

CCEA

COUNCIL BRIEFING

Minutes of an Additional Meeting of Council held on Monday 5 October 2020 at 10 am via MS Teams.

Present : Mr T Carson (Chair) Mrs C Harpur
 Mr RJ Thompson Ms R Byrne
 Ms P Slevin Dr A Kerr
 Mr B Wilson Mr C McKinney
 Mrs P Leitch Dr L Caul
 Mrs C Fitzsimons Mrs S Kirk

Mr J Edwards (Chief Executive)
Mrs L Scott (Director of Finance & Corporate Services)
Miss M Farragher (Director of Education)
Mrs S King (Head of Regulation)

Miss N Kennedy (Manager, Council Secretariat)

Introduction

The Chair thanked members and officers for their participation in the meeting.

Apologies

An apology was received from Mrs Kathleen O'Hare.

Conflict of Interests

Members confirmed there were no conflict of interests on the business to be discussed.

Main Business

The Chair confirmed that he had raised the matter of Payment for Examiners with the Permanent Secretary in advance of the correspondence received from DE. He expressed concern at the Minister's decision and therefore called this additional Council meeting to update members and discuss next steps.

Payment for Examiners

CB/05Oct/01

The Chief Executive reminded members of the discussions and Council's decisions taken during summer 2020 in regards to examiners (Top Teams, Invigilators and Examiner Teams), as 3 separate items to Council and the decision was to pay Top Teams in terms of continuity of service (and contracts in place), but decided it would not be appropriate to pay Examiners or invigilators on the basis of no contracts being in existence.

He confirmed that following submission of the 3 Business Cases, DE asked for a single business case to be prepared and re-submitted.

Following a lengthy period of discussion, (including legal opinion being sought from both CCEA and DSO), DE have now responded stating that CCEA are not permitted to make any payment in lieu of lost income as a result of the cancellation of examinations. The detail of the correspondence was provided at Appendix 1 – (*Letter to the Director of Finance & Corporate Services from Martin Monaghan, DE Workforce Planning Team : 29 September 2020 : Proposal on the Payment of Compensation to Examination and Assessment Teams for Lost Earnings due to the Cancellation of the 2020 Summer Examination Series*).

Council's Decision

For formal recording purposes a Council member sought confirmation on Council's decisions in regards to the payments for Examiners, Invigilators and Examining Teams.

The Director of Finance and Corporate Services outlined the Council decisions following discussion at Council briefings held in May and June 2020. In particular, the 3 groups of contractors under consideration were :Top Teams; Assistant Examiners and Markers; and Invigilation Teams. She advised that each group had slightly different nuances and were at different stages of contracting when the examinations were cancelled on 19 March 2020, and as such a different approach was required.

Invigilation Teams

The DoFCS advised that this group had been issued with their examinations calendar for 2020, however had not signed a contract. Based on legal advice it was confirmed they had not delivered the services. There was no written contract with this group and legal advice confirmed they were not eligible for furlough scheme and any payment would be outside of contract. The preferred Option was to 'do nothing', therefore no payment was recommended.

Council agreed with this Option.

Assistant Examiners & Markers

The DoFCS advised that this group did have contracts (renewed annually), however when the examinations were cancelled in March 2020, no contracts had been issued. Therefore, the legal advice remained the same that any payment would be outside of contract. The preferred Option was to 'do nothing' therefore no payment was recommended.

Council agreed with this Option.

Top Teams

The DoFCS advised that this group were in contract when the examinations were cancelled in March 2020. Therefore it was felt there was a commitment to this group, given the expectation to supply services, however the contracts state that there was no guarantee of work from CCEA throughout the contract. She advised that this group had been paid for setting and revising the examination papers in the months up to 19 March 2020 and from April to July 2020. It was recommended that the equivalent of furlough should be paid to this group which was in line with some of the Awarding Organisations in England and Wales.

Council agreed with this Recommendation.

The DoFCS advised that following submission of the one Business Case for all 3 groups to be considered collectively, DE has now advised (based on legal advice that there was a risk of challenge by one group in paying another group and they should be treated the same) that no payments should be made to any of the groups as CCEA had proposed.

