

THE OPEN UNIVERSITY STUDENTS ASSOCIATION LIMITED

Company number: 12031028

Charity number: 1183837

MINUTES OF A MEETING OF THE BOARD OF TRUSTEES

HELD ON: 26 July 2019 AT 1:15pm

Present: Cath Brown (Officer Trustee); Caroline Cowan (Officer Trustee); Annabel Lane (External Trustee); Adelaide Ribaud (Student Trustee); Stephanie Stubbins (Officer Trustee); Claire Wallace (Student Trustee).

In attendance: Rob Avann, Alison Lunn (Company Secretary, minutes), Tim O'Brien (via telephone).

1 Apologies for absence/notice and quorum requirements

- 1.1 Apologies for absence had been received from Alison Kingan (Student Trustee); Kirsty Lamb (Student Trustee); Cinnomen McGuigan (Student Trustee); John Paisley (Student Trustee).
- 1.2 It was noted that the 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 noted that the meeting was quorate, in light of there being more than five Trustees present and at least one from each category of Trustee.

2 Interests in proposed transactions and/or arrangements with the Company

- 2.1 The Trustees declared the nature and extent of their interest in:
 - 2.1.1 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*)) – the interests disclosed were the fact that all of the Trustees are also charity trustees of the Open University Students Association, charity registration no. 1144251 ("**OUSA**") and that two of the Trustees (Stephanie Stubbins and Cath Brown) are also employed by OUSA, whose employments will transfer to the Company following the incorporation; that that two of those Trustees (Caroline Cowan and Alison Kingan) also serve as Trustees for the Open University Students Educational Trust ("**OUSET**") (charity number 285189 and SC038300); that two of those Trustees (Caroline Cowan and Stephanie Stubbins) also serve as Directors for OUSA (Services) Ltd ("**OSL**") (company number 03074570); and finally that the Association's Chief Executive (Rob Avann) was also a Trustee for OUSET and a Director for OSL.
 - 2.1.2 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*) – interests disclosed as above,
- 2.2 It was noted that a general notice is a sufficient declaration of interest for the purpose of the declarations in paragraph 2.1 above.
- 2.3 It was noted that in light of the entire Trustee board also being charity trustees of OUSA, Charity Commission authorisation of the transfers involved in the

incorporation and the associated conflicts had been sought and granted as the Charity Commission had agreed to exercise a section 105 order. A copy of the draft section 105 order agreed by the Charity Commission was presented to the meeting and it was further noted that the final sealed order had been received earlier on the day of the meeting, 26 July 2019.

2.4 It was also noted that the Charity Commission had provided its prior consent to a members' resolution being passed to approve a substantial property transaction to the extent that the same is required on the facts.

2.5 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 conflicts in the context of the proposed incorporation it was noted that this requirement was waived in respect of those conflicts so authorised.

3 Bye-laws

3.1 It was noted that at a previous meeting that Stone King LLP had been instructed to review and prepare a proposed revised set of Bye-Laws to ensure compatibility and consistency with the Articles.

3.2 This revised set of Bye-Laws which include comments provided by Stone King were circulated to the meeting which, once finalised, will be presented for consideration by the Trustees and Central Executive Committee and, if thought fit, for adoption in accordance with article 40 of the Articles.

4 Accounting Reference Date

4.1 Since the last meeting at which it was confirmed that Stone King were instructed to amend the financial year end to 31 July 2019, it was noted that this is in hand and the Change of Accounting Reference Date Form AA01 signed by a Trustee will be filed at Companies House.

4.2 The Trustees **RESOLVED** that Alison Lunn be authorised to continue to liaise with Stone King in respect of this and be authorised to proceed to update Companies House and the Charity Commission accordingly.

5 Transfer of Assets and Undertaking

5.1 Further to the update provided at the first board meeting on 13 June 2019 in respect of the proposed transfer of the entirety of OUSA's assets and undertakings to the Company and the resolutions passed at that meeting, a draft transfer agreement has been prepared and circulated. A copy of that transfer agreement was presented to the meeting (the "**Deed of Transfer**").

5.2 It was also noted that the Charity Commission had provided the necessary consent required in accordance with section 201 Charities Act 2011 to approve a substantial property transaction in the event that such a classification is appropriate to the proposed transfer. Further to the last meeting, a members' resolution had been prepared providing the necessary members' approval to the transaction in accordance with section 190 Companies Act 2006. A copy of that members' resolution had been circulated to the meeting. It was noted that it had been passed by a resolution of the Members of the Company at a meeting earlier on 26 July 2019.

5.3 It was therefore **RESOLVED** that:

- 5.3.1 it was in the best interests of the Company to proceed with the transfer from OUSA in the manner outlined in the Deed of Transfer in order to effect the 'incorporation' of OUSA;
 - 5.3.2 the Transfer Agreement between OUSA and the Company be approved on the terms set out in (or similar to) the form of the Deed of Transfer circulated to the meeting;
 - 5.3.3 Further to the discussion at the previous Board meeting on 13 June 2019, it was agreed that any two of the Trustees be authorised to execute the Deed of Transfer and any other deed or instrument that may be necessary to give effect to the provisions of the Deed of Transfer (with any final changes as they in their discretion may consider to be necessary or appropriate) and be authorised to carry out any other activities required in connection with the incorporation. Stephanie Stubbins and Caroline Cowan were authorised by the Board to complete this task.
 - 5.3.4 A draft of the Deed of Accession and Flexible Apportionment Arrangement relating to the transfer of pension rights in the Universities Superannuation Scheme was circulated with the agenda. It was **RESOLVED** that Stephanie Stubbins and Caroline Cowan were authorised to execute on behalf of the Open University Students Association Limited the Flexible Apportionment Arrangement relating to the Universities Superannuation Scheme between Universities Superannuation Scheme Limited, The Open University Students Association Limited and the Open University Students Association. They were further authorised to execute the Deed of Accession between The Open University Students Association Limited and Universities Superannuation Scheme Limited.
- 5.4 It was noted that the proposed effective date of the transfer was midnight on 31 July 2019 or any such later date as the Company and the Trustees (as defined in the Transfer Agreement) agree (the "**Effective Date**").

