



MAKING LEARNING WORK

Tel 01324 403205
Campus Falkirk
Date 18 August 2025

Email: publicaudit.committee@Parliament.Scot

Dear Convener

Thank you for your letter of 11 July 2025 and for giving the College the opportunity to respond to the Auditor General for Scotland's (AGS) section 22 report and the ability to provide further information and comment on the issues raised in the Public Audit Committee (PAC) meeting on 4 June 2025.

Firstly, I would like to note that it is the College's view that we worked openly with Audit Scotland in support of the preparation of the section 22 Report. While the College has a different view on some of the issues raised we do accept the overall conclusions and recognise the failings highlighted, the majority of which were identified by the College and included in the College's own Lessons Learned Report which was shared with Audit Scotland. The College's Audit Committee oversaw the implementation of all the recommendations from the Lessons Learned Report and have recently closed this off as completed.

It is the College's position that the former Principal, as the accountable officer, as well as the Project Director, were ultimately responsible for the failings identified in relation to this project. Also, as the Project Director's line manager the former Principal should not have allowed the project to be run outwith the control of the College. By allowing the Project Director to report to the Consultant, the previous Principal then assumed responsibility for the oversight of the project and dealt directly with the Consultant. The previous Principal also dismissed the concerns raised by the Vice Principal Finance & Corporate Affairs on a number of occasions.

It is the College's view that there was a lack of recognition by the Consultant, Project Director and the former Principal that this was only ever a College project. While a subsidiary company was incorporated, it remained dormant and never traded. When the former Principal allowed the Consultant and Project Director to assume the titles of Chief Executive and Chief Operating Officer this gave the impression they were running a separate entity. The College's position is that due to this separation the Consultant and Project Director believed the Project was now their business, rather than a college project, with the College only being a conduit for the Scottish Government funding to flow through. This is a view that the former Principal also held.

In terms of responding to the issues highlighted in the AGS's section 22 report, I would note that the AGS stated in the PAC meeting of 4 June 2025 that "The detail of the circumstances that are before you has been reflected in a lessons learned report, and the actions that are associated with those lessons have been implemented." As stated above, the College's Lessons Learned Report highlighted the failings, which were later noted in the section 22 report, and what actions had already been taken and identified further recommendations. The College provided detailed feedback to Audit Scotland during the clearance process on a number of Audit Scotland's observations.

Kenny MacInnes, Principal & Chief Executive, Forth Valley College
Forth Valley College of Further & Higher Education

Falkirk Campus - Tel: +44 (0)1324 403000
Grangemouth Road, Falkirk, FK2 9AD

Alloa Campus - Tel: +44 (0)1259 215121
Devon Road, Alloa, FK10 1PX

Stirling Campus - Tel: +44 (0)1786 406080
Drip Road, Stirling, FK8 1SE

The following sections provide a response for the issues not covered by the Lessons Learned Report namely the AGS's view on;

- There was a lack of transparency,
- There were missed opportunities to rectify the absence of a contract,
- The Lessons Learned Report lacked objectivity,
- The dual role of the Vice Principal of Finance & Corporate Affairs (VPF&CA), and
- The need for colleges to have proper controls over subsidiary companies.

In terms of Audit Scotland's view on a **lack of transparency**, from the College's position we feel that there has been complete transparency with SFC, our internal and external auditors and Audit Scotland, something confirmed by our external auditor in the PAC meeting on 4 June 2025. With the benefit of hindsight, the College accepts that different decisions could have been made in terms of the reporting of the procurement breach. However the non-reporting of the procurement breach in November 2021 was not due to a lack of transparency but rather on the advice of the Supply Chain Manager who genuinely believed this did not require to be reported.

The VPF&CA instigated a fact-finding investigation and became the whistle blower in the full knowledge that there would be an independent investigation.

As per the timelines supplied to Audit Scotland, the Board were informed of the procurement breach in November 2022 and engaged with the SFC in February 2023. OSCR and Police Scotland were then informed at the behest of the Board in June 2023. The full lessons learned report was submitted to the Board of Management in September 2023 and gave full disclosure on the failures relating to this project, long before there was any indication there would be a qualified audit opinion which would eventually lead to a section 22 report.

