

Optimum Support

Open University Students Association

13th Update Prepared by Tim O'Brien (TJOB) – 30 September 2019

Phased Route Map to Incorporation Project:

Phase	How	Who Responsible for Delivery	By When	Status	Commentary
1) Confirm background to project and obtain understanding of project aims	Research and discussion	TJOB with Tom Murdoch (TM) of Stone King (SK), Rob Avann (RA) and Peter Cowan (PC).	06/17	Done	
2) Determine approach to the project and confirm approval to proceed including with Company Limited by Guarantee (CLG) as incorporation vehicle	Meet with RA & Trustees	TJOB/RA/Trustees	08/17	Done	
3) Establish working party of OU Students Association personnel and External Professional advisers (EPAs)	Meet as a group and agree responsibilities and reporting lines	TJOB/RA/TM	09/17 onwards	Done	See list of EPAs below
4) Prepare "consultation" pack for stakeholders including OU, OU Students Association membership etc., this to include a communications plan with milestone dates.	Working Party (WP) to develop briefing including the use of FAQs etc.	TJOB/RA	9/19	Done	All stakeholders have been regularly updated and informed as necessary. The regular updating of the Route Map has served as a communication vehicle for the OU, the CEC and OU Students Association Trustees and has been well received. The process used for students/members' consultation is at 5) below. This magazine article, website and social media posting all proved helpful and were well received.

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5) Plan a consultation with students (members) via the University's student consultative forums.	Based on data assembled in 4) above	RA/TJOB/ Jerard Bretts (JB)	03/18	Done	Following discussions with JB, it has been decided (and endorsed by the CEC) not to have a formal consultation process but instead to publish an informative article in OU Student magazine. The article will be supported by associated promotion via OU Students Association's website and social media It is envisaged that this will invite comments/questions.
6) Draft informative article for the OU Student magazine (see 5) above) and associated information on the website and social media	RA to commission and collate comments/ questions received. RA & TJOB to review/action as necessary	RA/TJOB	03/18	Done	The article was drafted by RA/TJOB with assistance and input from Cath Brown, Steph Stubbins and members of the Board of Trustees. It duly appeared, with support from the OU Students magazine team, as planned in the March 2018 edition. The article was also posted on a special section of the website (www.oustudents.com/incorporation). This will host future papers on the project. A FAQ document is envisaged (see 7 below) as a follow up.
7) Prepare a general FAQ document for the website	RA/TJOB to populate based on feedback to article at 6) above plus input from CEC	RA/TJOB	4/18	Done	Awaiting feedback, one comment received to date.

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8) Identify assets, liabilities, staff, contracts, undertakings etc. to be transferred and any incumbrances to so doing	RA working with TJOB & EPAs	RA/TJOB/TM/Auditors	7/19	In hand	<p>April 2019 update: Following discussions with TM at Stone King, the transfer of all aspects can be readily incorporated into the Transfer Agreement which SK will draw up. There is no necessity to obtain audited figures for assets and liabilities as everything will be transferred from the Trust to the CLG. RA and Alison Lunn (AL) are collating details of contracts, staff and undertakings as necessary for inclusion (probably as appendices) in the Transfer Agreement . TM will advise further as necessary.</p> <p>July 2019 update: The Transfer Agreement is being progressed by Lara Jones (LJ) at SK. RA & AL are working through the various contracts, undertakings etc to be transferred. Where necessary, Letters and Agreements have been prepared – see Appendix for the list of these and progress of same. Staff transfer is covered under TUPE (see 25) below). All matters satisfactorily identified for the Transfer Agreement which was completed and approved on schedule (see also 29) below).</p>

