Leeds City College

Extending Further Education values and ambitions into high education

On 1 August 2011 the Leeds College of Music (LCoM) Higher Education Institution (HEI) became a wholly-owned subsidiary company of the Leeds City College (LCC) Group. On merger, LCoM was dissolved as an HEI and its assets and liabilities transferred to the newly created, wholly-owned, subsidiary of LCC (a company limited by guarantee). This governance relationship is illustrated in appendix 1.

Catalyst / drivers for change

Despite having many strengths and achieving significant improvements in its financial performance, LCoM struggled to achieve genuine sustainability after joining the HE sector in 2005 and was judged by HEFCE to be at "higher risk" in 2007.

Following the subsequent appointment of a new Chair, Principal and Director of Corporate Resources (who was, inter alia, Finance Director) and a review of the College's strategic options, the governing body of LCoM decided to seek a merger partner with shared values and ambitions, both to secure the future of the College's distinctive provision and to provide students with a greater range of opportunities than could be provided by LCoM alone.

In LCC, LCoM believed it had found a partner that not only had a complementary academic vision and offer, but also a similar cost base. That both institutions are based in Leeds was an important factor in the shared vision, making it easier to develop new provision, map progression routes, share teaching, and realise cost savings, and for students to interact with their peers and to access the joint services on offer.

There were also financial and strategic advantages to LCoM joining with LCC, including the protection afforded to LCoM's 19+ FE provision.

LCC's offer in cognate subjects is predominantly of FE qualifications, such as BTEC multimedia, dance, drama, media production and music theatre. In addition, LCC offers a Foundation Degree in Theatre as part of its portfolio of HE courses. These strengths complement well LCoM's portfolio of HE foundation, bachelor and master degrees, and BTEC qualifications, in music, music production and music technology, and provide the basis for a joint centre of excellence in the performance arts.

Review of options

Having recognised the benefits of merger based on the College's mission, the governing body of LCC went on to consider the possible governance models, as follows:

1 **LCoM goes into a subsidiary of LCC**

Under this model LCC would apply to the Chief Executive of Skills Funding under section 19 of the Further and Higher Education Act 1992 for permission to incorporate a company, with LCC as the sole owner of that company. Once LCC had incorporated the entity, the Secretary of State would then, using his power under section 128 of the Education Reform Act 1998, transfer all of the assets and liabilities of LCoM into that subsidiary.

2 **LCoM goes into LCC**

This remains the most common form of merger of two education institutions. If both colleges were in the FE sector this would be called a "Model B" merger. For this model, the Secretary of State would transfer all of the assets and liabilities of LCoM into LCC.

3 **Both institutions go into a new body**

Under this option, both institutions would be transferred into a new body, which could be either a company or a new FE corporation.

4 **LCC goes into a subsidiary of LCoM**

Under this option, LCC would become a subsidiary of LCoM.

5 **LCC goes into LCoM**

Consent to the merger from the Department for Business, Innovation and Skills (DBIS), Higher Education Funding Council for England (HEFCE), the Skills Funding Agency and Young Person's Learning Agency (YPLA);

Following consideration of the advantages and disadvantages of each option, governors were of the view that only options 1 and 2 presented a realistic solution and the remaining options, whilst legally possible, were therefore dismissed. Option 1 was subsequently selected as the preferred model.

Governors acknowledged the potential advantages to be gained from such a subsidiary structure, including retention of the well established LCoM brand as a distinct identity and the ability of LCoM to trade separately with appropriate organisations and individuals in developing and delivering its full cost recovery and commercial activities. Another advantage of the subsidiary route was to ringfence liability of LCoM from LCC.

At this stage the proposed arrangements were conditional upon:

- Department for Business Innovation and Skills (DBIS), HEFCE, Skills Funding Agency and Young People's Learning Agency (YPLA) consent to the merger;
- receipt of funding from the HEFCE Strategic Development Fund (SDF) to fund the strategic alliance; and
- receipt of satisfactory due diligence reports from professional advisors.

Merger Process

At a meeting of the LCC Board held on 10 September 2010, governors were asked to decide whether to continue to support the merger in principle in order to provide backing for the SDF bid.

