



Brighton & Hove

BRIGHTON & HOVE CITY COUNCIL

REPORT OF THE SCRUTINY PANEL ON COMART'S INCLUSION IN THE PFI SCHEME

25 May 2005

MEMBERS OF THE PANEL:

Councillor Georgia Wrighton (Chair)
Councillor Leslie Hamilton
Councillor David Smith
Mrs Ann Antonio
Reverend Stephen Terry

The Panel wishes to place on record its thanks to all who provided them with submissions and information giving their perspectives and experience without which production of this report would not have been possible and

to Councillor Pat Hawkes the current Chair of the Children, Families and Schools Sub-Committee who attended a meeting of the Panel .

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SECTION A - THE SCRUTINY REVIEW: BACKGROUND AND PROCESS

1. ESTABLISHMENT OF THE SCRUTINY PANEL

- 1.1 The Scrutiny Panel on COMART PFI was established by the Education Overview and Scrutiny Panel at its meeting held on 22 June 2004 following consideration of a request for scrutiny submitted by Councillors Mallender, Paskins, Randall, Taylor, Williams and Wrighton. The Panel agreed that it would be appropriate to undertake a review of COMART's inclusion in the PFI Project and any lessons that could be learned for the future. A copy of the letter submitted to the then Chief Executive David Panter is included as Appendix 1 to this report.
- 1.2 Councillors and co-opted members of the Education Overview and Scrutiny Panel were invited to indicate whether they wished to serve on the Scrutiny Panel to undertake the review. The membership of the Panel was subsequently confirmed by the Education Overview and Scrutiny Panel and comprised of Councillors drawn from the administration and opposition groups together with independent co-optees as follows:

Councillor Georgia Wrighton (Chair)
Councillor Leslie Hamilton
Councillor David Smith
Mrs Ann Antonio (co-opted member representing NUT)
The Reverend Stephen Terry (co-opted member representing Brighton & Hove Governor's Network)
- 1.3 There was no provision for substitute members to attend meetings of the Panel.
- 1.4 The Panel is grateful to officers within the Children, Families and Schools Department and across the authority who were instrumental in providing valuable background information. The Panel would also like to place on record their gratitude for the valuable early contribution of Mr Andy Magrath (statutory co-optee Parent Governor Representative) whose further participation was cut short by his untimely death.
- 1.5 The Panel considers it is important to consider this review in the context of the situation at a time shortly following the inception of the new Unitary Authority when the need to seek to protect the

longer term future of COMART was considered paramount. The decision as to whether or not to include the school in the PFI following the decision to 'Fresh Start' it had to be taken within a very tight time frame, and at a time when alternative potential funding options did not appear to be available. Substantial funding was required in order to provide improvements which were seen as being integral in strengthening the school's position. The improvements effected due to the measures undertaken prior to the school being 'Fresh Started' and its subsequent inclusion in PFI were acknowledged as being very fragile. Notwithstanding the very particular set of circumstances relating to the decision to include COMART in the PFI at that time, the Panel are of the view that there are valuable positive lessons that may be drawn from this process that could be applied in the event that major schemes of a similar magnitude were to be embarked upon in the future. The professionalism and integrity of those involved at the time and since is unquestioned and the findings of this report are not intended to be punitive or political but to provide a positive model for the future.

2. TERMS OF REFERENCE/SCOPE OF THE REVIEW

- 2.1 Following consideration of the report of the Chief Executive and Director of Children, Families and Schools the broad parameters for the scrutiny of COMART PFI were established and enabled a Sub Panel to be set up to consider fully issues relating to the inclusion of East Brighton College of Media Arts (COMART) in the PFI and any lessons that could be learnt for the future (for copy see Appendix1).
- 2.2 Members agreed that the broad scope of the scrutiny should cover the following areas:-
- The initial planning of the PFI project for the four schools and the decision to include COMART.
 - The decision making process for projecting pupil numbers.
 - The Education Authority process for projecting pupil numbers.
 - The process of planning for school place provision with particular reference to national policy and guidance/statutory requirements on Local Authorities.
- 2.3 The Panel considered that in order to form a view some of the detailed financial information available to those making decisions regarding the future of COMART at the time when key decisions regarding its future and its inclusion in the PFI contract would probably be required. Part of the role of the Panel would also be to decide precisely what information it needed to consider and, whom it might request to give evidence, although the scrutiny should be carried out within the broad guidelines set and should focus on the

PFI. There was agreement however, that it was not appropriate to stray into areas relating directly to the closure of the college as that decision had ultimately been taken by the School Organisation Committee (SOC) a body that operates independently of the Council and whose decision was binding.

