

# THE OPEN UNIVERSITY STUDENTS ASSOCIATION LIMITED

Company number: 12031028

Charity number: 1183837

## MINUTES OF THE FIRST MEETING OF THE BOARD OF TRUSTEES

HELD ON: 13 June 2019 AT 8pm via Conference Call

Present: *Alison Kingan (Student Trustee); Adelaide Ribaud (Student Trustee); Annabel Lane (External Trustee); Cath Brown (Officer Trustee); Caroline Cowan (Officer Trustee); Claire Wallace (Student Trustee); John Paisley (Student Trustee); Kirsty Lamb (Student Trustee); Stephanie Stubbins (Officer Trustee).*

In attendance: Rob Avann, Alison Lunn (minutes), Tim O'Brien (External Project Manager, Incorporation).

### 1. Apologies for absence/notice and quorum requirements

- 1.1 Apologies for absence had been received and accepted from Cinnomen McGuigan, Student Trustee.
- 1.2 It was noted that Trustees had unanimously agreed to a meeting on short notice in accordance with Article 31 of the Company's Articles of Association (the "**Articles**").
- 1.3 It was confirmed that the meeting was quorate.

### 2 Certificate of Incorporation and Registration as a Charity

- 2.1 It was noted that the Company had been incorporated as a company limited by guarantee on 4 June 2019 (company registration no: 12031028) and its registration with the Charity Commission (England and Wales) was completed on 11 June 2019 (charity registration no: 1183837). It was further noted that the application to register with the Office of the Scottish Charity Regulator(OSCR) is being prepared and it was expected to be submitted early next week. Trustees wished to record their thanks to Rob Avann, Alison Lunn and Tim O'Brien for all their hard work on this project to date.
- 2.2 The Articles with which the Company had been incorporated were circulated for information. Final changes which were required further to advice from Stone King LLP in order to achieve registration included:
  - 2.2.1 amending references to the Company name throughout to read 'The Open University Students Association Limited';
  - 2.2.2 clarifying the fact, at article 16.2 of the Articles, that each Company Law Member (the Trustees being the Company Law members in accordance with article 12 of the Articles) shall have one vote at those meetings – this change was required to meet the legal requirements that follow when a company uses a name which includes the word 'Association';
  - 2.2.3 clarifying the fact, at Articles 16 and 17 of the Articles, that resolutions of the Company Law Members either at a Company Law Meeting or passed by written resolution shall be effective without the need for Student Member approval (note that article 9 continues to require approval of 75% of the Student Members voting at the Association's conference in addition to a Special Resolution of the Company Law Members);
  - 2.2.4 clarifying the fact that Conference will not amount to Company Law Meetings. Trustees noted that they would separately consider a minor amendment to the definitions section of the Articles (49.1.20) to make this change as part of a Members Meeting after this Board Meeting;

- 2.2.5 clarifying the definition of 'Association Officer' such that it now reads 'the student representatives (including the Officer Trustees) elected to such posts further to a secret ballot of Student Members';
  - 2.2.6 adding definitions of 'Conference, Deputy President, General Meeting and Vice President';
  - 2.2.7 making minor typographical amendments.
- 2.3 Trustees confirmed their acceptance and approval of all of these minor changes.

### **3 First Trustees and Members**

- 3.1 It was noted that:
- 3.1.1 Alison Kingan (Student Trustee);
  - 3.1.2 Adelaide Ribaud (Student Trustee);
  - 3.1.3 Annabel Lane (External Trustee);
  - 3.1.4 Caroline Cowan (Officer Trustee);
  - 3.1.5 Cath Brown (Officer Trustee);
  - 3.1.6 Cinnomen McGuigan (Student Trustee);
  - 3.1.7 Claire Wallace (Student Trustee);
  - 3.1.8 John Paisley (Student Trustee);
  - 3.1.9 Kirsty Lamb (Student Trustee); and
  - 3.1.10 Stephanie Stubbins (Officer Trustee),
- had been appointed as the first Directors of the Company in the statement delivered to Companies House.
- 3.2 It was noted that these first Directors, who were also the subscribers to the Company's Memorandum of Association, are automatically appointed as Trustees, pursuant to Article 18.1 of the Company's Articles of Association.
- 3.3 It was further noted that these first Directors, as subscribers to the Company's Memorandum of Association, are also Members of the Company.