In order for governors to make an informed decision, reports from the College's various professional advisors were presented, with attention drawn to the risks highlighted to date and what other work, in their opinion, needed to be undertaken before a full due diligence exercise had been completed.

The LCC Board had determined the issues to be satisfactorily resolved before the proposed merger could take place, based on the initial outcomes of legal and financial due diligence and the risks identified.

Following a lengthy debate around each of these pre-conditions, and after taking account of all of the information available to it, the Board continued to support the rationale of the merger as part of LCC's vision with a strong educational case for the merger benefiting students, not only in Leeds, but the north east region generally.

Governors felt that LCoM provided excellent and specialist provision which should be retained and developed under the auspices of a larger college so as to ensure the widest possible opportunities for students both now and in the future. However, the Board still had a number of concerns which would need to be resolved before the merger could proceed. In particular, governors emphasised that they did not wish to see LCC's position to be adversely affected, either financially, organisationally or reputationally as a result of merger.

Having achieved a satisfactory resolution of all outstanding issues and finalisation of due diligence, on 28 September 2010 the LCC Board resolved to make a formal commitment to the merger and agreed that the Chair be authorised to sign a letter of commitment to HEFCE and a Memorandum of Understanding/ Heads of Terms on behalf of the Board.

Following this formal commitment, it was agreed to establish a joint Merger Project Board (MPB) to oversee the merger on behalf of the two governing bodies. This was led jointly by the Chairs of the two colleges.

Grant Thornton was involved in independently monitoring the project on behalf of both governing bodies.

The Clerks of both LCC and LCoM played a key role throughout the merger process. The proposed timescale (see Appendix 2) was not only ambitious but sat alongside a previously untested process. The Clerks were therefore required to guide their respective governing bodies through the merger process, ensuring that governors received timely information to enable informed decisions to be made and ensuring the achievement of all key milestones. The Clerks were also instrumental in making proposals in relation to the governance framework to be adopted and supporting/servicing the MPB in its oversight and direction of the merger process. Another key role of the Clerks was to ensure appropriate communication between the MPB and governing bodies of both institutions. This was achieved through formal minutes and reports to Board meetings and, in the case of LCC, introduction of a dedicated section on the governor intranet for sharing information/key documents between formal meetings. The LCC Clerk now acts as Company Secretary to the LCoM Board, providing continuity and a useful link between the company and parent body governance arrangements.

Senior staff of both organisations played a key part, both during the merger process and in the early months of the new arrangements.

This included leading the work of the merger work groups to develop detailed proposals for the Merger Project Committee (MPC) and Merger Project Board (MPB) to consider (see Appendix 3). The MPC is a management committee chaired jointly by the two Principals. Its membership includes relevant senior managers from each institution, responsible for co-ordinating the development and successful delivery of the project plan. Senior staff within both institutions also played a key role in ensuring 'business as usual' throughout the merger process to ensure that there was no negative impact on students during this period of transition.

Stakeholder involvement

The strategic synergy existing between LCC and LCoM, combined with the assurance that the proposed merger would provide in respect of the sustainability of music education in Leeds was sufficient to secure the support of the key stakeholders of both institutions.

Other than HEFCE, the stakeholders with the greatest interest in the development were:

- Skills Funding Agency
- YPLA
- Leeds City Council

All three agencies were appropriately consulted on the colleges' plans and throughout the merger process senior officers of both colleges met on a regular basis with representatives of HEFCE. In addition, representatives of the Skills Funding Agency attended all meetings of the MPB.

A communications strategy was implemented to ensure that current and prospective LCoM students, the staff of both institutions, LCC students and wider stakeholders were consulted and kept informed of merger developments in an appropriate and timely way.

Feedback from students and staff was very positive, with both stakeholder groups acknowledging the increased opportunities that the proposed strategic alliance would bring for both students and staff. Benefits were realised by both groups at an early stage with LCoM students being provided with the opportunity to perform at LCC events and joint development events for staff during the merger process.

Key challenges and questions

Governors were aware that there had never been a merger before whereby a HE Corporation had moved into an FE Corporation or a subsidiary of an FE Corporation; the legislation was not drafted to accommodate this type of merger and therefore the proposal, although not impossible, was very much dependent on the goodwill of HEFCE and other funding bodies.