2.4 The Panel stressed from the outset that the process was not intended to be 'political', to be punitive nor to allocate blame either against departments, individual officers or any past political administration. Its purpose was as a neutral fact finding exercise to evaluate the information received and ascertain the framework which had informed the original decision making process. An assessment would then need to be made as to whether and how any lessons learnt might be applied positively in the future. It was considered very important that the Panel did not become side-tracked into discussing issues relating to closure of the school or stray into issues surrounding this which lay outside their remit. As there had been no direct parental involvement in the decision to include COMART in the PFI, it was decided that it was not appropriate for this group to be directly involved in the evidence giving process. Following the initial receipt of background information the Chair of the Governing Body of COMART was invited to give evidence and a valuable input was received from the Mr Derek Bown, whose involvement at the school spanned the period from the inception of PFI to date. Subsequently Headteachers from the other PFI schools, including the current acting Head of COMART, were invited to provide evidence to the Panel. The Panel is indebted to them and to all others for their candid responses without which a thorough scrutiny process would not have been possible.

2.5 Initially the Panel sought to familiarise themselves with the framework, groups, individuals or stakeholders involved in order to gain full background knowledge and to acquaint themselves with the processes, which had informed the decision to choose the school for PFI. Predicted pupil numbers and assessments of how it had been decided the financial risk could be managed were also considered.

The Panel considered:

- Background information to the present position.
- Backdrop to decision to 'Fresh Start' COMART.
- Brighton and Hove situation in 2000/2001

- Actual and projected pupil numbers.
- Availability of places at secondary schools across the City of Brighton and Hove.
- The Authority's plans for supporting COMART to succeed.
- The decision making process. The PFI Board had been instrumental in carrying the decisions made forward and for obtaining approval of the Policy and Resources Committee.
- Government directives and guidance in respect of PFI.
- The chronology of events leading up to the decisions taken, why school numbers dwindled, the volume of risk, factors considered and measures undertaken to mitigate against this.

Additionally the Panel considered that in order to better inform its own processes details of any models of Best Practice that may have been used as benchmarks at the time of the original decision would be beneficial. Details relating to the process applied by Central Government, both at the time and currently could also be instrumental in establishing rationale for future Best Practice.

- 2.6 The Panel called upon officers to provide background information at the outset and any further information required. It was agreed that thought would also need to be given to whether or not to hold their meetings in public. Whilst the scrutiny process by its very nature needed to be open and transparent, it was also appropriate for certain information, process planning and meetings where the Panel formulated the content of their submission to be held in 'closed' session. Having sifted and assessed the initial information requested Members agreed that they would need to form a view on this issue. The rationale as to why the evidence giving sessions were held in non-public session is referred to in detail at Paragraph 7.

3. THE TIMETABLE FOR THE REVIEW

- 3.1 The Panel held their first scoping meeting on 5 July 2004. During the course of their meetings the Panel received information from officers of the Council and other relevant persons including the current Acting Head of COMART and the Chair of Governors. Prior to the preparation of this report the Panel made a site visit to COMART in order to set the information they had received into context. The Heads of the three remaining schools currently involved in PFI were also provided with the opportunity to detail their experiences of the process and to provide their perspectives. Following the Panel's

initial trawl for information, it became apparent that it would be beneficial to invite some additional persons of whom the Panel had not immediately been aware and to devote time to carrying out this process methodically. A full list of those who provided information to the Panel are set out in Appendix 4.

4. PARAMETERS FOR THE REVIEW

- 4.1 The Panel consider that it is important to explain at the outset that it confined itself to examining the process that was integral to COMART's inclusion in PFI and any lessons learnt that could be applied in future. It was not within this Panel's remit to revisit the decision to 'Fresh Start' the school. This has already been the subject of a separate scrutiny review (included at Appendix 2 to this report). The Panel did however consider how this process may have been integral to the further decision made relatively soon thereafter to include the school within PFI. This is referred to in greater depth at Paragraph 5. Neither did the Panel as has previously been stated seek to examine the process surrounding the decision to close the school as, this was ultimately made by the School Organisation Committee (SOC) a statutory body which operates independently of the Local Authority. The SOC comprises representatives from both local diocese (Church of England and Roman Catholic), Parent Governors, The Learning and Skills Council and Council Members. The decision to merge or close any school is taken not by the Local Authority but by SOC and has to be unanimous across all 5 of the represented groups, otherwise the matter is passed to an independent adjudicator appointed by the DfES for determination.

5. BRIEF HISTORY: CONTEXT

- 5.1 Stanley Deason School, subsequently Marina High School and latterly COMART was (as a result of consistently poor Ofsted Inspections) deemed to have significant problems across a number of areas of its educational outcomes. This led to the conclusion that the school was failing to provide its students with an acceptable standard of education. As a result it was subsequently put into special measures by Ofsted. The Local Education Authority (LEA) (at that time the East Sussex County Council) were required to make the necessary improvements at the School. At that time and as continued to be the case many of the students at the school had varying degrees of special needs, 43% were also eligible for free school meals. The numbers in respect of both were far higher than the national average. At that time the school was achieving 11.5% A* to C grade passes at GCSE, which conversely was well below the national average. In 1997 when the new Brighton & Hove Unitary Authority took over responsibility for the school from East Sussex

County Council, it was still in special measures and a strategic action plan was produced by the new Local Education Authority (LEA) setting out how it intended to address the problems that had been identified at the school. This was submitted to the DfES in May 1998.

