The Committee will meet at 9.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Section 22 report - The 2013/14 audit of Coatbridge College: Governance of severance arrangements:** The Committee will take evidence on the Auditor General for Scotland report entitled “The 2013/14 audit of Coatbridge College: Governance of severance arrangements” from—

   Derek Banks, former Director of Finance, and Lorraine Gunn, former Director of Human Resources/Board Secretary, Coatbridge College;

   and then from—

   Paul Brown, former Partner, DWF LLP (Biggart Baillie);

   Alasdair Peacock, Partner, DWF LLP;

   and then from—

   David Robb, Chief Executive, and Laura Anderson, Head of Enforcement, Office of the Scottish Charity Regulator.

3. **Section 22 report - The 2013/14 audit of Coatbridge College: Governance of severance arrangements** The Committee will consider the evidence received at agenda item 2 and take evidence from—

   Caroline Gardner, Auditor General for Scotland;

   Angela Canning, Assistant Director, Audit Scotland.
The papers for this meeting are as follows—

**Agenda Item 2**

PRIVATE PAPER PA/S4/15/18/1 (P)

Letter from Allister Gray to the Public Audit Committee PA/S4/15/18/2

**Circulated for information**

Submission from OSCR PA/S4/15/18/3

Member’s Bulletin PA/S4/15/18/4
Dear Gary

The 2013/14 audit of Coatbridge College: Governance of severance arrangements

Thank you for your letter dated 9 November 2015 in relation to the above.

In relation to meetings of the Audit Committee at Coatbridge College, my colleagues have confirmed that a representative of Wylie & Bisset attended Audit Committee meetings on 14 March 2013, 4 June 2013 and 4 October 2013. My colleagues have confirmed based on their recollection that no matters in relation to severance arrangements were discussed at these meetings.

In relation to the electronic transcript, I would make the following comments:

On page 37, the first paragraph refers to me as ‘former internal auditor at Coatbridge College’. I was the engagement partner for New College Lanarkshire from January 2014 and one of my colleagues was the Engagement Partner for Coatbridge College. My colleague has confirmed the factual accuracy of the Wylie & Bisset transcript in so far as it relates to Coatbridge College in relation to the period prior to 31 October 2013.

On page 42, in response to the Convenor’s question ‘So you became aware of the payment after it had been made. How did you become aware of it?’ I can confirm that Wylie & Bisset were aware that there would have been a payment to the Principal of Coatbridge College but not the details of the payment. We became aware of the details of the payment when we undertook the review of severance arrangements as part of our internal audit work at New College Lanarkshire which commenced in April 2014.

I also enclose a completed copy of the questionnaire as requested.

Yours sincerely

Allister Gray
Partner
For and on behalf of Wylie & Bisset LLP
Public Audit Committee

2013/14 audit of Coatbridge College: Governance of severance arrangements

Submission from Office of the Scottish Charity Regulator

1. Introduction

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (‘the 2005 Act’) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of over 23,800 charities in Scotland.

The Public Audit Committee has issued a call for written evidence relevant to the Committee’s consideration of the governance around the severance arrangements for those who left Coatbridge College in preparation for the merger with Cumbernauld College and Motherwell College. OSCR welcomes the opportunity to provide evidence, from our perspective as charity regulator. In preparing our evidence we have considered our overall vision, which is of charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

We wish in particular to highlight to the Committee the duty that the trustees of Coatbridge College had to act in the interests of the charity when making decisions and ask that the Committee consider this additional aspect when reviewing the issues.

2. Written evidence

2.1 OSCR’s regulatory role

OSCR was established with the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). OSCR has a number of functions which are set out under the 2005 Act:-

- To determine whether bodies are charitable
- To keep a public Register of charities
- To encourage, facilitate and monitor compliance by charities with the provisions of the Act
- To identify and investigate apparent misconduct in the administration of charities and take remedial or protective action in relation to such misconduct.
- To give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR’s functions.
2.2  The duties of charity trustees

Coatbridge College was registered as a charity with OSCR – charity number SC021186. It was removed from the Scottish Charity Register on 31 July 2014 at the point of the merger, and OSCR did not receive its 2013-14 accounts as it would have when it was still a charity. The newly merged body, New College Lanarkshire is registered under charity number SC021206.

The charity trustees or ‘board of management’ have general and specific duties under the 2005 Act. These are outlined in section 66 of the 2005 Act which states:-

66 Charity trustees: general duties

(1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular-
   (a) Seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
   (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
   (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee-
      (i) put the interests of the charity before those of the other person, or
      (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.

