



**Inquiry Report made under Section 33 of the Charities and
Trustee Investment (Scotland) Act 2005**

University Of Aberdeen SC013683

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Executive summary

We opened an inquiry into the University of Aberdeen ('the University') on 10 July 2019 following liaison with the Scottish Funding Council (SFC) under our [Joint Working Agreement](#) with them. The concerns related to statements in the University's 2018 Annual Accounts regarding substantial settlement payments made to the former Principal (the Principal) in connection with his retirement.

Our inquiry sought to establish whether, in reaching and making the settlement payments, the charity trustees (members of the University Court) met their trustee duties under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act); in particular their duty to act in the interests of the University and with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

Our inquiry found evidence that the charity trustees were faced with an urgent need to address a potentially difficult situation in the academic leadership of the University in the summer of 2017. Nevertheless, the level of care and diligence that was exercised by the charity trustees who were members of the Remuneration Committee (a sub-committee of Court) in reaching a settlement with the Principal fell below the required standard. In particular, we found that they:

- breached the terms of the Financial Memorandum under which the University received funding from the SFC, resulting in a liability to return a portion of the funds
- breached the University's financial regulations in failing to obtain guidance from the SFC before making a severance payment
- failed to give proper consideration to a range of options to in order to satisfy themselves that settlement reached with the Principal was in the interests of and represented best value to the University
- were unable to provide evidence that the settlement decision reached by the Remuneration Committee was fully reported to and considered by the University Court as required by Scottish Code of Good Higher Education Governance

We consider this amounts to a breach by the charity trustees who were members of the Remuneration Committee of their trustee duty to act in the interests of the charity. In terms of the 2005 Act a breach of this duty is to be treated as misconduct in the administration of the University.

OSCR has considered taking formal action but we have concluded that it is not necessary or proportionate to do so. This is because the present charity trustees are actively taking

measures to put into practice recommendations resulting from this report and the report from the SFC. In particular, we have made recommendations regarding decision making by the Court and its sub-committees including recording of meetings, reporting and accountability.

In addition, the majority of the charity trustees on the Remuneration Committee at the time of the events in question are no longer charity trustees of the University and are not charity trustees of any other charity.

Background

Background to the University

The University of Aberdeen was founded as King's College in 1495. Its current composition dates to 1860 with the merger of King's and Marischal Colleges. It is one of the four ancient universities of Scotland, governed by the Universities (Scotland) Acts 1858-1966 and the Higher Education Governance (Scotland) Act 2016. It was recognised as a charity (SC013683) in 1975.

Finance and administration of the University is the responsibility of the University Court (the Court), members of which are the charity trustees. This is confirmed by a formal letter of engagement sent to all new Court members on taking up post, which highlights their responsibilities as charity trustees and forms part of their induction.

In accordance with the provisions of the Universities (Scotland) Acts and the Higher Education Governance (Scotland) Act 2016, the composition of Court is set out by means of an ordinance granted by the Privy Council. On 19 July 2017 a new composition to comply with the Higher Education Governance Act (Scotland) 2016 and the Scottish Code of Good Higher Education Governance was approved by the Privy Council including a set of transitional provisions through which the new composition would begin to take effect. The Court was therefore in a state of transition at the time of the events which were the subject of our inquiry. A number of positions were vacant or had very recently been appointed.

The Remuneration Committee is a sub-committee of Court with responsibility for determining and reviewing the salaries, benefits and terms and conditions of the Principal and such other staff as the Court deems appropriate. The Committee operates under a remit and delegated authority agreed by the Court to which it reports. As a result of the changes in Court membership beginning on 19 July 2017, the position for a staff member of Court on the Remuneration Committee became vacant. One member of the Committee was newly appointed.

Prior to 19 July 2017 there were eight independent members of Court, the Senior Governor and seven co-opted independent members. One of the independent members was also Convener of the Remuneration Committee.

The University's purposes include:

- The advancement of education;
- The advancement of health;
- The advancement of civic responsibility and community development;
- The advancement of the arts, heritage, culture or science

The University is grant funded (for part of its income) directly by the SFC under a Financial Memorandum which sets out the formal relationship between the two bodies and the terms and conditions of the grant. Responsibility for compliance with the Financial Memorandum rests with the Court.