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9) Consider aspects to be addressed re University Superannuation Scheme (USS) including confirming the "window of opportunity" (Relevant Period)	Review guides and information provided by USS. Identify the USS contact and liaise as necessary	RA/ARC Pension Advisor	8/19	Done	<p>USS and our advisors (Anne-Marie Winton and Aneliese Sweeney at ARC Pensions Law) have continued to liaise. USS have agreed to enter into a Flexible Apportionment Arrangement (FAA) (subject to the completion of a funding test as required by legislation). The FAA will transfer the liabilities from the Trust to the CLG. It is envisaged that the FAA will be drafted along with a new Deed of Accession (DOA) to enter the CLG into USS. This will be based on the same terms applicable to the current OUSA DOA. RA will follow up to ensure that the legal documentation is available for review by Trustees in good order.</p> <p>April 2019 update: Via AS at ARC, USS have confirmed that no further information is required, approval has been granted for the FAA & DOA . USS's solicitors will be sending documents trough for final review. There should be no problem with meeting the 1 August 2019 deadline.</p> <p>July 2019 update: The FAA & DOA have been finalised and are in agreed form. ARC (Aneliese Sweeney) are liaising with USS to ensure final documents are issued . These will come into effect on 1 August 2019 and they did.</p>
10) Identify any revisions made to the OU Students Association Constitution as part of the quadrennial review or changes made due to the Remits Review that need to be reflected in the incorporation documents.	Feedback to be obtained in 11/17. CEC in 01/18 to confirm	RA/PC	01/18	Done	These have been identified and are the subject of the relevant CEC paper.

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11) Draw up a "Memorandum of Understanding" of the transfer to a CLG (including its proposed name) which is endorsed by OU, OU Students Association Trustees (and CEC?)	To be drafted initially for OU Students Association Trustees' meeting on 2/11/17. Input also from OU & CEC to be requested	TJOB/RA with OU Students Association Trustees	01/18 onwards	Done	As Conference have now approved incorporating OUSA, the MoU has now served its purpose.
12) Inform the Vice Chancellor's Executive (VCE) to obtain their agreement "in principle" to proceed	JB to prepare a paper for VCE	JB in conjunction with RA & TJOB	12/17	Done	A draft prepared by JB has been agreed by RA & TJOB and was submitted to the VCE at their January 2018 meeting. No objections in principle were raised. VCE will be kept informed through JB (Or his successor) going forward.
13) Consider how (and when) the CLG membership should be determined (drawing the distinction with the student association membership).		TJOB/RA with OU Students Association Trustees	6/19	Done	It is envisaged that the Trustees will form the corporate members. This requires formalisation at a future Board Meeting. (see also 19) below). April 2019 update: It is intended to do this at the Board meeting on 10 May 2019. July 2019 update: This has now been done with all Trustees becoming "Company Law" members.

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14) Confirm instructions to SK to draft legal incorporation and related documents		TJOB/RA/TM	04/19	Done	<p>April 2019 update: At a conference call meeting with TM on 5 April 2019, instructions were confirmed for SK to:-</p> <ul style="list-style-type: none"> Finalise the approved Articles. July 2019 update: Done (see 15)) Form the CLG - this will be called The Open University Students Association Ltd. July 2019 update: Done (see 16)) As Draft Articles (see 15) below) are now approved, these can now be formalised so as implementation of the incorporation can take place in August 2019 . July 2019 update: Done. See 16). Draft the transfer agreement between the Trust and the CLG. July 2019 update: In hand. See 24) Prepare the registration of the new CLG charity with the Charity Commission (CC) and OSCR. July 2019 update: Done (see 17)).
15) Articles of Association (in effect the Governance Document) drafted for OU Students Association "Ltd"	Review NUS Model documents to determine their applicability for OU Students Association and refine as appropriate	RA/TJOB/TM	03/19	Done	<p>A "working party" of RA: TJOB: & PC have worked on these over the summer (2018) . A final draft (Version 8) has been passed to TM of Stone King and to JB & IS of OU for review and comment. The CEC will be invited to give theirs at their October meeting .</p> <p>April 2019 update: All stakeholders including Trustees and the University Council, have approved the Final Draft (16).</p>
16) OU Students Association incorporated as a CLG (OU Students Association CLG)		TM/LJ	6/19	Done	<p>July 2019 update: Incorporated on 4 June 2019 with a company registration no. 12031028.</p>