- 5.2 The then Headteacher left at the end of the Spring term of 1998 and the LEA recruited an acting Headteacher and an associate teacher to cover for the summer term of 1998. In September 1997, the school governors had decided to change the name of the school to Marina High School. Marina High School subsequently became the East Brighton College of Media Arts (COMART) in September 1999 following the decision to 'Fresh Start' the school. (A full chronology relating to this period is included at Appendix 2). By October 1998, although the DfEE, as it was then, noted that some improvements had been made, in their view, they still fell short of the standards required also considering that the pace of improvement needed to be increased. The LEA was requested to provide a target date for recovery or closure. Although the exam results for 1999 had showed some improvements the view of the DfEE remained unaltered.
- 5.3 At that time the view taken by Members and officers was that the only option available was to 'Fresh Start' the school, closure of the school was not considered to be a viable option. On a practical level there were, at that time insufficient places available across the City's schools to accommodate the numbers of children who would be displaced by a school closure. It was also considered very important in the wake of the area's inclusion within East Brighton For You (Eb4U) in recognition of its levels of deprivation for the community to feel supported. It was believed at that time that the school could provide an important community focus. The timeframe during which rapid and sustainable results were required by the DfES was not negotiable and this led to a very tight timescale.
- 5.4 Integral to the decision to 'Fresh Start' the school, to effect a rapid turnaround in its performance and to improve its local and national reputation was the decision to re-brand the school as a specialist media arts college, whilst also delivering the national curriculum. At that time there was a perception based on the school's educational results in areas that could broadly be defined as falling within media arts that pupils at the school, particularly those with special needs, had tended to perform well and at a higher level in such subjects than in more traditional academic subjects. This was also a subject that appeared to have a broader appeal and it was considered that in order to raise pupil numbers closer to the schools capacity it was necessary to diversify into an area that as well as capturing the imagination of the students, could ultimately provide employment

opportunities and draw students from a broader catchment area as had occurred in the past.

- 5.5 Having 'Fresh Started' the school it became apparent that the level of funding available was insufficient to effect all of the works required. The LEA had been placed in the position where it was under pressure to act quickly to seek to ensure that the school did not close. The decision was then taken to include the school within the LEA's bid for PFI credits with three other schools, Dorothy Stringer, Patcham and Varndean. It should be noted that the timeframe for PFI bids was also tight. The reason for inclusion of COMART was different from that relating to the other three schools. The other three were to be enlarged to enable them to admit an additional form of entry and create additional places for children aged 11–16 years of age; in the case of COMART, facilities were to be provided to enable it to specialise in media arts education and to improve the layout of the school including works to the long interconnecting corridor known as 'The Street'. The works at COMART were not carried out in order to expand the school but were intended to attract pupils up to its stated capacity. PFI was also intended to address the condition and suitability of all the school premises and to remove any huddled classrooms. The "Fresh Started" school opened in September 1999. A detailed chronology is set out at Appendix 2).
- 5.6 A group of Councillors and senior officers was established at an early stage as a Project Board to oversee the project and lead on decision making during the initial decision making process. The Project Board provided support to a Project Team in progressing the scheme to the point where reports were taken forward for decision by the Policy and Resources Committee. It is important to note that throughout the period decisions in respect of entering into the PFI contract between the LEA, the service provider and the four schools were approved by the Policy and Resources Committee which was and remains a full standing Committee. During much of this key period however, the Council had different democratic arrangements in place than at the present time. At that time an experimental Executive and Cabinet arrangement was in place as the framework for decision making. Committees other than Policy and Resources and its Sub-Committees, for example Planning, were abolished and decisions taken at Executive decision making meetings of Executive Councillors in consultation with Directors. Post 2002 a revised Committee system was adopted following public consultation and this remains in place. During that formative period a relatively small number of individuals were delegated to make decisions up to the point at which reports were referred to the Policy and Resources Committee for approval.

5.7 Once approval had been given to submit bids for PFI funding, key milestones for the life of the project were set and works were due to commence at all four schools during the summer of 2002. It should be noted however that the submission of the outline business case to the DfEE in February 2000 overlapped with the early period during which the school had been 'Fresh Started'. One of the overriding objectives was for additional places to be provided at the other three schools by the start of the 2002/2003 school year.