Key questions that arose during the merger process were around the ownership of student numbers, funding and accountability. LCC now 'owns' all HE and FE student numbers, receives all HEFCE, Skills Funding Agency and YPLA funding, and is directly accountable to the funding and quality agencies; LCC engages the Company to deliver the music curriculum at LCoM's existing premises. These issues are clearly documented in an agreement for funding and academic services between LCC and LCoM. This sets out the degree of control and autonomy of the LCC Group and LCoM respectively.

Agreement was also reached at an early stage in relation to the need to ensure synergy within the corporate planning process and how to promote/achieve the values and ambitions of LCC through LCoM. To this end, the strategic plan of LCoM for the period 2011-2014 is consonant with, and contributes to the delivery of, LCC's mission and values. The strategic plan of LCoM is subject to scrutiny by the LCC (Group) Board to ensure corporate synergy.

Risk analysis

The risks inherent in the project were considered in some detail by governors and were addressed in advance of reaching the SDF bid stage. Key among these were the risks that had ultimately obstructed LCoM's previous merger attempts, including:

- staff assimilation costs;
- pension arrangements (around the question of staff from a subsidiary body being eligible for continued membership of existing schemes); and
- the continuation of FE and the support of the FE funding agencies.

Other key risks that it was felt could potentially obstruct the completion of the merger plans included:

Risk	Mitigating action
Failure to obtain SDF funding.	Engagement with HEFCE to ensure that the SDF bid satisfactorily addressed all criteria.
Inadequate management resource to manage the merger.	Phased, minimum-change approach taken through the adoption of the subsidiary model.
Cuts in HE sector funding in excess of those anticipated in the merger plan and sensitivity analysis.	Financial plan prudently prepared and resilient to sensitivity testing for HEFCE funding cuts up to 10 % per annum.
Staff morale in both institutions may dip as merger approaches.	Use of communications strategy to outline benefits of merger.

The project planning and risk management arrangements required a risk register to be regularly updated and reviewed to ensure that risks were captured from all sources as they arose/ Responsibilities for their management were assigned and progress monitored, at all levels of the project management structure. The risk management process was overseen by the MPB.

Conclusion and impact

Despite the challenges faced due to current legislation not being drafted to accommodate this type of merger, the project was achieved smoothly and to timescale, through a well designed process which achieved the support from prime stakeholders.

The key benefit of this new structure is that LCoM's valuable brand is preserved, enabling it to continue to market its unique offer of practice-based education in classical music, jazz, music production and popular music to potential HE, FE and community-based students, and to trade with external parties without the risks arising from a change of identity.

The primary aim of the merger was to provide a stable and secure basis for LCoM's future operation as a provider of specialist music education within a much larger organisation, thereby enabling it to develop a programme of full cost recovery activities, using flexible delivery and blended learning approaches to support and enhance its publicly funded work. The merger has also strengthened significantly the offer to the students of both colleges, and added value to the colleges' offer to their local and regional communities, and to employers more widely.

In particular, LCC's substantial community outreach programme, with its extensive network of community centres, offers a number of opportunities to expand the current involvement of LCoM's HE students in community placements. This is important to the missions of both colleges, and to the people of the Leeds City Region.

LCC has a very substantial and wide-ranging FE offer which means that it is better able to accommodate changes in FE funded qualifications that might otherwise pose a threat to LCoM's provision if it had remained a specialist provider operating with a narrow curriculum base. LCC's significant expertise and management capacity in FE also means it should be possible to achieve both quality enhancements and cost savings in this area of LCoM's work within a short time after merger.

Since the merger LCoM has backed its commitment to bringing world class facilities to its students with the launch of a multi-million pound refurbishment programme. The investment includes refurbishment of studios, performance spaces, communal spaces and a major investment into the latest equipment and technology as part of LCoM's commitment to musical excellence.

In addition, in 2011 LCoM became the only English conservatoire with All Steinway School status and the first regional British Academy of Songwriters, Composers and Authors Hub, which encourages high standards in the industry.

Next steps

Transferring LCoM relatively intact as a subsidiary of LCC means that its successful operation can continue within the group structure, allowing for further integration to take place as and when this may be judged beneficial.