### **4 Interests in proposed transactions and/or arrangements with the Company**

- 4.1 The Trustees declared the nature and extent of their interest in:
- 4.1.1 proposed transactions to be discussed and other arrangements to be considered at the meeting – i.e. any personal interests of any of the Directors in matters for discussion at a meeting (in accordance with the requirements of section 177 of the Companies Act 2006 (*interest in proposed transaction or arrangement*)); and
  - 4.1.2 existing transactions and/or arrangements in accordance with the requirements of section 182 of the Companies Act 2006 – i.e. any personal interests of any of the Directors in current arrangements or existing transactions (*interest in existing transaction or arrangement*).
- 4.2 It was noted that a general notice is a sufficient declaration of interest for the purpose of the declarations in paragraph 4.1 above. Alison Kingan asked if her position as a Trustee of OUSET was a matter for declaration. Rob Avann advised that this and interests of other Trustees in OUSET and/or OSL had been noted in the application to the Charity Commission. It was noted that this also applied to Stephanie Stubbins for OSL and to Caroline Cowan for both OSL and OUSET. Cath Brown and Stephanie Stubbins also declared their interest as employees of the Association. Finally, Rob

Avann also declared an interest as the Chief Executive was a member of both the OUSET Board of Trustees and the OSL Board of Directors.

- 4.3 It was noted that Article 39 of the Company's Articles of Association requires that a Trustee subject to a Personal Interest (being an interest a financial interest or an interest that does not arise in the ordinary course of being a Member or a Trustee (for example, being a member of a club or society) must absent themselves from discussions of the Trustees in certain circumstances.

## **5 Appointment of Secretary**

- 5.1 It was resolved that Alison Lunn should be appointed as the Secretary of the Company with immediate effect.
- 5.2 ACTION: The Secretary was directed to file Form AP03 at Companies House to notify Companies House of her appointment.

## **6 Appointment of Chair and Deputy Chair and authority for Chief Executive and Deputy Chief Executive (Finance and Resources)**

- 6.1 It was resolved that Cath Brown, the President, be appointed as the first Chair of the Company pursuant to Article 35 of the Company's Articles of Association (in addition to being appointed as ex-officio Deputy Chair, also pursuant to article 35).
- 6.2 It was noted that this was a temporary measure and that once a recruitment process has been completed an alternative Chair will be appointed with the President simply continuing as Deputy Chair.
- 6.3 It was noted that on an appropriate date (after an alternative Chair has been recruited and appointed further to a later resolution of Trustees) that the appointment of Chair and Deputy Chair would be ratified by a majority of the Central Executive Committee in due course.
- 6.4 It was also resolved to delegate authority for the day-to-day administration and operation of the Company (with authority to carry out any activity of the Company in connection therewith) to Rob Avann and Alison Lunn, in their respective roles of Chief Executive and Deputy Chief Executive (Finance and Resource) of the Unincorporated Association until such time as the assets and undertaking of the Unincorporated Association shall transfer to the Company, when they shall take on equivalent roles with equivalent authority for the Company.

## **7 Address of Registered Office**

It was noted that the situation of the Registered Office of the Company is PO Box 397, Walton Hall, Milton Keynes, MK7 6BE.

## **8 Bye-laws**

- 8.1 It was noted that Stone King LLP was instructed to review and prepare a proposed revised set of Bye-Laws to ensure compatibility and consistency with the Articles. This revised set will be presented in due course for consideration by the Trustees and Central Executive Committee and, if thought fit, for adoption in accordance with article 40 of the Articles. Rob Avann clarified that this review is focused on ensuring compatibility and consistency with the Articles of Association and would not include any substantive changes to the content, unless made by recommendation due to the absence of pertinent information. Caroline Cowan would be kept informed in her capacity as Vice President Administration.