6. INITIAL PLANNING PROCESS INVOLVEMENT OF THE FOUR SCHOOLS

6.1 As referred to in Paragraph 5 above, the initial planning process in respect of all four schools sought to consolidate each of the sites expanding three of them and removing any huddled/temporary accommodation, with in addition improved access and sporting facilities on three of the sites and in the case of COMART, new specialist media arts facilities and the reconfiguration of the long access corridor known as 'The Street'. From those who gave evidence most were generally in agreement that given limited funding streams available at that time PFI had been the only means of delivering the major works required. There was also agreement that during the initial stages all parties were satisfied with the level of consultation, involvement and information sharing which took place. The preferred bidder was appointed following a series of presentations to which heads of the schools and their governing bodies were party. It should be noted however that although the other three schools were satisfied with the bidder chosen, COMART were not, mainly in respect of the proposed plans notably in respect of the configuration of 'The Street' and the location of the media arts facilities. Whilst the effect of this cannot be quantified it may have been a contributory factor to some although by no means all of the problems that were experienced initially. The Panel fully accepts however that the nature of PFI is very heavily prescribed (perhaps more so at that time as a new initiative) and, that the Council had to chose one provider for all four schools and was not able to 'cherry pick'. The Panel all received details of the constraints and contractual obligations that fell to the authority in terms of new build and refurbishment works and performance deductions.

6.2 Following the preparation of an outline business case in February 2000 higher levels of PFI credits were sought to carry out the works required and subsequently approval was received from the DfES to proceed on the basis of those higher figures. At that point both affordability and risk analyses had to be carried out to the satisfaction of the DfES which sought to ensure that the PFI route could be justified to ensure that it would offer prima facie value for money and was affordable.

- 6.3 There was recognition at the time of the decision to include COMART in the PFI that there was a high risk of failure, 50%. The terms of the agreement entered into between the Council and the private sector provider (Jarvis) were drawn up in such manner as to ensure that where it was commercially practicable to do so, risk was transferred to the provider, risk remaining with the Council in the event of lower than predicted pupil numbers or eventual closure. Relevant terms and conditions were agreed which would enable the Council to manage performance including by variation to the contract and to terminate the agreement if appropriate.
- 6.4 This attendant risk whilst acknowledged seems to have been accepted on the basis that closure of the school was untenable, not least because in practical terms there were insufficient surplus school places available across the City and also because there was a genuine optimism that the measures proposed would lead to increased pupil numbers from a broader demographic base and would also dovetail with the broader aims of fostering lifelong learning and wider community use which would link in with local initiatives such as Eb4U and the East Brighton Action Zone.
- 6.5 Following this initial planning phase and acceptance of the 'Best and Final' offer from the bidder, contracts were exchanged and signed off and works on each of the four sites commenced. As part of its consultation process the Panel sought information and views regarding mechanisms and information exchange in relation to both the pre and post contract stages and sought detailed information regarding projected pupil numbers, the level of risk and how that was determined; their findings in this respect are set out in the paragraphs 7 and 8 of the report.

7. CONSULTATION PROCESS

- 7.1 The Panel has not attributed any of the information received to any individual as this was provided in confidence by those who gave evidence. It became clear at the outset that the Panel were far more likely to receive the candid responses which would give a full understanding of the context of PFI and would be instrumental in forming their recommendations in this way. From its commencement the Panel was seeking to ascertain whether or not there were consistent threads and themes which could be drawn out relative to COMART and to the schools PFI generally in order to pin-point any areas of weakness or lessons to be learned, which could be applied in order to better manage this or any similar process in future. It is important to note that much of the background information received by the Panel was by virtue of the

fact that it contained detailed contractual information relating to legal matters entered into between the Council and a third party exempt from disclosure in the public domain. That information was and still is by its very nature exempt and under those circumstances it would have been inappropriate for this to be disclosed to the public or discussed in the public domain.

- 7.2 The Panel gave very careful thought to whether or not its meetings should be open to the public but were of the view that in the interests of gaining a complete and accurate picture on which to base any findings that might appear in the final report, it was important for those who gave evidence to be assured of complete confidentiality and to be able to speak freely. External invitees were all asked whether or not they wished to make their submissions either in person, in private or in writing. In the case of Council Officers as their submissions related to the legal and contractual information detailed at Para 7.1 above, this information was also received in 'closed' session.
- 7.3 The Panel whilst wishing to carry out discussions in public session if practicable to do so decided on a meeting by meeting basis once it entered its evidence giving stage whether or not the nature of their discussions at that point was such that they could be open to the public. This process was duly followed and having carefully reconsidered the position on each occasion and in order to respect the wishes of their respondents these further evidence hearing sessions were also held in private.
- 7.4 This Scrutiny Panel was not a formal Committee or Sub-Committee under the Council's Constitution, but there was however a presumption that it would mirror the Committee framework and hold meetings in public if appropriate to do so. Meetings were advertised at the evidence giving stage and the decision whether they should be held in public session made on each occasion. This did not ultimately prove possible for the reasons set out, but is not considered to be against due democratic process given that this report and its findings are fully within the public domain. Full copies of all the papers considered by the Panel in formulating its response (including those containing exempt information) have been made available to all Members of the Education Overview and Scrutiny Panel.
- 7.5 Following their initial scoping and information gathering meetings the Panel began to interview witnesses and to assess whether there remained issues about which they still required further information. The Panel also took great care in framing the content of the questions they asked of attendees providing them with details of

the parameters to be covered in advance in order to ensure that these were focussed and appropriate.