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17) Register OU Students Association CLG with the Charity Commission (CC) and the Office of the Scottish Charity Regulator (OSCR)		TM/LJ	07/19	Done	<p>April 2019 update: See 14). This cannot be done concurrently as OSCR will only accept registration once the primary regulator (CC) have approved the “new” CLG Charity. TM has advised that so long as the CC’s approval is received in time (there is evidently currently a significant backlog of applications at the CC – SK will expedite the process as much they can), the new CLG Charity can come into effect on the target date of 1/8/19. The OSCR registration, if it should prove necessary, can be done after 1/8/19 with the old OUSA Trust being retained as a “shell” entity until it is eventually lapsed.</p> <p>July 2019 update: CC registration of the CLG satisfactorily completed on 11 June 2019 with a new Charity number 1183837. OSCR application submitted on 20 June 2019, awaiting feedback at time of writing.</p> <p>OSCR registration confirmed on 21 August 2019.</p>
18) Consider and plan the arrangements for transfer of employees (including USS).		RSM	07/19	Done	<p>April 2019 update: RSM are liaising with RA and AL on this. They will advise on the appropriate communication with staff, produce all the necessary paperwork and oversee a 6-week consultation period commencing 1 June 2019. No problems are envisaged.</p> <p>July 2019 update: TUPE consultation process actually commenced on 17 June 2019 and will end on 29 July 2019 (See 25)). All employees written to on 30/7/19 to signify transfer to CLG . No dissention and all staff evidently content.</p>
Formal appointment of Directors/Trustees and Officers of OU Students Association CLG. Fix the 1 st Board Meeting formally to approve appointments	To be formalised at OU Students Association Trustees’ Meeting	RA/TJOB	6/19	Done	<p>April 2019 update: It is planned to do this at the 10 May 2019 Board meeting.</p> <p>July 2019 update: 1st Board Meeting of the CLG held on 13 June 2019 at which all appointments formally approved.</p>

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<p>19) Relationship Agreement between OU Students Association & OU to be reviewed and modifications to be proposed to reflect new legal CLG entity, to include the formalisation of shared services agreements (e.g. payroll, accommodation, IT support)</p>		RA/JB/IS/JV	08/19	Done	<p>RB/JB/JV have been working on this and considering matters with Head of Property, Regions & Finance Dorian Holloway (DH). The consensus was that modifications should be made to the Relationship Agreement so that it details the accommodation and shared services (e.g. Payroll & Pensions, IT Support) as in-kind/no charge support and that there should not be a formalised lease agreement. A revised version was approved by the OU Students Association Board of Trustees and by the OU's Council.</p> <p>July 2019 update: Relationship Agreement formal letter drafted by SK was signed by Liz Marr (Pro Vice Chancellor (Students)) and RA on 28 June 2019 which agrees that the Relationship Agreement transfers to the Association Limited at the effective date with no further changes. Paymaster Agreement for Payroll services etc finalised in agreed form with OU on 9 July 2019 pending formal signature by both OUSA and OU . Duly approved.</p> <p>Other shared services agreement and licence/lease to occupy office accommodation in hand, with assistance from SK and the PVC Students office team. No problems anticipated.</p> <p>Progressing – meeting with Andrew Russell of OU scheduled for 1/10/19. This will now be taken forward off the PRM.</p>
<p>20) Application of OU Students Association CLG with CC; seek consent for transfer of assets and liabilities from OU Students Association to OU Students Association CLG and closure or modification of OU Students Association Trust entity</p>		TM/RA/TJOB	6/19	Done	<p>July 2019 update: Section 105 letter drafted and submitted to CC by SK</p>