In terms of the **missed opportunities to rectify the absence of a contract** I would note that while the Project Director, the VPF&CA and the former Principal were aware of the lack of a contract at differing stages of the project, action was being taken to put a contract in place with the subsidiary company Fuel Change Ltd. It was always the intention that the project would be run through the Fuel Change Ltd. Following the announcement of £500k Scottish Government funding, as noted in the actions from the meeting on 30 November 2021 the intention was to have Fuel Change Ltd operational from 1 April 2022. However, for a number of reasons, including the inability to produce a business case to seek Board of Management approval to bring Fuel Change Ltd into operation, this did not happen.

With hindsight, the College recognises that when the decision to delay taking the business case to the Board in February 2022 was made, a contract should have been put in place between the consultant and the College at that time. The College accepts this was a missed opportunity to rectify the lack of a contract before the expenditure escalated to the level it did.

The AGS's view is that the **Lessons Learned Report lacked objectivity** as the former Principal, the Consultant and the Project Director were not asked to contribute. On that point, the Lessons Learned Report was requested as an internal review by the Board of Management. I would note that while the report was written by the VPF&CA it was reviewed by myself, as the current Principal who heard the initial disciplinary hearing, the Chairs of the College's Finance and Audit committees who held the disciplinary appeal hearing, and the Interim Chair at that time. All of the above had full access to all of the documentation / evidence relating to the disciplinary process and the internal audit investigation. In addition, myself and the Committee Chairs also heard directly from the Project Director at length on their view of events and reviewed their position against the Lessons Learned Report. I can confirm that I am satisfied that the report is a fair reflection of the management of the project and that the recommended actions were fair and relevant in relation to the College.

In terms of the **dual role held by the Vice Principal Finance and Corporate Affairs** I would note that Audit Scotland stated at the Public Audit Committee that the Board minute of 5 December 2024 did not give a rationale for the dual role being in place. I would like to highlight that the minute Audit Scotland should have referred to was the minute of the Board meeting held on 27 September 24 which was presented to the 5 December Board meeting for approval as an accurate record of the September meeting.

Audit Scotland are correct in saying the actual minute of the 27 September meeting does not detail the rationale, however Audit Scotland did not highlight there was a paper presented to the Board of Management outlining the rationale. This was highlighted to Audit Scotland immediately after the PAC meeting. In the AGS response to your request for additional information, they provided you with a copy of the 27 September 2024 Board minute as discussed at the PAC meeting but have not provided you with a copy of the Board paper which detailed the rationale. I have therefore attached a copy of the Board paper for your information.

I would like to take this opportunity to confirm that the VPF&CA will be stepping down from the Board Secretary role to focus on the College's current financial challenges and that an independent Board Secretary will be recruited. I would also highlight while the section 22 Report stated there was a potential for a conflict of interest, it did not state there had been any evidence of conflicts of interest due to the roles being conjoined.

In terms of the AGS view for need to **have the right governance and leadership in place over subsidiaries**, I can confirm that the College is in full agreement with the AGS. However, in relation to this project it must be noted that the subsidiary company, Fuel Change Ltd was only ever a dormant company and did not trade. The reason for this being, that a business case to bring the company into operation was put on hold due to the delay in confirmation of Scottish Government funding, which was critical to the financial business case.

I can confirm that the draft Board paper due to go to the February 2022 Board of Management meeting incorporated all the necessary controls required over the subsidiary including FVC Board of Management representation on the subsidiary Board and the need for a clear framework around which the Board of Management could oversee strategy and significant decision making. This was with the clear expectation that the FVC Board of Management would therefore be overall responsible for the fiscal management of the funds as well as the monitoring of progress against expectations, as set out in the offer of grant conditions. When considering the legal structure of the entity tax implications were also considered.

In addition, while the section 22 report identified a number of failures it did not make any further recommendations for the College to action over and above those included in the College's Lessons Learned Report. I can confirm that all the recommendations noted in the Lessons Learned Report have been actioned and I am therefore content to confirm that all appropriate measures have been put in place by the College to prevent any future recurrences of these events. I would also like to state that the College is committed to working with the AGS's office going forward on matters of College Governance and financial controls if required.

I would also like to highlight that it was through the College's internal control processes that the financial irregularities were identified and the appropriate action taken.

Finally, as requested I attach a copy of the response to the minute of the meeting held on 30 November 2021 from the Consultant, the College does not hold a record of any response from the previous Principal.