- 7.6 The Panel would like to place on record their gratitude to all who participated in the scrutiny review. Their perspectives input and information were invaluable when set against the background and other information received by the Panel and in helping to set this information into its proper context, and were instrumental in helping to formulate their final recommendations. The Panel also wish to place on record its thanks for the contribution made by Councillor Pat Hawkes the current Chair of the Children, Families and Schools Sub Committee who has also had an involvement in education in the new Unitary Authority since it was set up in 1997.
- 7.7 The initial information gathering process proved lengthier than Members had initially anticipated. Following a preliminary examination of the background documents relating to the inclusion of COMART within the PFI process, the Panel drew up a list of those whom it wished to interview including existing Council Officers, Members, Headteachers and school governors who had been intimately involved in the original Planning Process some of whom had since left the authority and some others who had been involved latterly.
- 7.8 Unfortunately despite their efforts to do so the Panel were unable to interview any of those who had left the authority.
- 7.9 This omission did not affect the eventual outcome of the Panel's research, but did hamper the process in its initial stages. It was only once the process was in train that it became apparent that individuals other than those of whom the Panel had initially been aware might also be able to provide them with information. A full list of those who provided the Panel with information is included at Appendix 4.
- 7.10 The Panel whilst understanding the perceived need and rationale for including COMART within the PFI sought detail regarding how this potentially high risk had been mitigated against, and how it had been that the pupil numbers had fallen so far short of that predicted. It was explained that an earlier bid made by East Sussex County Council for funding and approval to build a new school had been unsuccessful. At that time therefore the option of extending and refurbishing three of the chosen schools was the only available option to create the additional number of places required.

- 7.11 It was explained to the Panel that there was a 50/50 (medium to high) risk that the anticipated pupil numbers at COMART would not be achieved and this was stated at that time. The Panel had sought confirmation regarding how the risk could best be managed and whether or not it could be passed on to the contractor. They were advised that the fundamental principle of PFI was that risk should be allocated to the party best able to manage it at least cost. This risk therefore had not been written in to the contract and therefore not transferred to the contractor as to do so was not good business practice, nor would it have represented value for money over the life of the contract. It was considered appropriate and good business practice for the Council to bear any attendant risk. To write any potential risk factor for any 'failure' into the contract against an eventuality which might not occur, would have resulted in far higher monthly charges. Given that the life of the contract for all four school is 25 years it represented good financial management for the 'contract variation procedure' to be used in the case of any significant change for example the removal of one of the schools after the commencement of the contract.
- 7.12 The contract allowed for variations to be made and would be renegotiated at that time depending on the changed circumstances, for example reduced pupil numbers or closure, and variables such as the remaining unexpired term of the contract. To do otherwise would have been inappropriate and may well have resulted in the PFI being unworkable.
- 7.13 The parameters for the PFI procurement process itself had been set by Central Government and are prescriptive and rigidly drawn and allow very little flexibility to any Local Authority embarking on the PFI process.
- 7.14 COMART had been on the verge of closure, which at that time had been insupportable; the Local Authority had been under pressure to act quickly otherwise the matter would have been taken out of its hands by the DfES. Those involved at the time had needed to adopt a pragmatic approach.
- 7.15 By May 2002, it began to become apparent that the projected pupil numbers were not being realised; the contract had been signed and committed to in March 2002. This arose in part as a result of the requirement of the government that as far as practicable, LEA's should seek to meet parental preferences and to the knock on difficulties caused due to admissions elsewhere and the result of successful appeals.

- 7.16 Notwithstanding that COMART had not been in agreement regarding the preferred bidder, given the heavily prescribed nature of the contractual arrangements it would not have been possible to engage a separate contractor to carry out the works at COMART. A consensus view had been obtained and overall Jarvis had been considered to provide by far the best package and had been appointed on that basis.
- 7.17 The primary concern of any contractor was to retain their profit ratio and negotiations with the Local Authority would also have centred around that. Although the provider has control of the site, the land remains in the ownership of the Local Authority and the provider's involvement in the COMART site could be brought to an end through the variation procedure, subject to payment of appropriate compensation to the provider for the early termination of that part of the contract.
- 7.18 One of the schools only agreed to commit to the contract very close to the final deadline, but this did not appear to be due to undue concerns on their part but because they had sought independent legal advice. However, all considered that post contract the balance of relations appeared to have changed when responsibility for the continuing contract was essentially in the hands of the Council and the contractor as joint parties to the main contract. It was the schools' perception that the level of contact and ability to get works carried out on schedule or to resolve problems altered at this point. This appeared to be a common theme and had coincided with the departure from the project of a number of key personnel from the Local Authority who had been involved at the inception of the project and of the original Project Manager (appointed on a Consultancy basis) given that the project had now moved on its next stage. At this critical time the hiatus within the Local Authority resulted in a period when the schools were left to deal with the provider direct and where in the absence of dedicated staff to pick up the day to day running of the project monitoring was not as rigorous as it should have been. This presented specific difficulties in the case of a school which was already struggling. It later became apparent that during this period, in order to achieve economies of scale in one instance alterations were made to plans for the facilities on which the school was not consulted at that time.
- 7.19 During the course of the evidence giving sessions certain common themes as well as issues which were specific to COMART emerged. These are referred to in greater depth in our conclusions/recommendations sections (Paragraphs 8 and 9).