She confirmed that the direction from DE was not to pay, however in moving forwards we can either implement the instruction or can make a further representation seeking permission to pay, however she advised that there would be a low chance of this being granted and this would also present risks in regards to employment status as contractors.

She drew attention to the information provided in paper CB/5Oct/01, in particular the risks and mitigations. Management is very aware of the disruption this has caused to the contractors who feel they have not been

kept informed and expressed concern at the potential detrimental effect this could have on services for 2021 examinations.

The DoFCS confirmed that looking forward a range of matters would be reviewed in regards to the 3 groups for 2021.

The Chief Executive advised that the original agreement for the 3 business cases was to pay Top Teams only and confirmed that CCEA has not deviated from this position.

A Council member sought clarification on whether we had advice to change our initial decision both from DE and solicitors. The Chief Executive confirmed that CCEA did not change its original decision from Council. Instruction has been received from DE not to pay the Top Team.

The Council member said that if we are to look to mitigate this CCEA would be making representation to DE to retain the Top Teams. The Chief Executive advised that mitigations are in place to engage examiners for additional work for the 2021 series, and this would be communicated to this group. He confirmed he had met with senior examiners to explain the timeline and keep them update to mitigate effects of contracts not being renewed.

The Chief Executive referred to the Next Steps outlined on page 2 of the paper, and confirmed that he would be meeting the examining teams and Chief Invigilators.

The Council member stated that Council made a decision to pay the Top Teams and suggested that this could not be reversed, and sought clarification on whether CCEA had sought the decision from the Minister. The Chief Executive confirmed that DE sought a decision from the Minister and this had been communicated to CCEA by DE.

The Chair sought and received confirmation that CCEA's proposal was to pay the Top Teams. He advised that the Minister's decision was that no payment should be made to Top Teams.

The Council member sought and received that the Minister was aware of the risks associated with this decision. The Chair assured members that upon receipt of the decision, he spoke with the Permanent Secretary (PS) and raised a range of issues including the high risk this decision would have and how this would sit on the DE Risk Register. The PS confirmed that he and a senior official discussed the proposal with the Minister and were of the view that the decision would be to pay, however the Minister's decision was not to pay.

The Chief Executive stated that the risks were highlighted in the business case and were outlined to the Permanent and Deputy Permanent Secretary who presented CCEA's and DE's advice and risks to the Minister.

Discussion

A Council member raised the following points :

- Whether CCEA could have clarification on the risks raised by DSO legal team to compare with CCEA's legal team, as full clarity would be preferable in order to communicate effectively.

The Chief Executive advised that the DSO legal advice was protected and would not be available. CCEA's legal advice was shared with DE. He stated however, that the issue arose in comparator of contract for services across the three different groups, and the likelihood of successful challenge. He drew attention to the correspondence received from DE, in particular *'the fact that this group has already been paid for work completed, the Minister has concluded that 'making no compensation payment' is the most appropriate way forward.'*

- Reference to Minister's correspondence and his recognition of the vital role played by contractors in the exams process, however no reference was made to the way in which individuals are being facilitated and paid for work not completed during the pandemic and in these unprecedented times.

The Chief Executive confirmed that in terms of work completed, any work contracted and scheduled for completion, has been paid.

- Whether it would be possible, as an addendum to the notes for Council meetings, for a full list of key events to include the occasions when Council discussed (in its weekly briefing meetings) that Council members pursued the issues in regards to Contracts for Services, outlining the discussion and requests for resolution to the matters, to ensure it is clear that Council was concerned at the absence of responses from DE.

The Chief Executive confirmed that this would be accommodated and provided to members and uploaded onto Decision Time. The Chair asked that this information be provided to demonstrate the lengths to which Council have gone in arriving at this decision when speaking to the examining teams.

- Were there any reasons for the teams not applying for contracts in writing?

The Chief Executive advised that this was an exiting contract for part of the Life and Health Sciences. He confirmed he had met with the team to understand their position which was one of resolution, and asked for clarity. This was a forthright discussion, however full appreciation was acknowledged that the payment was not within the Chief Executive's powers to do so.

