatives and the two teacher representatives.

5.6.2.

For this reason, amalgamating the existing Sub-committee into the Education, Leisure and Housing Committee is not recommended.

5.6.3.

However, consideration of subsuming the remit of the existing Sub-committee into the Education, Leisure and Housing Committee, is discussed further in the next option, that of establishing a separate stakeholder group, given that the role of governing body requires to be delivered.

5.7. Establish Stakeholder Group

5.7.1.

There was general agreement by the short-life working group that, although a governing body is required, primarily to fulfil legal and financial obligations, including through the College's partnership with UHI, there is also a clear role for a group to assist and support the College's Senior Leadership Team to continually develop the college offering. Section 4.3 above sets out various functions which such a group could undertake.

5.7.2.

If established, the purpose of the group would not be to act in any official decision-making capacity, with delegated authority, but to provide a strong link into the communities that Orkney College serves, providing local oversight and ensuring information passes between the College and local stakeholders. The group would be involved in the development and review of various policies, strategies, plans and projects, with reference to input from the group included in reports presented to the Education, Leisure and Housing Committee.

5.7.3.

The group could also advise on effective ways of ensuring the right learning is in the right place, help ensure local accountability for the quality of the learning experience and delivery of strong outcomes for learners, as well as ensuring the College is effectively linked into relevant local developments, research and strategic opportunities, priority projects and partnerships.

5.7.4.

For these reasons, the recommended option is to disestablish the formal sub-committee and establish a stakeholder group, which affords the opportunity for open and frank discussions without being restricted by the governance processes and procedures of a formal sub-committee. The role of the governing body would be undertaken by the Education, Leisure and Housing Committee, with appropriate input from the stakeholder group.

6. Membership of Stakeholder Group

6.1.

As stated above, because the role of governing body is still required, membership of the stakeholder group should include elected members, to provide an effective link back to the Education, Leisure and Housing Committee when relevant items of business are being considered. UHI should also be represented on the stakeholder group, given Orkney College is a partner of UHI.

6.2.

It is therefore proposed that core membership of the stakeholder group should comprise the following:

- Five Elected Members of the Education, Leisure and Housing Committee (including Chair and Vice Chair of the Committee).
- Four Business Community representatives.
- Four Community/Third Sector representatives.
- Two Student representatives.
- Two Staff representatives.
- Two representatives from UHI.

6.3.

There will be scope for the stakeholder group to co-opt additional members depending on the matters under discussion/development. These may include representatives from other Council services, as well as external agencies, such as HIE.

6.4.

For clarity, the staff representatives should not be trade union representatives, as the stakeholder group will not be considering operational matters, such as staffing and employment matters. These matters will continue to be progressed through existing arrangements.

6.5.

Should the proposal to establish the stakeholder group be approved, it is proposed that existing members of the College Management Council Sub-committee, where currently in post, be appointed to the stakeholder group, for the period up to July

2024. A further report will be submitted to the Committee in June 2024 reviewing the terms of reference and operation of the stakeholder group, as well as proposing arrangements for the appointment of members and the term of office.

7. UHI Partnership Forum

7.1.

As the Council is a partner in UHI and Orkney College is an assigned college in terms of funding, and given UHI's role as the regional strategic body, it is appropriate that the Council, as the governing body, should also be represented on various groups at UHI level.

7.2.

The primary role of the Partnership Forum of UHI is to bring together university court members, the chairs of the academic partners and other key partners to ensure the university partnership delivers high quality tertiary education strategically across the university partnership.

7.3.

As the governing body of Orkney College is the Council, it is proposed that the Chair of the Education, Leisure and Housing Committee be appointed to UHI's Partnership Forum.

8. Corporate Governance

This report relates to the Council complying with governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

9. Financial Implications

9.1.

Orkney College is an entity providing further and higher education, whose assets and liabilities are wholly owned by Orkney Islands Council. The Chief Executive of the Council is the accounting officer for Orkney College, as it is part of the Council's services. The Council is the employer of College staff.

9.2.

Orkney College is a provider of Further and Higher Education and is an assigned college by virtue of The Assigned Colleges (University of the Highlands and Islands) Order 2014. The Post 16 Education (Scotland) Act 2013 established Regional Strategic Bodies, which receive funding from the Scottish Funding Council. UHI, as a Regional Strategic Body, is the principal funder of Orkney College.

9.3.

It is a requirement of the FE Financial Memorandum between the Scottish Funding Council (SFC) and UHI that there will be a Financial Memorandum between UHI and each of its assigned colleges. The current Financial Memorandum between UHI and Assigned Colleges, which took effect from 1 January 2016, states that the Regional Strategic Body (RSB) requires the governing body of the College to ensure that “the College plans and manages its activities to remain sustainable and financially viable. The RSB may attach terms and conditions to the payment of grant made to its colleges. It is a term and condition of grant payment from the RSB that the governing body of the College and its designated officers comply with the requirements set out in the FM”.

9.4.

The RSB will seek at all times to work in a spirit of partnership with the College, including maintaining regular dialogue with the College and, where appropriate, its representative bodies. The shared aim of that partnership will be to work collaboratively to support the College deliver its strategic priorities and commitments in terms of the Regional Outcome Agreement with SFC, and to ensure that the RSB can deliver its regional priorities and undertake its statutory and other functions.

9.5.

Accordingly, both UHI and the Council have financial accountabilities for public funding in which Orkney College is implicated.

9.6.

Orkney College is required to set a balanced budget, with income received from UHI, as the regional strategic body, for further and higher education, together with course fees and other income, such as café sales, requiring to balance expenditure.

10. Legal Aspects

10.1.

Section 57(3) of the Local Government (Scotland) Act 1973 permits the Council to appoint non-members to a committee charged with discharging the Council’s functions. However, at least two thirds of the committee must be Members of the Council.

10.2.

For a sub-committee, that subsection specifically states “but at least two-thirds of the members appointed to any such committee (other than a sub-committee) shall be members of that authority or those authorities, as the case may be”. Accordingly, the subsection is clear in that the “two thirds” provision does not apply to a sub-committee.

10.3.

Unlike a committee, there is no limit on the number of non-members of the authority that can be on a sub-committee.

10.4.

In accordance with Standing Order 11.5, the consent of the Council is required to appoint members to a sub-committee who are not members of the Council.

11. Contact Officers

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