- Although the initial consultation process was good and the schools were kept informed, there was a generally held view that once the contract had been entered into the relationship changed.
- Following the initial process which represented a sharp learning curve for all concerned, there were changes in personnel and gaps occurred where the process did not seem to be as effectively supervised and monitored as had originally been the case, this led to problems at all of the schools.
- Due to a perceived failure in the required level of supervision and in communication with the schools during the summer holiday period, there were delays in opening COMART for the start of a new academic year. This was cited as a critical factor, at a time when the school was seeking to rebrand itself.
- At that time the Assistant Director initially responsible for PFI left the authority and on deletion of their post another Assistant Director took on responsibility for this but this was in addition to their other responsibilities.
- It was clear that the school was grappling with a multitude of problems, including a significant proportion of pupils who were vulnerable young people. The disruption caused due to major building works served to exacerbate an already difficult situation, although the rationale for including COMART within the PFI was understood.
- The loss of key Local Authority staff at such a critical time at COMART was seen as being detrimental there but did also appear to result in differing levels of problems across all four schools including in one case, a potential delay to the start of term due to health and safety risks. Much of the success or otherwise of the schemes across the individual schools during this period seemed to rely on the dynamic between the site managers and relevant school representatives.
- It should be noted that the role of the parties was different to that pre-contract and it was perceived by the schools that there was insufficient awareness of the educational imperatives of the school during works.
- It was explained to the Panel that there had been weekly meetings following the eventual appointment of a key member of the LEA's staff but prior to that there was a 'gap' between May and December – The Consultant Project Manager had co-ordinated the early stages but had then left prior to commencement of the works. Council officers had been providing monitoring and liaison between Heads and Jarvis but

again there appears to have been a 'gap' resulting in discontinuity.

- During the absence of the then Head of COMART on protracted sick leave much work relating to PFI had been delegated. The Panel are of the view that the on-going monitoring of the schools educational performance would have formed a back-drop to PFI and to the major on-going building works.
- During the period when there had been a hiatus within the Council there appeared in some instances to be rapid changes in personnel within Jarvis itself e.g. on site managers. This led to a loss in momentum and effectiveness.
- Failures in communication and lack of clarity in roles resulted in a loss of confidence by the schools in the process and in some instances in the Council itself.
- The pressures caused to the Schools who were seeking to deliver education whilst the building works were going on did not always appear to be appreciated by the contractor who was not used to working within an educational environment.
- Notwithstanding that a detailed risk analysis was undertaken, the numbers projections for COMART itself were over-optimistic particularly when set against parental preferences, although this was not fully understood at that time.
- The 'aftercare' provided to schools following the initial support given suffered as a result of the hiatus and reduced supervision referred to above and left school Heads trying to take the lead on a number of issues. The PFI process is heavily prescribed and allows for little flexibility in key respects. It is a completely different working culture to that which existed previously. The relationship between the contractor, schools and the LEA is significantly different than with other major projects as responsibility for the continuing contract is very much in the hands of the Council and the contractor as joint parties to the main contract. There is a danger that individual schools may feel excluded, in some instances they did. Although efforts have been made subsequently to address this, an effective audit trail does not appear to have been maintained at that critical time.
- Changes were made to the agreed contract specifications in respect of one of the schools without the prior knowledge of the Head and without consultation at that time. This occurred between the period the contract was signed and the commencement of works. The Head of the school only became aware of this situation at a later stage and this resulted in injured contractual relations.