## **9 Appointment of Committees**

9.1 It was resolved, pursuant to Articles 24 and 25 of the Company's Articles of Association, to appoint the following individuals to the following committees:

9.1.1 Claire Wallace as the Board of Trustees' representative on the Appointments Committee, joining the other members of the Committee as prescribed under the Bye-laws;

9.1.2 Alan Measures, Andrew Hulme, Annabel Lane, Caroline Cowan and Adelaide Ribaud as members of the Remuneration Committee;

and it was noted that the duties of the committees, the powers and restrictions on those committees and the quorum requirements were set out in the relevant bye-laws and Terms of Reference.

9.2 It was noted that, in accordance with Article 25.3 that the Trustees may delegate all financial matters to any committee provided that such committee had at least one member who is a Trustee. It was also noted that all proceedings of committees must be reported promptly to the Trustees and that every committee must appoint a secretary (in a non-company law sense and purely as a secretary for those committees) for that purpose.

## **10 Central Executive Committee**

10.1 It was noted that article 26 of the Articles sets out basic information in respect of the composition and activities of the Central Executive Committee ("CEC").

## **11 Accounting Reference Date**

11.1 It was noted that on incorporation the Company had been automatically allocated an Accounting Reference Date of 30 June.

11.2 It was also noted that: Stone King LLP have been instructed to amend the financial year end to on 31 July; that the Change of Accounting Reference Date, Form AA01 which had been signed by a Trustee will be submitted to Companies House; and that Stone King LLP will confirm once this change has been carried out.

11.3 It was resolved that the change to the Accounting reference date to 31 July was approved and that accordingly the first set of Accounts for the Company will be made up to 31 July 2019, as advised by the auditors. Alison Lunn advised that dormant company accounts for the period 4 June 2019 to 31 July 2019 would be filed. Due to merger accounting rules, the results of the unincorporated charity for the year ended 31 July 2019 would be presented as comparative figures in the company accounts to 31 July 2020.

## **12 Transfer of Assets and Undertaking**

12.1 It was noted that the Open University Students Association (charity registration no. 1144251, "**Unincorporated Charity**") has proposed to transfer the entirety of its assets and undertakings to the Company.

12.2 The transfer of the Company's assets will also result in all the employees of the Unincorporated Charity transferring to the Company further to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) .

12.3 For the avoidance of doubt, it was noted that the employees being transferred under TUPE will include the two trustees, Cath Brown and Steph Stubbins who will be employed by the Company in line with their existing contracts of employment with the Unincorporated Charity, the details of which were approved by the Unincorporated Charity in April 2018.

- 12.4 It was noted that the advice of RSM and ARC Pensions Law has been sought with regard to all TUPE and related matters.
- 12.5 All of the Trustees declared the fact that they are conflicted from approving the transfer and Transfer Agreement given that they are all charity trustees of the existing Unincorporated Charity. It was noted that Stone King LLP has included a request for an appropriate approval from the Charity Commission in this regard in the Charity Commission application which will need to be in place before the Trustees' approval of the transfer can be effective (the "**Conflict Approval**").
- 12.6 Subject to the Conflict Approval being received, it was resolved that:
- 12.6.1 the Trustees confirmed their agreement to accept this transfer of assets, employees and undertakings, which will be based on the terms set out in a draft Transfer Agreement provided by Stone King LLP; and
- 12.6.2 on behalf of the Trustees, Cath Brown (signing in the presence of a witness) was given authority to agree the terms of the transfer, agree suitable amendments to the draft Transfer Agreement, to finalise it, to proceed with its execution and to carry out all such further steps as may be expedient in giving effect to the transfer and related matters, including transfer of pensions, establishment of payroll arrangements etc. Trustees requested that they be kept informed if any changes arise in relation to the transfer agreements.
- 12.7 It was also noted that, subject to further enquiries being completed and the following being required, a resolution of the Members of the Company approving that transfer will be passed in order to satisfy the requirements of section 190 of the Companies Act 2006.
- 12.8 The dissolution of the predecessor organisation was discussed and Tim O'Brien advised that this should be left in place until all transfer arrangements had been concluded. A firm recommendation would be made to Trustees at a later date.