Kind regards

A handwritten signature in black ink, appearing to read 'Kenny MacInnes', with a stylized flourish at the end.

Kenny MacInnes
Principal and CEO



11. Board Secretary Arrangements For Approval

27 September 2024
BOARD OF MANAGEMENT

1. Purpose

To seek approval from members to continue with the current arrangements for the Board Secretary and Deputy Board Secretary.

2. Recommendation

That members review the current arrangement for the Board Secretary and Deputy Board Secretary as outlined in this paper and approve to these to continue for 2024/25.

3. Background

The revised Code of Good Governance for Scotland's Colleges ("the Code") was adopted by the Board in December 2016.

Section D.13 of the Code states

The board as a whole must appoint a board secretary who is responsible to it and reports directly to the chair in their board secretary capacity. The board secretary may be a member of the senior management team in their board secretary capacity, but **they cannot hold any other senior management team position at the same time. The appointment and removal of the board secretary is a decision of the board as a whole.**

The code also requires colleges to publish a Statement of Compliance with Good Governance in the Annual Report.

Each board must state its adoption of the Code in the corporate governance statement contained in its annual financial statement. The chair, on behalf of the board, is expected to report as to how the principles have been applied by the board. Where, for whatever reason, a board's practice is not consistent with any particular principle of the Code, it should make this known to SFC or, if it is an assigned college, the regional strategic body. This should be done immediately they become aware of an inconsistency and, without exception, in advance of publishing the information. An explanation for that inconsistency must be clearly stated in its corporate governance statement. Boards will be expected to offer a clear rationale for exceptions in the context of their college's operational model and to identify mitigations.

It was approved by the Board in December 2016 that the Vice Principal Finance & Corporate Affairs would be formally appointed as the Board Secretary and the Corporate Governance and Planning Officer would be formally appointed as Deputy Board Secretary in line with the current arrangements. Both report directly to the Chair in terms of the Board Secretary role. This has subsequently been reviewed and ratified by the Board annually since then.

4. Key Considerations

The 2021 external board Effectiveness review highlighted that this did not comply with the Code, however recognised that this had been approved by the Board and that Board members felt the arrangements were working well.



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It is common practice in a number of organisations both within the public and private sector for the board Secretary to hold a position within the Senior Management Team. At least two other Colleges do not comply with the code in relation to the Board Secretary role. It can be argued that by having a dual role that this actually strengthens governance and provides greater assurance to the Board rather than weakens it.

It is also not considered to be good value for money to employ a part time Board Secretary when the College already has members of staff with the required skills to perform this role and have been doing so for a number of years.

There is only one area within the Board Secretary role where holding a senior management team position as well as Board Secretary could impact on good governance. The Board Secretary is appointed by the Board and reports directly to the Chair, if they also report to the Principal in terms of their senior management team role this could lead to a potential conflict of interest in terms of reporting to the Board. The current arrangements mitigate this risk by having a Depute Board Secretary.

While current arrangements go against the requirement of the code, it is still acceptable for the Board to take this decision and explain the reason for non-compliance in the annual financial statements and to SFC, which the College has done for the previously. This has been reviewed by the external Auditors and in the Audit Reports they have stated they have no issues to report in relation to Governance. SFC have also noted the non-compliance, however have not requested that this be changed.

5. Resource Implications (Financial, People, Estates and Communications)

None. Both the Secretary to the Board and Depute Secretary are established roles within the College.

6. Equalities

There are no equalities impacts as this approval related to compliance with the Code of Good Governance.

7. Communities and Partners

None



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27 September 2024
BOARD OF MANAGEMENT

8. Risk and Impact

Please complete the risk table below. Risk is scored against Likelihood x Impact, with each category scored from Very Low through to Very High. Risks should be robustly scored and, if the combined score (Likelihood x Impact) is higher than the Board Risk appetite for the risk category identified, additional justification must be provided on why this risk is necessary.