8. CONCLUSIONS

Risk Matrix/COMART's Inclusion in PFI

- 8.1 Whilst the principles for the inclusion of COMART following on the heels of 'Fresh Start' are fully understood the Panel is firmly of the view that although the 'risk' of failure was not disregarded it was not the primary factor informing the decision to include the school. The timeframe was tight, otherwise control of the decision whether or not the school should close would have been taken outside the control of the Local Authority (school closure). There was recognition of the need to support the community of East Brighton and of the fact that there were insufficient surplus school places available across the City in the event of closure.
- 8.2 Two separate very tight timeframes had operated in tandem with one other. Firstly that relating to take up of the 'Fresh Start' initiative and then the lead in to PFI itself through the acceptance of the 'Best and Final' offer and signing of the PFI contract.
- 8.3 Should a similar situation arise in future very careful thought needs to be given as to whether it is appropriate to include a school which is struggling in such an ambitious scheme. During a period the school was being re-branded significant disruption was caused due to major building works taking place around the central core of the school. This occurred at a time when the school's recovery was very fragile. The fact that the school was unable to open on time at the start of a new academic year at the same time as it was being re-branded was cited as having represented a considerable set back at the outset. If such a major project were to be embarked upon in the future there clearly needs to be sufficient resources in place to ensure that adequate monitoring takes place at the point at which works are due to commence on site, during the period of the main on site works and ultimately for the life of the contract.
- 8.4 One of the key factors was that the minimum financial value to make PFI viable was fixed and did not enable any stand alone options to be considered. In order to achieve the necessary economies of scale COMART had to enter into a contract with the other three schools. The minimum financial value was set by the Treasury which decided whether or not the contract was viable.

Impact of Delays in Works

- 8.5 Although the timeframe and scheduling of works appeared particularly critical in the case of COMART similar problems were cited as having occurred to a greater or lesser extent at the other

schools. Given the fixed nature of the contract it is perceived by the schools as being difficult to invoke penalties where infringements are deemed to be minor although they may not be considered to be such by the school. COMART was not the only school where delays caused major difficulties in opening at the start of a new academic year. The late opening and overrun at COMART undoubtedly did cause potential problems in effective educational delivery at a time when the school was already beleaguered.

Hiatus in Staffing

8.6 The situation that had arisen whereby key staff had left at a critical stage in the process is considered to have caused difficulties in the school's PFI generally as during this hiatus clearly there was a failure of supervision and monitoring and in effective follow up and the schools were left to take up issues for themselves. Although PFI was long established within the health service it was a new departure within Brighton and Hove and represented a steep learning curve for all concerned. These breaks in continuity and the capacity of remaining staff to monitor progress on something which represented a new departure clearly did result in difficulties. Additionally the Council Officers interviewed had been involved for short periods at different stages in the process. This hampered the Panel in its initial information gathering as interviewees referred to others who had been involved of whom the Panel had not initially been aware. Too much seemed to have relied upon the interplay of management styles and relations between key school staff and the contractors across the different school sites. In some instances this was coupled with a rapid turnover in Jarvis' own on site managers in an attempt to address this.

8.7 Common problems appear to have been experienced across all four schools:

- A delay in completion of works to meet the necessary health and safety requirements at one school and an inability to identify the accountable person within the authority led to a potential delay to the start of term.
- Scheduling of works - where delays occurred this impacted on the ability of schools to open on time or to effectively manage their working day and could hamper the effective delivery of education.
- Inflexibility in the contract resulted in delays in obtaining a rapid response to what were considered to be minor works and could invoke performance penalties requiring a variation

in the contract. Significant delays carried health and safety implications.

- It was perceived that there was a lack of understanding and lack of clarity as to the responsibilities of each party during the management of the contract.
- Measures are available to the Local Authority in instances where the contractor fails to deliver, and to feed monies back into the schools. This process is seen as being ineffective, notwithstanding that this is due to its prescribed nature which has been set by Central Government. Disputed amounts have to be resolved by a process of negotiation and could result in a variation to the contract.
- The contract specification was in one instance changed following signature of the contract by negotiation between the LEA and the contractor and appeared to exclude the school. The school concerned was not made aware of this until some months later. This had not facilitated harmonious relations.
- It is important that structures are in place, that transcend differing management styles and relations between key school staff and contractors and provide a framework that is sensitive to potential problems and clarifies roles and expectations between the parties.
- It is important therefore to have structures in place to ensure that such difficulties can be responded to rapidly and there is proactive monitoring and are mechanisms which are able to respond to potential difficulties at an early stage particularly day to day minor works where there are sometimes significant delays in getting works done.
- Whilst it recognised that there are dedicated staff now in post delays in their appointment resulted in practical difficulties and it is important to ensure that there are structures in place to deal with any similar eventuality in future including staff cover from other areas of the Council if necessary.

8.8 All interviewed from the schools were in agreement that initially the level of consultation and information giving had been good but that this changed post contract. By virtue of the way in which PFI operates, schools in effect become tenants within their own school buildings which is a new and significantly different situation from that which had existed in the past. All those embarking on a similar process in future would need to ensure that there is sufficient awareness of these differences between the parties. The changing contractual arrangements have led to subtle differences which

have resulted in some instances in a perception by schools that they are a 'nuisance' and that the relationship between the provider and the LEA was closer than that between the LEA and the schools. The overall responsibility for education lies with the local authority and it is important that this concept is fully understood.

- 8.9 Dedicated personnel who were appointed subsequently appeared to be knowledgeable and able in their professional specialisms including construction, but may have not had an educational or developmental background and inevitably delays occurred whilst they up to speed once coming into post and did not have the appropriate level of seniority.