Financial and other performance targets are being monitored through the Group governance structure illustrated in Annex 1. The MPC also continues to meet to monitor the post-merger implementation, including harmonisation (where relevant), and to recommend closure of the project when appropriate. It will then evaluate the merger project on behalf of LCC's governing body and the LCoM Board. In addition, Grant Thornton will be commissioned to conduct a post-implementation review at the appropriate time. The LCC (Group) Internal Audit Plan also includes 20 days for review of LCoM activities during 2011/12. The audit reports/opinions will be presented to the LCoM Board and the LCC Audit Committee, as illustrated in Annex 1.

At this point, half-way through the first year of these new governance arrangements, a need has been identified for a review of reporting between LCoM and LCC. In particular, to ensure that the necessary level of reporting is in place to provide the LCC (Group) Board with adequate assurances over the performance (financial and academic) of LCoM. This will include a review of the reporting framework, further training for board members and independent review by the College's internal auditors. As a condition of the SDF funding, HEFCE also require a post-project review to be carried out. The outcomes of each of these reviews will help to shape and inform future governance arrangements.

Lessons learned

Lesson 1: To carefully select the governance model

When entering into any such strategic alliance, it is important to think carefully about the governance model to be selected as this shapes the way in which any new institution(s) operate, including reporting relationships, control and accountability arrangements. The governing bodies of LCC and LCoM fully evaluated the potential advantages and disadvantages of all options available to them in effecting their strategic alliance before opting for the subsidiary company route. It was important to governors that all possible options were assessed against the colleges' vision and mission, ensuring that form followed function.

Lesson 2 : To reach a mutual understanding

Having selected the preferred model, it was important to consider the nature of the relationship between the LCC Board and the LCoM subsidiary company. This was confirmed through a Memorandum of Understanding / Heads of Terms. The Heads of Terms expressed the desires and understandings of the respective parties subject to legal and other professional advice and subject to the formal approval of the respective governing bodies.

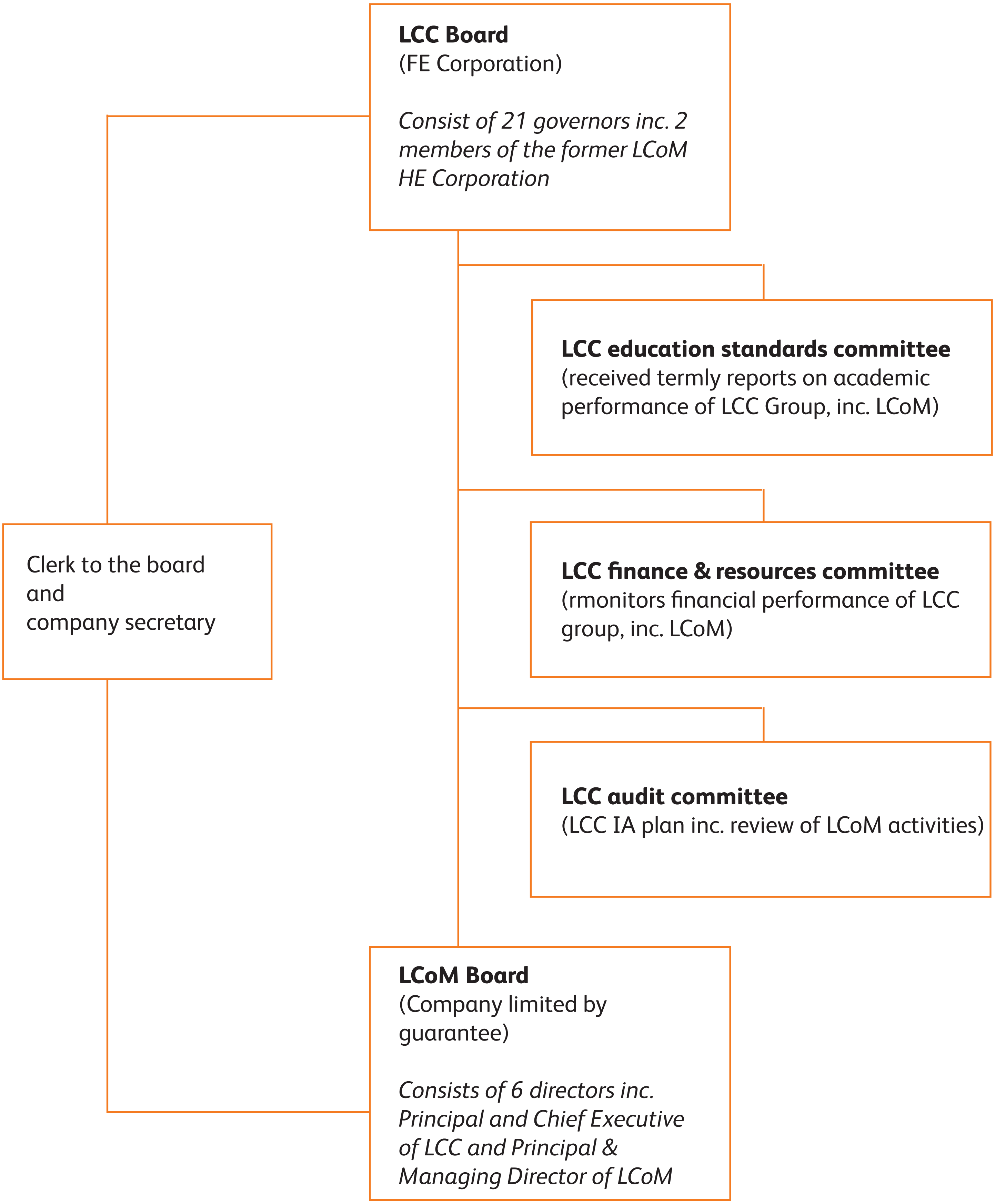
Lesson 3: To agree and document levels of control and accountability