He confirmed he had met with 3 top teams to discuss the matters as far as possible.

- Council members to be provided with the draft statement by the Chief Executive in advance of issue.
- Can Council write to DE to express its dismay at the length of time it took to reach the decision, and the actual decision itself.

The Chief Executive said this was a matter for Council and the Chair.

- Ensuring that the communication to the groups of contractors is effective and clear, stating the Minister's decision and CCEA having to carry out the instruction.

The Chief Executive assured members that the communication would be pitched appropriately to ensure empathy with the groups and provide a full understanding of their concerns. The statement will be verbal in the first instance and will provide clarity on CCEA's responsibilities and refer to the letter outlining the Minister's decision.

He confirmed that work was underway for arrangements for 2021, to include a range of options and contingency arrangements which will be discussed with the affected groups. The contracts will be reviewed to ensure they are fit for purpose.

A Council member referred to the letter from DE in that no reference was made to the 3 groups and understood the DSO legal advice would not be disclosed, however, was confident that that strong communication from the Chief Executive to maintain relationships and keep examining teams on board would be managed, however it was crucial that it is made clear that delay was not CCEA's.

The Chief Executive confirmed that he had engaged with examiners in terms of timelines, however would continue with the strong communication in terms of challenges and frustrations CCEA has been facing. He assured members that management would continue to work closely with the teams. All CCEA subject officers would be briefed on the situation and plans for 2021, to ensure relationships remain constant and steady.

He agreed that he would also raise awareness in terms of communicating messages on the differing contractual status of the three groups. He recognised the point made in the 3 groups being combined for consideration by DE as opposed to individual groups.

The DoFCS confirmed a total of 6700 people were affected, however stressed the importance that these were contractors (self-employed), not CCEA employees.

The Chief Executive wished to raise the important difference between private/charitable Awarding Organisations and CCEA as an Arms-Length Body, and as Accounting Officer he has to seek advice from the sponsor department.

The Chief Executive advised that approximately 60% of the examiner group were existing teachers. The DoFCS wished to state clearly that this was not a consideration nor included in the business case.

The Chief Executive clarified the double payment had been dealt with, however recognised the complexities in regards of moving forwards in thinking for 2021 decisions and take learning from this contractual situation and seek advice outside contract.

The Chair asked cognisance to be taken of a precedence being set.

A Council member expressed concern that the teaching profession was still not clear on the status of CCEA and asked that this be addressed in terms of teachers having a clear understanding of CCEA's statutory responsibilities. She welcomed the work being progressed with stakeholders, however, asked for a succinct way of clarifying and removing the myths in the system in regards to return of revenue, CCEA having the lowest examination fees in the UK; the nature of decision making for other awarding bodies and the constraints CCEA are under as an ALB, with a view to raising a professional awareness.

A Council member referred to the range of media coverage in regards to the 2021 examination series and beyond, and what the nature of contracts will be moving forwards over the next 10 years. The Chief Executive recognised the positive nature of setting a precedence in that CCEA can, if required, contract a workforce to assist with contingency arrangements on that basis. He advised that Contract for Services had well established protocols across the Awarding Bodies, and guarded against alternative contract models as this would increase risks to the services.

Clarification was sought on whether the groups could be contracted at a particular point in the year and draft the groups when required. The Chief Executive said this would have to be tested.

The Chief Executive assured members that he would manage all communications.

The Chair referred to the issues set out in the paper and confirmed he was content with the communications plan to include the note to clarify CCEA's status across the sector.

The Chair sought and received confirmation that it would not be advisable to write to the Minister on the issue. However, recognising the challenges now placed upon CCEA in terms of how the decision will be taken forward.

A Council member suggested that the decision-making process of Council needs to be discussed on how the Council takes forward resolutions in terms of providing advice and recommendation to the Minister/DE. The Chair recognised the challenges and pressures Covid-19 has placed on the Council in taking this matter forward however time would be allocated for discussion in early November.