RESOURCING/NEED FOR DEDICATED PERSONNEL

- 8.10 The Panel considered that whilst senior and key staff may leave at any given time it is very important to ensure that such a major process is properly resourced from the outset to ensure that service pressures do not result in key staff taking such work on in addition to their other daily responsibilities or being taken off this work and allocated to other projects as this could result in loss of control or failure to proactively monitor projects at an early stage or on an on-going basis. It is also considered vital that besides ensuring that heads and key senior staff both in schools and across the authority understand the differences in respect of PFI arrangements, that dedicated personnel at an appropriate level of seniority within the authority have the capacity to deal with this on a day to day basis throughout the life of the project. If these mechanisms are in place it is considered less likely that any 'gaps' in staffing and or supervision would result in lapses in the level of rigorous supervision and monitoring required.

- 8.11 These findings are not intended as criticism implied or otherwise of staff or members involved in the process but are intended to overcome potential organisational or structural weaknesses that are inherent if such mechanisms are not in place.

9. RECOMMENDATIONS

Clarification of Roles

- 9.1 A protocol or 'framework' is required to clarify roles in managing the contract, especially between the Council and schools but also including the contractor, particularly in relation to the role of site managers. There should be a greater sensitivity to the role of schools who are not a party to the main contract, and the feeling by some schools in the past that they have been excluded from decision

making and have not had adequate support during building works. There needs to be greater recognition of the additional burden on Headteachers and staff in handling building contract responsibilities whilst already managing a challenging school environment, especially if there are a high proportion of pupils with special needs. Also, education and pupil welfare during the operation of the contract should not depend on the approach or working culture of the schools or the relations between key school staff and the site managers. The Council should take a more proactive approach to fulfil its ultimate responsibility for the health of the school and the education of children.

RECOMMENDATION 1: A protocol or 'framework' is required before embarking on any PFI or similar major project in order to clarify the roles and expectations on all parties at the outset. This is particularly important in managing the relationship between the Council and the schools but should also include the role of the contractor (site manager).

Council to Take More Proactive Role and Ensure Appropriate Staff are in Place

- 9.2 The capacity of the Council's officers to manage the contract effectively is a key factor and the Local Authority needs to take a pro-active approach to this, ensuring that the appropriate staff are in place to see the project to successful completion. Staff need to take responsibility for ensuring education and pupil welfare can continue adequately whilst building works proceed. These staff must have appropriate skills, experience, training and the capacity to do the job. Continuity in the process is a key factor and should staff leave during the initial phases of the project the capacity must exist to train and brief new staff. Ideally there should be a period during which responsibilities are handed over.

RECOMMENDATION 2: A Senior leadership position is required, probably from the Council (an officer of the Children, Families and Schools department) to work in liaison with the Headteacher or appropriate senior representative from the school throughout the operation of the contract.

RECOMMENDATION 3: Continuity of staff is crucial. When key staff leave, they should fully train/brief new staff replacing them before they leave. Mechanisms should be in place for staff cover from elsewhere if posts are not filled immediately.

Greater Ability of Schools to Influence Content of the Plan

- 9.3 If PFI is to be used in future there should be one school per contract, if possible, to enable schools to better influence the choice of plan and proposals. When schools are grouped together for PFI or similar, not everybody may agree that the plan from the chosen contractor is right for their school. Any subsequent changes to the plan, which is perceived as the agreed plan, need to be fully discussed with all relevant parties.

RECOMMENDATION 4: One school per contract if possible for any future PFI or similar project.

RECOMMENDATION 5: All parties must be involved in any plan changes. There must be on-going dialogue and plans should never be changed without consulting schools first.

More Inclusive Decision Making Structure

- 9.4 A suitable structure needs to be in place to inform the process and to provide greater transparency and opportunities for expression of doubt by all stakeholders and a scrutiny of the process at that stage. Alternative options should be fully explored, e.g. extension of more popular schools, contraction or closure of underachieving schools and the consequences, e.g. possible financial risks or closure, of those are fully understood by those taking the decisions at that time. The Committee structure now in place would facilitate this. However, a Forum or other more inclusive body may be appropriate to ensure the involvement of all relevant stakeholders.

RECOMMENDATION 6: There should be a suitable structure to inform the process ensuring greater transparency/opportunities for expression of doubt by all stakeholders and scrutiny of the process.

BRIGHTON & HOVE CITY COUNCIL
REPORT OF THE SCRUTINY PANEL ON COMART'S INCLUSION
IN THE PFI

APPENDICES

BACKGROUND PAPERS
(AVAILABLE SEPARATELY FOR REFERENCE)

**APPENDIX F: SCHEDULE OF MEETINGS OF THE SCRUTINY PANEL AT WHICH
EVIDENCE WAS CONSIDERED AND WITNESSES WHO ATTENDED**