(2) The charity trustees of a charity must ensure that they charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.

Where a charity trustee breaches the duties imposed by section 66 this can be considered misconduct and OSCR have powers to take action accordingly. Whilst charity trustees can delegate authority they retain ultimate control for the actions of a charity.

2.3  Areas of concern for OSCR

The section 22 report prepared by Audit Scotland raises a number of concerns around the severance arrangements for some of the senior management team, an additional member of staff and the Principal at the time of the merger. As well as the payments there are also concerns raised around the decision making process, including the information provided to and considered by the Remuneration Committee.
On reviewing the discussion held at the Public Audit Committee held on Wednesday 9 September 2015 it is clear that the Auditor General for Scotland is of the opinion that the payments made were in excess of those required under the usual severance arrangements, that information was potentially withheld from the remuneration committee, particularly around the Scottish Funding Council’s concerns over the packages and that the Principal failed to deal appropriately with a conflict of interest.

These are areas where OSCR has a regulatory interest as they apply to the conduct of the trustees when Coatbridge College was a registered charity. The information contained within the section 22 report suggests that there was a potential breach of the section 66 charity trustee duties.

There are two main areas for concern:-

The fact that severance packages awarded to some members of staff exceeded those required under the agreed severance package raises the issue that charitable funds may have been misused. Charity assets should be utilised for the purposes of the charity, and while it is recognised that the fair and reasonable remuneration of employees is necessary, additional or inflated severance packages may be a breach of trustee duties. The fact that these packages were specifically advised against by the Scottish Funding Council compounds our concern.

Secondly the report raises serious concerns about the governance and conflict of interest procedures of the charity. There is a suggestion that information was deliberately withheld from the remuneration committee and that the Principal particularly did not act correctly when faced with a conflict of interest. This again may indicate a breach of trustee duties.

Although the College has been removed from the Charity Register following the merger, OSCR does retain powers under section 34 of the 2005 Act which allow application to the Court of Session to retrospectively disqualify trustees of a charity, notwithstanding that the charity no longer exists.

3 Conclusion

OSCR welcomes the opportunity to submit written evidence surrounding the governance and severance arrangements of the Board of Management of Coatbridge College.

We wish to particularly highlight to the Committee the duty that the trustees had to act in the interests of the charity when making decisions and hope that this information is useful to the Committee in its consideration. Should there be any questions on this evidence please contact Claire Stuart (Accounting Advisor) at claire.stuart@oscr.org.uk.
Public Audit Committee Members Bulletin: 18 November 2015

The following table details new documents laid or published which fall within the general remit of the Committee. Except in relation to reports from the Auditor General for Scotland, there is no requirement for the Committee to consider these documents, however Standing Orders provide for the Committee to consider any such documents, if it so decides.

<table>
<thead>
<tr>
<th>Date Laid (2015)</th>
<th>Ref</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>02/11/2015</td>
<td>SPSO/2015/AR</td>
<td>Scottish Public Services Ombudsman: Annual report 2015 s</td>
</tr>
<tr>
<td>09/11/2015</td>
<td>SG/2015/221</td>
<td>National Galleries of Scotland Financial Statements for the year ended 31 March 2015</td>
</tr>
<tr>
<td>09/11/2015</td>
<td>SG/2015/222</td>
<td>Creative Scotland Annual Report and Accounts for the year ended 31 March 2015</td>
</tr>
</tbody>
</table>

Forthcoming AGS report

<table>
<thead>
<tr>
<th>Title</th>
<th>Anticipated publication date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health and social care integration (j)</td>
<td>December 2015</td>
</tr>
<tr>
<td>Implementing the Scotland Act 2012: an update</td>
<td>December 2015</td>
</tr>
<tr>
<td>Changing models of health and social care (j)</td>
<td>March 2016</td>
</tr>
<tr>
<td>Maintaining Scotland's roads: a follow-up audit</td>
<td>June 2016</td>
</tr>
<tr>
<td>Audit of higher education in Scotland</td>
<td>June 2016</td>
</tr>
</tbody>
</table>

(j) Joint AGS/Accounts Commission report

Forthcoming Accounts Commission reports (for information)

<table>
<thead>
<tr>
<th>Title</th>
<th>Anticipated publication date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argyll and Bute Council Best Value Audit 2015</td>
<td>November/December 2015</td>
</tr>
<tr>
<td>Major capital investment in councils: Targeted follow up</td>
<td>January 2016</td>
</tr>
<tr>
<td>Social work in Scotland</td>
<td>Summer 2016</td>
</tr>
</tbody>
</table>