If the paper is an approval, please reflect on whether the approval will have any direct or indirect impact for any other areas of operational activity internally or externally within the College –No

| | Likelihood | Impact |
|---------------|------------|--------|
| Very High (5) | | |
| High (4) | | X |
| Medium (3) | | |
| Low (2) | X | |
| Very Low (1) | | |

Total Risk Score – 8

The College has a Strategic Risk appetite for categories of risk as defined by the Board of Management. Decisions being taken at LMT/SMT/Board level must have cognisance of this. Please indicate the single most relevant risk category in the table below.

| BoM Risk Categories & Risk Appetite (Select one area only) | | | | | |
|--|---|--------------|--|-------------------|--|
| Cautious <15 | | Open 15> <20 | | Eager >20 | |
| Governance | X | Strategy | | People | |
| Legal | | Financial | | Project/Programme | |
| Property | | Reputational | | | |
| | | Technology | | | |

There is a risk the Board are not fully informed due to a conflict of interest of the Board Secretary reporting to both the Chair and the Principal. The appointment of two individuals reporting to the Chair minimises this risk.

Is the score above the Board Risk Appetite level? - No

Risk Owner – Board of Management

Action Owner – Chair of Board of Management

Paper Author – Alison Stewart on behalf of the Chair

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Note of Meeting 30 November 21
Date: 06 December 2021 14:45:35

[REDACTED]

[REDACTED]

Thank you for the notes and actions which capture our session well. As you say it was good to be around the same table and share where we are.

I will have the updated cost forecast over in the morning after further discussion with the team. I has been an interesting time.

In relations to sales invoices who should I direct this to?

In terms of new employees you position is as agreed – Paradigm will employ with a view to transferring at an appropriate time to the organisation we establish. I had a meeting with Michael Matheson today and he has clear expectations in terms of scaling up and timescales hence beefing up our staff in line with the forecast is essential.

Thank you again for this and look forward to delivering the ‘win-win’ we discussed.

Regards

[REDACTED]

From: [REDACTED]
Date: Sunday, 5 December 2021 at 20:49
To: [REDACTED]
Cc: [REDACTED]
Subject: Note of Meeting 30 November 21

Hi [REDACTED]

I hope all is well with you.

Thank you for your time last week. I think was really useful for both us to understand where we are in relation to Fuel Change. As discussed, I have noted below what we are agreed on and actions that are required to move forward.

Agreed

- FVC is supportive of Fuel Change and the desire to make this into a successful organisaiton
- Fuel Change (FC) is currently operating as a project within FVC and will remain as a project within FVC until 31 March 2022
- As a project within FVC all college procedures apply to Fuel Change
- Further consideration is required as to how this moves from FVC post 1 April 2022. Your preference is that this is as a CIC outwith the control of FVC. Clarity is required around the conditions of grant / accountability – further discussion needed with SFC/SG/FC/FVC
- Need to consider VAT implications of each possible structure

- Consultants who do not charge VAT should invoice FVC directly and not via Paradigm Futures as non recoverable VAT is being added to the cost when costs are invoiced through Paradigm Futures
- Income should not be processed through Paradigm Futures - all sales invoicing should be done through FVC
- Where SFC approval is required for the award of contracts not competitively tendered this should be done as one submission to SFC to allow the project to move forward
- FVC will continue to support Fuel Change with [REDACTED] working on the project until 31 July 2022. From 1 August 2022 Fuel Change will be responsible for funding the Director of Operations post. How this will be done will depend on the company structure that is put in place.

Actions

- AS to email [REDACTED] re offer of grant & conditions
- AS to set up meeting with FVC, FC & [REDACTED] to discuss Company structures
- AS to set up meeting with FVC/FC/SFC/SG offer of grant received, conditions of grant clearer and company structure clearer
- [REDACTED] to provide an update of the costs to end of March 22 and contracts in place
- [REDACTED] to pass details to FVC for outstanding invoices which require to be raised

[REDACTED] we also touched on staff being employed directly by Paradigm Futures. I think you said there was only one at the moment - [REDACTED]. I see that you have advertised a permanent Challenges Operations Manager and 2 interns. I think this might need further discussion as I'm not quite sure how this sits. I assume Paradigm Futures is the employer and not Fuel Change as Fuel Change has no legal identity at the moment other than it remains a dormant company. One for [REDACTED] to look at. While the intention is in the longer term they will be employed by Fuel Change it might need to be clearer who the employer is. We just need to make sure that the lines are not getting blurred between FVC, Fuel Change and Paradigm Futures.

Hopefully I have captured everything. If I have missed anything or I haven't picked up something correctly just let me know.

Kind regards

[REDACTED]