Background of our inquiry

In June 2019 we liaised with the SFC under our Joint Working Agreement concerning remuneration received by the Principal of the University as disclosed in the University's accounts for the financial year ended 31 July 2018. Note 7 'Staff Costs' states:

The remuneration (comprising of salary and pension contributions) of the former Principal, [*deleted], in the financial year was £312,000 (2017: £327,000). This was 7.9 times (2017: 8.4 times) the median remuneration of the workforce which was £39,551 (2017: £38,891). Including the contractual notice payment described below, the calculation is 15.0 times the median.

In August 2017, [*deleted] intimated his intention to retire to allow the University to begin the process of appointing a successor. Due to the considerable time required to complete the recruitment process, it was agreed that [*deleted] would remain in office until his successor was appointed and in post. [*deleted] formally gave his notice to retire in July 2018, he was entitled to a payment of £282,000 in respect of a contractual 12 month notice period. A further payment of £7,000 was in respect of related expenses.

The accounts disclosed a total of £601,000 paid to the Principal in settlement of his retirement. In addition, a payment of £50,000+VAT was made on his behalf by the University for outplacement support which was not disclosed in the accounts. In January 2019 the SFC wrote to the University seeking clarification of the issues surrounding the payments and, following review of the University's response, decided to undertake a formal review and to share its concerns with us.

Scope of OSCR's inquiry

We opened our inquiry on 10 July 2019 using our powers under section 28 of the 2005 Act. The purposes of our inquiry were:

- to understand the process by which settlement with the Principal had been negotiated and agreed
- to understand the context in terms of the circumstances of the University's governance at the time the settlement was reached
- to consider, based upon our findings, whether the charity trustees acted consistently with their general duties as set out in section 66 of the 2005 Act, in particular their duty to act in the interests of the University and with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

Summary of findings

The University has cooperated with us throughout our inquiry. We received and reviewed a substantial written submission in response to our initial call for documents. We met and teleconferenced a number of current and former charity trustees, particularly those who had been members of the Remuneration Committee at the time of the events in question. We also met several current or former employees who were members of the University's senior management team at the time.

In summary, we found that the charity trustees were faced with an urgent need to address a potentially difficult situation in the academic leadership of the University in the summer of 2017. Nevertheless, despite the challenging circumstances, we found evidence that charity trustees who were members of the Remuneration Committee breached the trustee duty to act in the interests of the University in that the level of care and diligence they exercised in reaching a settlement with the Principal fell below the required standard.

Detailed findings

Retirement

On 25 July 2017, the Principal intimated his intention to retire from post. We heard varying accounts of the events that led to this decision but, in summary, the evidence indicates that difficult issues had developed in the professional relationships within the academic leadership team at the University. This left the Court facing a need to address the situation urgently to resolve these issues.

The Principal's decision to retire initiated a period of negotiation of the terms of his settlement. He gave written notice of his intention to the then Senior Governor on 2 August 2017. Public and media announcement of his intended retirement was made in late August 2017 and the SFC was notified. We saw evidence that the original intention had been to embargo the announcement until late September 2017.

Under the terms of his contract, the Principal's appointment was terminable at not less than 12 months' written notice by either party. The contract also reserved to the University the right to suspend the Principal from all or any of his duties during a period of notice and place him on 'Garden Leave'.

In the settlement agreement, the Principal was deemed to have given formal 12 months' notice from the appointment date of his successor (defined as the date that his successor took up post), at which point he ceased to have any executive duties or authority and was placed on Garden Leave. His successor was appointed with effect from 1 August 2018.

We saw evidence of interim leadership and management arrangements put in place for the period following announcement of the Principal's retirement until his successor was appointed and in post. This included relieving the Principal of some of the duties and activities usually associated with the office.

Negotiation of settlement

Negotiation and agreement of the detail of the settlement with the Principal was delegated by the then Senior Governor to the then Convener of the Remuneration Committee.

We saw and heard evidence of meetings and correspondence between the Principal, the Convener of the Remuneration Committee (the negotiator) and the University's Director of

Human Resources on the terms of the settlement. We also saw evidence of comments on the proposed terms from the University Secretary and the University's lawyer.