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21) Full Due Diligence Review to meet all appropriate requirements	Refer to TM's outline plan for the key elements of this.	TJOB/TM/RA	04/19 Onwards	Done	See 14). The principal issue is for Trustees to confirm that they are satisfied that the CLG is the best possible model for governance of the Charity going forward. If this not already minuted, it should be done so at the 10 May 2019 Board meeting. The on-going status of OSL & OUSET should also be confirmed.
22) Finalise asset transfer and shared service agreements, arrangements and mechanisms		TJOB/TM/RA/Auditors	8/19	Done	See 8) & 14). July 2019 update: Other relevant and necessary matters being progressed including ICO Registration and HMRC Registration for the CLG. All confirmed by AL.
23) Set up appropriate banking arrangements for the CLG		RA	06/19	Done	AL has been in touch with NatWest. They have commented – “As the charitable company is replacing the unincorporated charity and there is provision in the existing organisation’s governing document for it to transfer its assets and liabilities to another organisation with similar or the same objects, there is no need to set up different bank accounts.” There will be a need to complete and submit a new bank mandate for the CLG once it is formed. The account numbers will remain the same. AL has obtained the necessary form for completion in due course. July 2019 update: New bank mandate formalised and approved at Board meeting of CLG on 13 June 2019.
24) Transfer of Undertakings for Protection of Employment (TUPE) Process		TM/RA/RSM	8/19	Done	July 2019 update: Per 18) above, TUPE consultation underway. Employee Q & A sessions held on 27 June 2019 and 2 July 2019 . Unison attended the 27/6 meeting. UCU will attend a discussion on 11 July 2019. No problems encountered or envisaged. See 18) above.

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25) Confirm payroll arrangements can be transferred seamlessly	Refer to OU Payroll department	RA/RSM	8/19	Done	RA/AL liaising with Chris Linn in Payroll Dept. July 2019 update: See 20) above re Paymaster Agreement in agreed form pending final approval. OK.
26) Communication Programme to all relevant stakeholders.		RA/JB/TJOB	08/18	Done	July 2019 update: CEC comments would be welcomed on what form further communication to student members should take after completion of the project and the effective transfer to the new company is completed. Final communication was issued following CEC feedback on 1 August.
27) Draft resolution for Conference.		RA	05/18	DONE	Conference (6/18) passed the resolution to incorporate.
28) Approval of all transfer and novation contracts and documentation (N.B. OSL and OUSET to be comprehensively covered here including transfer of OSL share ownership to the CLG)		RA/TJOB/TM	07/19	Done	July 2019 update: See 8) & 14). At their first Board meeting on 13 June 2019, the Board of Trustees authorised the Chair (the President) to formally approve this on their behalf when the Transfer Agreement is produced for review and approval. The University's PVC Students has authorised a member of her team to witness the agreement. All done.

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29) OU Students Association CLG as an incorporated body "goes live"			08/19	DONE	CLG went live as scheduled on 1 August 2019.
30) Status of OU Students Association CLG formally ratified by OU	At the March 2019 Council meeting.	RA/JB/IS/JV	03/19	Done	

External Professional Advisors

Role	Organisation	Lead contacts
Project Manager	Optimum Support	Tim O'Brien (TJOB)
Legal advisors	Stone King(SK)	Tom Murdoch (TM); Lara Jones(LJ)
Pensions legal advisors	ARC Pensions Law	Anne-Marie Winton (AMW) Aneliese Sweeney (AS)
External Auditors	James Cowper Kreston, Oxford	Jess Curley (JC); Mike Farwell (MF)
HR Consultants	RSM UK	Christie Weston, Senior HR Consultant (CW)
Pension Scheme	USS	Clare Kearns (CK), Joanna Rigby (JR)
OU Liaison	OU	Liz Marr (PVC Students), Andrew Russell (AR), Ian Simpson (IS), Jo Vango (JV).

OU Students Association Project Delivery Team: Rob Avann (RA); Alison Lunn (AL).

Notes

- Comments in **bold** are new on this **13th** update (July 2019);
- **Orange** shaded – phase completed.