The Council member referred to the direction from the Minister in regards to the examining process and how we should proceed on examinations 2021, despite disagreeing, he said that for safety first purposes CCEA must follow the direction closely and properly. However he said there was a need for radical though

processes to address the future of examinations. He asked for the minutes of meetings to reflect when the direction was received from the Minister. The Chief Executive confirmed that a letter was received outlining the desire of the Minister in regards to proceeding with examinations in 2021.

He confirmed that at the GAR meeting on 28 September the number 1 item in terms of risks raised was in regards to the decision of non-payment to examiners. The Chair also confirmed that at his meeting with the Minister on 17 September he also raised this issued and was given an assurance that the proposal would be given due consideration.

The Chief Executive gave an assurance that he would outline to the examiners the representation to DE and convey the decision contained in the letter from the Minister clearly and concisely.

A Council member in referring to the range of discussion, expressed her surprise at the Minister's decision, however was content that the minutes would show the discussions of Council, through a number of meetings, and Council's concern has been registered against the Minister's decision.

She wished to place on record Council's support to and confidence in the Executive and teams in taking this forward. The Chair concurred with this, however expressed regret at the additional workload this has created.

The Chair thanked members and officers for their input into the meeting.

Council Chronology of Discussions on Contract for Services Payments

Council Covid-19 Briefing Meeting : 13 May 2020

The Chief Executive asked members to observe confidentiality on the content of the papers provided. The issues were for discussion and not decision at this time.

He advised that this issue had been assessed in depth, including the limit of powers of the Chief Executive in terms of payments and contract issues that could potentially arise with examiners and invigilators.

DE is currently considering the options outlined in both papers, and also identifying where the risks lie with the ALBs.

A Council member raised the matter of accountability. The Chair confirmed that he had been appraised of the issues in advance. He stated that the papers provided were for initial consideration, and following advice from DE (and Council) will come back for further consideration and decision.

The DoFCS said that her responsibility was to advice the Chief Executive as Accounting Officer, and this is the context in which the papers have been written. She wished to place on record that the circumstances were unprecedented, however the recommendations have been drafted within the compliance framework, supported by CPD and Government guidance. The Chief Executive advised that some options were beyond the potential scope of his authority for spend and would require Departmental Approval.

She advised that the two categories under consideration were Examiners/Markers (Paper 1), and Invigilators (Paper 2).

Options Paper on Payment of Examiners (Markers) Summer 2020

CB/13May/1

The DoFCS drew attention to the detail provided and confirmed that Examiners/Markers are engaged by CCEA as contractors – not CCEA employees. A contract is issued for each series and there is no continuous engagement spanning a full year. She advised that CCEA has engaged with other Awarding

Organisations in England, Scotland and Wales with a view to taking a consistent approach for all contractors in the examinations market including Examiners.

The DoFCS gave an overview of the range of options outlined in the paper together with associated risks, and recognised the dependence of CCEA on markers whose assistance was key to the successful operation of the examinations series. She stated that the preferred option was Option 1 – Status Quo (Do Minimum) as all other options were outside CCEA's delegated authority limits.

CCEA was awaiting direction from DE on how to proceed.

Members sought and received clarification on a range of matters and were content with the explanations provided.

In regards to the possibility of making a goodwill/retention payment, the Chief Executive advised that this was being considered by SQA, however, should CCEA wish to make a payment it would be novel and contentious, and require DE approval.

Members discussed the issue of reputational damage to CCEA by not making any payments. A Council member said that at present this had not been raised as an issue in the teaching profession and sought clarification on whether significant correspondence had been received by CCEA. The Chief Executive confirmed that a small amount of correspondence had been received from examiners seeking clarification. The matter has been raised at the NI Assembly seeking information, however he was concerned that this would become an issue over the coming weeks.

The Director of Education stressed that no decision would be made at this point and expressed concern that not making a payment could be deeply unpopular and could impact on CCEA's reputation.

The Chair recognised the exceptional circumstances and the working environment everyone was currently operating within. He confirmed that further detail would be brought back to Council for consideration, once DE had provided direction.