From this, we conclude that:

- negotiation was opened and based on terms proposed by the Principal
- the negotiator and the Director of Human Resources considered those terms to be ambitious and were aware that they exceeded his contractual entitlements
- the negotiator and Director of Human Resources were aware of the requirements in the SFC Financial Memorandum regarding severance payments and decided not to seek SFC approval
- the University did not have a severance policy
- the negotiator and Director of Human Resources were aware that the maximum severance payment approved by the Court in recent schemes had not exceeded 12 months' salary
- the negotiator was presented with other options from the University Secretary and lawyer that may have offered better value to the University

Remuneration Committee

The remit of the Remuneration Committee at the time of the events in question included *inter alia*:

- (i) To advise the Court on matters relating to the pay and conditions of senior staff.
- (v) To oversee severance arrangements for senior staff and ensure that account is taken of the SFC Guidance on Severance Arrangements in respect of Senior Staff. Where consideration of severance arrangements is delegated, to ensure that the boundaries of delegated authority is clear, and to receive formal reports of any severance arrangements.

The Scottish Code of Good Higher Education Governance 2013 was in force at the time of the events in question. It states 'in considering severance arrangements for senior staff, the remuneration committee must represent public interest and avoid any inappropriate use of public funds. The committee should be careful not to agree a severance package which staff, students and the public might reasonably deem excessive.'

An extraordinary meeting of the Remuneration Committee was convened for 29 July 2017 (a Saturday) at 12 hours' notice. The membership of the Committee included the President of the Students' Association (the President) and a non-executive staff member of Court. Whilst a quorum was present, the President was not contactable at such short notice and the non-executive staff member position was vacant. We did not see evidence of any consultation with the President or other student or staff representatives (although this was not a requirement of the Scottish Code of Good Higher Education Governance at the time).

The purpose of the meeting was to consider draft heads of terms of a settlement agreement with the Principal which were circulated with the notice and duly approved at the meeting. We saw no evidence that Committee members were presented with any other information of the kind we would expect to assist their consideration including:

- advice on their duties as charity trustees to act in the interests of the University
- advice on their responsibilities to achieve value for money in compliance with the Financial Memorandum
- advice on their responsibilities to represent the public interest in accordance with the Scottish Code quoted above
- sufficient detail of the proposed terms, including their financial implications, and analysis of any alternative options to enable them to reach an informed, evidence-based decision on an appropriate settlement

We heard from members of the Remuneration Committee that they took on good faith that the terms presented to them were consistent with the Principal's contractual entitlements and that there was no other viable option. We also heard confirmation from Remuneration Committee members that they did not seek additional information and were comfortable with reaching a decision on the basis of the information presented.

The evidence indicates that an alternative proposal was presented verbally by the University Secretary and discussed at the meeting, but it was rejected and excluded from the written minute of the meeting.

University Court

The Scottish Code of Good Higher Education Governance 2013 states 'The policies and processes used by the remuneration committee shall be determined by the governing body, and the committee's reports to the governing body shall provide sufficient detail to

enable the governing body to satisfy itself that the decisions made have been compliant with its policies.’

The Court next met on 4 October 2017. The minutes of this meeting do not include a report from the Remuneration Committee and make no reference to the extraordinary meeting of that Committee of 29 July 2017 or to the settlement agreement with the Principal. During our interviews with members of the Remuneration Committee we heard that a verbal update was given to Court that a settlement has been reached with the Principal. We did not see evidence to confirm that the Court was provided with details of the settlement or to indicate that members of Court questioned the absence of this detail.

Outplacement support

Minutes of the Remuneration Committee of 29 July 2017 record ‘it was agreed that consideration would be given to the provision of outplacement support, following consultation with the University Lawyer on the matter’. The purpose of outplacement support is not recorded but, in the context of the meeting, we have taken it that Committee members recommended professional assistance to the Principal with finding new employment. No sum is proposed and it is left unclear by whom further consideration would be given.

In October 2017, the Principal met consultants with a view to assisting him to identify career opportunities post retirement from the University. We have seen evidence to indicate that:

- the consultants were approached on the Principal’s behalf by the University Secretary on the recommendation of a member of the Remuneration Committee
- a fee of £50,000+VAT was known and agreed to by the University Secretary prior to the consultants meeting the Principal
- arrangement for payment was made by the University Secretary

We have not seen evidence of consultation with the University lawyer as recommended by the Remuneration Committee or of any further consideration or formal authorisation of the expenditure. The Remuneration Committee next met on 16 February 2018. The minutes do not record a report of this expenditure.

We consider this additional payment from the University’s funds to be a personal benefit in kind to the Principal. The payment is not disclosed in a note to the 2018 accounts.

Financial Memorandum

The Financial Memorandum set out the requirements the University had to comply with as conditions of the grant funding it received from the SFC. The Memorandum contained detailed provision in respect of severance payments.