6 Transfer of shares in OUSA (Services) Limited ("OSL")

- 6.1 The Trustees noted that one of the assets transferring to the Company further to the Transfer Agreement was the entire share capital in OSL. The Trustees noted that it had been brought to their attention that a review of the identity of the current shareholders of the OSL shares had been undertaken in light of OUSA not having legal personality and so not being able to hold legal title to the shares. The conclusion of that review was that the last purported transfer of shares was to two individuals to hold the shares on behalf of OUSA.
- 6.2 Transfer documentation has been prepared to arrange a transfer of shares from those individuals to the Company, to be executed by a director of OSL in accordance with the respective rights in the OSL articles of association of OSL in the event that shares are held by an ex-representative of OUSA. That transfer documentation (being the draft instruments of transfer) was presented to the meeting. It was noted that Stephanie Stubbins had been authorised by the OSL Board in her capacity as an OSL Director to execute this transfer.
- 6.3 The Trustees reviewed the draft documentation provided and **RESOLVED** that the share transfer to the Company be approved as being in the best interests of the Company.

7 Amendment to OSL's articles of association

- 7.1 It was noted that OSL's articles of association would benefit from minor amendments clarifying that post-incorporation, references to the 'Association' refer to the Company, that references to the 'Executive Committee' refer to the Central Executive Committee and that article 15(a) should be amended to properly reflect the eligibility

for director appointments. It was also noted that, following advice from the auditors James Cowper Kreston, article 25 should be removed.

7.2 A draft memorandum recording the decisions of the Company as sole member of OSL making the above changes and a revised set of articles of association were circulated to the meeting.

7.3 It was **RESOLVED** that the proposed amendments and the revised articles of association be approved and that any one director of the Company be authorised to sign the memorandum of a meeting of the sole member of OSL passing the special resolutions amending the OSL articles of association on behalf of the Company (following the transfer of the shares in OSL to the Company). Annabel Lane was duly authorised by the Board to sign the memorandum on their behalf.

8 Relationship Agreement between the Open University and the Company

8.1 A copy of the relationship agreement between OUSA and the Open University which was last approved by the Open University Council in March 2019 was circulated to the meeting.

8.2 It was noted that a letter provided to the Open University to document the agreement that the relationship agreement will be effective between the Open University and the Company with effect from the Incorporation Date had been prepared ("**Relationship Transfer Letter**").

8.3 The Trustees noted that the Relationship Transfer Letter had been approved and executed on behalf of the Company on 28 June 2019 and a copy of the final executed letter was circulated at the meeting.

9 Paymaster Agreement between the Open University and the Company

9.1 It was noted that a paymaster agreement had been prepared to document the terms and conditions on which the Open University will provide the paymaster services to the Company (the "**Paymaster Agreement**"). The Paymaster Agreement has been prepared and agreed with the Open University, as such arrangements are in the best interests of the Company.

9.2 The Trustees noted that this agreement has been agreed and executed on behalf of the Company and the final executed version of the Paymaster Agreement was circulated at the meeting.

9.3 It was noted that the terms and conditions that apply to the data protection position and responsibilities under the Paymaster Agreement would be documented separately.

10 Shared Services Agreement between the Open University and the Company

10.1 It was noted that a shared services agreement was to be prepared to document the terms and conditions on which the Open University will provide the Services (defined therein) to the Company.

10.2 A draft shared services agreement has been drafted and is in circulation to be approved and finalised and will be dealt with at a later meeting.

11 Licence between the Open University and the Company

11.1 It was noted that a licence agreement was to be prepared to document the terms and conditions on which the Open University will permit the Company to occupy the Premises (defined therein).

11.2 A draft licence agreement has been drafted and is in circulation to be approved and finalised and will be dealt with at a later meeting.

12 Resource Sharing Agreement with OSL

12.1 It was noted that a resource sharing agreement had been prepared to document the terms and conditions on which the Company will provide the Services (defined therein) to its trading subsidiary, OSL.

12.2 A draft resource sharing agreement has been drafted and is in circulation to be approved and finalised and will be dealt with at a later meeting.

13 Resource Sharing Agreement with the Open University Students Educational Trust (“OUSET”)

13.1 It was noted that a resource sharing agreement had been prepared to document the terms and conditions on which the Company will provide the Services (defined therein) to OUSET, a charity with which the Company works closely.

13.2 A draft resource sharing agreement has been drafted and is in circulation to be approved and finalised and will be dealt with at a later meeting.

14 Student Data Sharing Agreement

14.1 It was noted that a student data sharing agreement had been prepared to document the data protection position and responsibilities of both the Open University and the Company

14.2 A draft student data sharing agreement has been drafted and is in circulation to be approved and finalised and will be dealt with at a later meeting.

15 Registrations

15.1 It was noted that the online form “Get Recognition from HMRC for your Charity” (previously form ChA1) had been submitted to register with HMRC and that Alison Lunn was waiting for a response in respect of the same from HMRC and this was in hand.

15.2 It was also noted that registrations for VAT, Corporation Tax and the ICO were in hand and being dealt with by Alison Lunn.

There being no further business the meeting terminated at 1:45pm.

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Chairman