Options Paper on Payment of Invigilators Summer 2020

CB/13May/2

The DoFCS gave an overview of the Options provided on payment of invigilators in light of the cancellation of the summer examination series and the fact that the services of invigilators are therefore not required.

She confirmed that at the time of the Minister's announcement, invigilators had been nominated by schools and CCEA had issued the calendar of examinations sessions. However legal advice obtained by CCEA stated that this does not necessarily constitute a contractual obligation, and therefore the preferred option would be Option 1 – Status Quo (Do minimum). This has also been submitted to DE and CCEA are waiting on direction on how to proceed.

The Chair sought and received confirmation that the issues were similar to that encountered with the Examiners/Markers, however recognised that there would be discontent amongst invigilators, and could have a more negative impact for CCEA should the decision be taken not to make any sort of payment.

The Chief Executive highlighted the 3 main factors:

- This group does not have a contract
- There is a higher degree or risk of challenge
- This group are lower paid earners

He advised that SQA were also considering non-payment.

Members, whilst recognising the challenges, suggested that it would be disadvantageous to discriminate between the two groups (Examiners & Invigilators), and said it would be preferable if the decision was consistent for both.

The Chair thanked members for their contributions and advised that this would be brought back to Council for further consideration, following response from DE.

The Chief Executive said it would be preferable to have this cleared as soon as possible and would update Council on progress.

The DoFCS advised that a third group was also affected – Senior Examining Teams, she recognised that teachers were also fundamental to the success of CCEA's examinations series and suggested that a communications campaign be put in place to encourage the teaching profession to support CCEA in light of the COVID-19 restrictions. She advised that a range of options will be brought forward to Council for discussion in due course.

Council Chronology of Discussions on Contract for Services Payments

Council Business Meeting : 21 May 2020

Update : Contract for Services

The DoFCS advised that the approach and range of options for payment to senior examiners were still under development. A paper would be brought to Council for consideration once all of the information was available.

She stated that the examiners were in contract and had already completed a portion of the work. She clarified that the contract was for a period of 11 months and therefore not treated as continuous service.

The DoE expressed concern at not being able to recruit sufficient examiners in the future, should no payment be proposed and suggested that a token payment be considered as a good will gesture. She said that there is an element of risk in that to lose relationships with markers would threaten the stability within the examinations system, and recognised the similar challenges facing the other Awarding Organisations.

Members sought and received clarification on a range of matters and urged caution with the use of public money. The Chief Executive assured members that CCEA would progress this within the scope of delegated authority and seek legal opinion where appropriate.

The Chair asked for an options paper to be drafted and brought forward to Council as appropriate.

Council Covid-19 Briefing Meeting : 10 June 2020

Options Paper on Payment of Examiners - Summer 2020

CB/10June/02

The DoFCS drew attention to the detail provided in the paper and confirmed the information had been submitted to DE for consideration. She advised that the paper set out a range of options and proposals for payment of examiners for the summer 2020 examination series. The proposals have also been through legal review.

She confirmed that furloughing was not an option as CCEA was a public body.

Members discussed the information in detail, sought and received clarification on a range of issues, and were satisfied with the explanations provided.

The proposal was formally proposed by Mr Robert Thompson, and seconded by Mrs Kathleen O'Hare.

The Chief Executive confirmed that a significant amount of work had been carried out in drawing together the proposals in respect of the 3 categories, and advised that this would now be condensed into one single proposal for DE and DoF consideration, and subsequent approval.

The Chair thanked the DoFCS and her team for the detail provided.

Council Covid-19 Briefing Meeting : 17 June 2020

Finance

The Chief Executive confirmed that following Council consideration and agreement of the 3 options papers on Examination Fees; Payment for Examiners and Contract for Services, a consolidated paper has been submitted to DE for consideration and approval. He advised that DoF approval would also be required.