In particular, it required the University to have a severance policy that provided for approval by the Remuneration Committee of severance packages for members of the senior management team and formal approval by the Court for packages that exceeded the maximum threshold agreed by the Court. We saw evidence to confirm that the University did not have a severance policy and that recent severance packages approved by the Court had not exceeded 12 months' salary.

The Financial Memorandum also required the University to consult with the SFC's Accountable Officer prior to approving any severance package that exceeded the maximum threshold. We saw evidence to confirm that the Convener of the Remuneration Committee and the Director of Human Resources (who was also Clerk to the Remuneration Committee) were aware of this requirement, although no consultation with the SFC took place.

The Memorandum also required that notice of termination of appointments must not be delayed in order to generate entitlement to payments in lieu of notice. Despite intimating his intention to retire in July 2017 and giving written notice of that intention to the Senior Governor on 2 August 2017, the settlement with the Principal permitted him to delay giving formal notice for 12 months. The effect of this delay entitled the Principal to an additional year on full pay while on Garden Leave.

We did not find evidence that other members of the Remuneration Committee were advised of these requirements of the Financial Memorandum or that they requested further information before reaching their decision.

Trustee Duties

Under the 2005 Act, charity trustees have general control and management of the administration of a charity. In terms of this Act charity trustees are under a duty to act in the interest of the charity and must:

- seek, in good faith, to ensure that the charity operates in a manner consistent with its purposes;
- act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person; and
- manage any conflict of interest between the charity and any person or organisation who appoints trustees.

Any breach of this duty is to be treated as misconduct in the administration of the charity. Misconduct includes mismanagement.

Conclusions

Taking into consideration all of the relevant information made available to us during our inquiry, we conclude that charity trustees who were members of the University's Remuneration Committee at the time of the events in question (summer 2017) were in breach of their trustee duty to act in the interests of the University. In particular, they failed to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person in respect of their conduct in agreeing the heads of terms of the severance settlement with the Principal. In terms of the 2005 Act, a breach of this duty is to be treated as misconduct in the administration of the University.

When we have evidence of misconduct, we have powers under the 2005 Act to take enforcement action which includes the power to apply to the Court of Session to disqualify individuals from acting as charity trustees in the future. In carrying out its functions OSCR must have regard to the principles of best regulatory practice. These include ensuring that any use of our powers is proportionate, consistent, transparent and targeted only where action is necessary.

We originally wrote to the University in July 2019. Since that letter the charity trustees, former charity trustees, current senior staff and previous senior staff have engaged positively with OSCR.

We are now engaging with the University to review its current policy and procedures to ensure that risks are identified and mitigated as far as possible. This will include putting into practice recommendations from OSCR and the SFC. The SFC published its report and made recommendations to the University in February 2020. As a result of breaching the Financial Memorandum with the SFC the University was required to pay back a grant of £119,000 to them.

The University has taken some proactive measures, which includes its Governance and Nominations Committee establishing a working group to identify and review specific issues arising out of the SFC report and to make recommendations accordingly. The University has undertaken to inform us of any governance changes which result from our and the SFC's report and recommendations.

Going forward the University must ensure that they have a severance policy in place as required by the SFC Financial Memorandum. The Court must ensure that all significant decisions relating to severance payments are agreed by Court. These decisions must be accurately recorded with all options fully considered by the trustees.

We have considered the proactive steps taken by the current charity trustees and senior management of the University since the OSCR inquiry and SFC inquiry. The majority of the charity trustees who were members of the Remuneration Committee in July 2017 are no longer charity trustees of the University and are not charity trustees of any other charity. Taking all of this into account, we do not consider it necessary or proportionate to take any formal enforcement action.

We will continue to monitor and engage with the charity trustees and senior management staff in relation to any changes resulting from our report and recommendations.

Wider lessons for the charitable sector

Our inquiry suggests a number of learning points for the sector:

- Minutes of trustee meetings and sub-committees should reflect all the relevant discussions and considerations that led to decisions being made.
- Where decisions are delegated to a sub-committee, the trustees should ensure that the sub-committee is clear about the extent and limits to its authority and how it will report back on its decisions.
- When considering a severance agreement, charity trustees should have access to the individual's employment contract and all other relevant information about their terms and conditions of employment.
- It may be appropriate to seek professional opinion before reaching a severance agreement, especially if potential severance payments are significant.
- Charities should consider a minimum notice period for the calling of trustee and sub-committee meetings, to maximise attendance and allow enough time to consider the business at hand.

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