### **13 Trustees who will also be employed by the Company**

- 13.1 This discussion was of a confidential nature and has therefore been reserved to the confidential minutes.

### **14 HMRC Registration**

- 14.1 It was noted that the Company requires HMRC registration to enable the Company to benefit from the tax reliefs available to charities.
- 14.2 All but 3 Trustees have completed, and returned to the Secretary, Fit and Proper Persons declarations, in the form of HMRC's standard declaration.
- 14.3 ACTION: The Secretary will make individual contact with those Trustees still to complete the declaration. It was noted that these would be kept by the Company and not supplied to HMRC.
- 14.4 The Trustees also confirmed that the details of the following Trustees shall be provided to HMRC to be Responsible Persons for the purposes of the HMRC registration: Cath Brown and Caroline Cowan. In addition, the details of Alison Lunn shall be provided to HMRC to be the Company's Authorised Official.
- 14.5 ACTION: The Secretary was instructed to submit the online form "Get Recognition from HMRC for your Charity" (previously form ChA1) to HMRC.

## **15 Appointment of Bankers**

- 15.1 The appointment of Bankers was considered, and it was resolved:
- 15.2 that a banking relationship will be maintained with National Westminster Bank Plc (the “**Bank**”) in accordance with the bank mandate circulated to the meeting (the “**Mandate**”);
- 15.3 that the individuals identified as Authorised Signatories from time to time (being at the date of the meeting the following persons: Magda Hadrys, Sam Harding, Pete Turner, Verity Robinson, Beth Metcalf, Rob Avann, Wendy Burrell, Alison Lunn, Cath Brown, Caroline Cowan) may, in accordance with the Signing Rules:
- 15.3.1 sign cheques and give instructions for Standing Orders, Direct Debits, electronic payments, banker’s drafts and other payments on the accounts even if it causes an account to be overdrawn or exceed any limit;
- 15.3.2 sign, accept or endorse bills of exchange;
- 15.3.3 request and give counter-indemnities for the issue of letters of credit or Guarantees (including bonds, indemnities and undertakings);
- 15.4 that Authorised Signatories identified in the Signing Rules for unlimited amounts may, in accordance with the Signing Rules:
- 15.4.1 sign facility agreements for overdrafts or the issue of letters of credit or Guarantees;
- 15.4.2 sign agreements for electronic products, including payment systems, and appoint or remove administrators and operators of those electronic products. The Company authorises the administrators and operators to exercise the powers detailed in the terms of each electronic product. These powers may be extensive and include the power to make payments and access information on behalf of the Company, and in the case of administrators, the power to appoint and remove other administrators (with the same powers) and operator;
- 15.5 that any Authorised Signatory may give other instructions or requests for information to the Bank in relation to the accounts; opening accounts with the same Signing Rules and Authorised Signatories; closing accounts; or other banking services or products;
- 15.6 that the Bank may accept instructions that do not have an original written signature provided the Bank is satisfied that the instruction is genuine and subject to any other agreement the Bank may require for those instructions;
- 15.7 that individuals identified as Call Back Contacts (Alison Lunn, Wendy Burrell, Rob Avann) can be contacted by telephone by the Bank to confirm or correct any instructions or information that the Bank has received;
- 15.8 that the Mandate will continue until the Company completes a new mandate / passes a new resolution advising the changes in authority on the accounts.
- 15.9 It was agreed that other authorised signatories may be added at a later date.

## **16 Appointment of Auditors**

- 16.1 It was resolved that James Cowper Kreston Chartered Accountants be appointed auditors of the Company to hold office until the conclusion of the first General Meeting at which Accounts are laid.

## **17 Appointment of Legal Advisers**

17.1 The appointment of Legal Advisers was considered, and Stone King LLP was appointed.

There being no further business the meeting terminated at 21:05.