Council Business Meeting : 5 August 2020

Chief Executive's Report – Resourcing

The Chief Executive reminded members of the decisions taken in regards to payments for Contract for Services. He confirmed business cases had been prepared and submitted to DE for consideration. To date no response from DE has been received. He confirmed that the issue had been pursued by the Director of Finance & Corporate Services, and that he had also written to DE seeking a decision on payments for examiners as this had been identified as a risk to CCEA business. DE has indicated they are awaiting information from the Department of Finance (DoF). The Chief Executive expressed concern at the delay and the risk to organisation's reputation given that this issue would be out of CCEA's control.

A Council member strongly suggested that the Chair write to the Minister citing the information from the Chief Executive and seeking direction/decision.

A Council member further suggested if a communication could be issued to examiners advising of the status of the matter. The Chief Executive confirmed that examiners were aware of the situation, and would prefer not to issue any further information at this time. His preference would be for DE to provide direction on this matter.

The Chair, in taking all suggestions on board, was of the view that the Chief Executive should write to the Deputy Permanent Secretary expressing Council's dissatisfaction and deep concern about the lack of decision, and potential risk to CCEA. Should no response be forthcoming he would write to the Minister on behalf of Council. The Chief Executive agreed to communicate with the Deputy Permanent Secretary as a matter of urgency.

Council Covid-19 Briefing Meeting – 25 August 2020

Chief Executive's Briefing - Resources – Contract for Services

The Chief Executive reminded members that Council had approved the proposals for top teams and markers, and forwarded to DE for consideration and approval. He advised that DSO advice has been received and Senior Council have asked for additional information, giving an indication of likely approval by DoF. He expressed frustration at the pace at which the matter was being expedited, having had to resubmit 1 Business Case (for all 3 sets of payments) for consideration as DE will only consider this as a single payment against CfS and the further need now for senior counsel opinion.

The Chair confirmed that he had raised the matter with the Permanent Secretary and had received an assurance that it would be brought to the attention of the Minister.

The DoFCS advised that the information would be issued to Senior Council as soon as possible.

A Council Member referred to the matter being raised at the NI Assembly Education Committee and welcomed the involvement of the Permanent Secretary in taking this forward. She sought clarification on whether the Education Committee were aware of the steps being taken to resolve the matter to avoid a negative viewpoint in such a public forum. The Chief Executive had stated that the matter was under legal consideration (on the Hansard record), and therefore no further comment could be made until Senior Council had provided opinion.

The Chair added the Education Committee would be communicating with the Minister of Education, and that they were aware of the legal issues. He stated that the Chief Executive had, on several occasions, pointed out the difficulties in this area, including the need to seek DE approvals in regards to finances.

Members welcomed the clarification.

FINANCE COMMITTEE MEETING : 27 August 2020

The DoFCS advised that there were a number of unresolved issues, in particular payment for Contract for Services, and assured members that continuous representations had been made to DE seeking a decision. She confirmed that legal advice was being sought. However, until this was resolved the issue of school fees could not be resolved. Members were assured that fees would be reviewed to ensure fairness and consistency across centres.

The Chair sought an assurance that this was being treated as a matter of urgency and on approximate timescales. The DoFCS confirmed she was preparing documentation for consideration by CCEA's legal team and her preference would be to take time to discuss and consider the information to ensure accuracy moving forwards. She asked members to take cognisance of the financial implications and complexities, however gave an assurance that she was working closely with the legal team to ensure recommendations were appropriate.

In regards to the timescales she confirmed the information would be issued to the legal team before the end of August, and upon receipt of QC advice discussions would commence with the relevant teams.

Members noted that to date just under £1M had been paid to contractors under the furlough scheme, and this activity continued. It was hoped that normal working arrangements would resume from November 2020.

Clarification was sought on a number of matters, and members were content with the explanations provided.

The Chair, whilst recognising the challenges, said the position was regrettable.

Council Business Meeting : Thursday 24 September 2020

Finance

The DoFCS advised that the a number of fundamental and material decisions remained outstanding in regards to the payments for Contract for Services. The Business Case has been resubmitted to DE seeking permission to pay, however, it was understood a decision was imminent. She advised that following the decision, the fees for summer 2021 will be reviewed, and contingency plans drafted should there be a need to secure funding for resource and delivery requirements.

The Chair recognised the difficulties in regards to this issue.