It was also felt important to document the reporting relationships, levels of control and accountability prior to the strategic alliance being effected. This was achieved through agreement of the reporting structure and Agreement for Funding and Academic Services. Agreeing and documenting these key issues in advance helped to ensure that there were no surprises or unknowns on merger.

The detailed project management arrangements put in place at the outset helped to ensure that the merger was achieved smoothly and gained support from prime stakeholders.

Appendix 1

Group governance structure



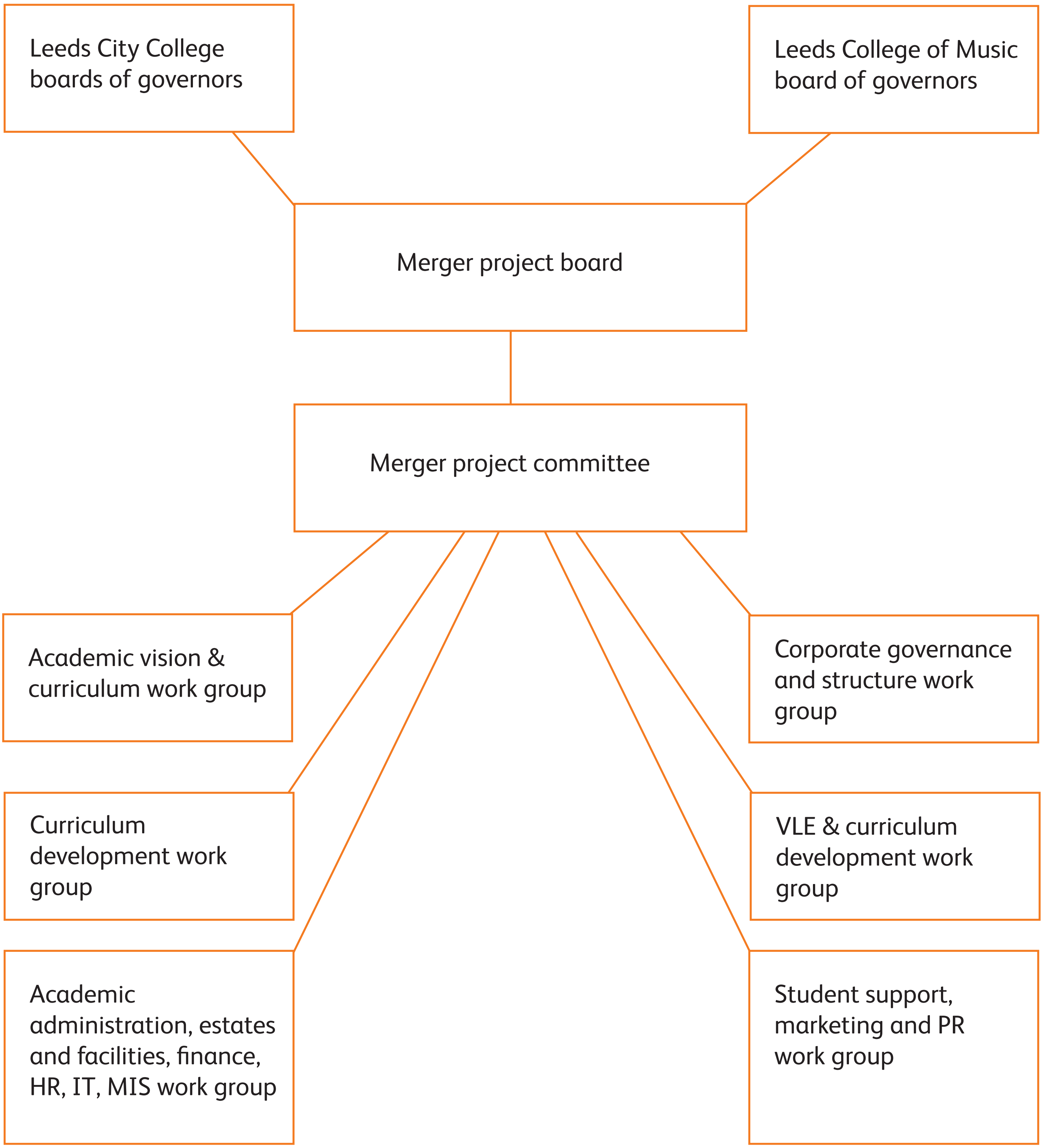
Appendix 2

Timetable and Document List	Completion Date
Initial consideration of proposed strategic alliance by Governing Bodies of both institutions – in principle approval to discussions continuing and for initial proposal to be submitted to HEFCE	**March – July 2010**
LCC Governing Body confirms its formal commitment to the merger and provides letter of commitment to HEFCE	**September 2010**
Liaison with HEFCE, the SFA and BIS as to form and details of merger	**September 2010**
Decision as to legal vehicle for merger	**September 2010**
Issuing and entering into Heads of Terms Agreement	**September 2010**
Establishing a working party with equal numbers of nominees from each college to deal with the merger facilitation. Reviewing terms of reference of merger working party.	**September 2010**
Drafting and issuing of Mutual Due Diligence Questionnaire	**September 2010**
Issuing Due Diligence Report and commencing actions arising	**November 2010**
Formal resolutions of both colleges to approve the merger (for LCC this included resolutions to create a wholly owned subsidiary company and that the company receive the assets and liabilities of Leeds College of Music on the transfer date, following relevant approvals)	**December 2010**
Liaison with BIS as to timings of application for merger	**December 2010**
Agree strategy for employees - TUPE consultations, Pensions etc.	**January 2011**
Draft Application by LCC to SFA in accordance with Section 18 and 19 of the Further and Higher Education Act 1992 for consent to set up a company and submit a business plan to the SFA.	**Spring 2011**
Liaison with stakeholders and contractors	**Spring 2011**
Agree Board and membership structure of Subsidiary	**Spring 2011**
Draft Memorandum and Articles of Association of Subsidiary	**Spring 2011**
Register Subsidiary at Companies House	**Spring 2011**

First Board meeting of Subsidiary • Appoint directors • Approve bank account	**Spring 2011**
Group VAT registration of the Subsidiary	**Spring 2011**
Amend student contracts, codes of conduct, policies and procedures (if required)	**Spring 2011**
Draft Funding and Academic Services Agreement between LCC and the Subsidiary	**Spring 2011**
Agree announcements/PR protocol for internal and external statements about the merger	**Spring 2011**
Liaison with and applications to pension funds	**Spring 2011**
Obtaining an Order of the Secretary of State to effect the merger	**July 2011**
Merger effected	**August 2011**

Appendix 3

Leeds City College and Leeds College of Music merger project governance and management



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