

Treloar, Chief Executive (Downside Trust), Caroline Brawley, HR Manager, and Jane Vines, Director of External Communications). My principal task has been to effect such changes as are necessary or required to bring about a structural separation of School and Abbey, with the result that the School becomes self-governing from an operational, financial and governance perspective.

4. The separation process has involved engaging with a number of different issues and moving matters forward in a number of different areas. The following is a non-exhaustive list of matters involved in the separation process:

- a) **Financial aspects.** We have established draft financial statements for the Abbey and School as separate standalone entities. There will also need to be an agreed opening balance sheet for the School so that it knows that it will have the financial means to operate from day one. This is in the course of preparation and should be available during January. The Abbey Trust engaged Buzzacott LLP, the UK accountancy and consultancy firm, to provide a professional review of the financial statements. They included the following statement in their executive summary: "The revised business plan of the school and the new business plan of the monastery include financial forecasts that are based on clearly explained assumptions that link to strategic planning for the future of both organisations."

- b) **Sale of monastic assets.** The Abbey has engaged Sotheby's, the fine arts company, to value certain assets of Downside with a view to their being sold by auction or private sale during 2019 to realise cash for the School. Various assets have been valued or are in the course of being valued. The Downside Chapter, which is comprised of all the monastic community including certain non-resident monks (the "Chapter"), will have to give its formal approval for such assets to be sold and a proportion of the proceeds to be endowed to the School.

- c) **Establishment of new school entity.** We have received approval from both Chapter and the Board of Trustees to establish a new legal entity to manage the School. Farrer & Co, the Abbey Trust's legal advisers, prepared the articles of association of the new entity. The Board of Trustees gave final approval for the draft articles on 7<sup>th</sup> December 2018. A company limited by guarantee, called Downside School was duly incorporated on 4<sup>th</sup> January

with a significant number of directors appointed. We also intend to seek charitable status for the school entity and Farrer & Co are proceeding with this. This process might take up to 12 weeks.

- d) **Recruitment of trustees.** Six trustees have been approved for appointment for the new school following a public advertisement process commenced in October 2018. More details are given below at paragraphs 10 to 12.
- e) **Banking arrangements.** There have been a series of discussions with the Abbey Trust's external bankers, Barclays. The Abbey Trust is seeking to have arrangements in place whereby the School and Abbey Trust have separate borrowing arrangements with them. Certain of the existing borrowings essentially relate to the School but are secured on monastic assets. It is expected that this arrangement will be replaced with fresh loans at the time of separation so that the School will assume responsibility for paying off the current indebtedness (as it relates to the School) but such borrowings will remain secured on the monastic assets. A protocol will be agreed between School and Abbey so that the Abbey has an agreed understanding as to when its assets will be free of the bank's security.
- f) **Lease of the School premises.** The parties are in discussion on the granting of a long lease from the Abbey Trust to the School, expected to be 125 years. Draft heads of terms have been tabled which the parties are discussing. Stone King, the law firm, is in the course of being instructed to produce the necessary long form documents to that they can be circulated during and agreed before the separation. Both School and Abbey will have the benefit of legal advice. The Abbey has had the benefit of advice from Gerald Eve LLP, a real estate advisory firm, on the range of rent that may be charged. The Abbey Trust will to a certain extent need to rely on rent from the School arising from the lease but it is also seeking ways of developing income of its own independently of the School. It should be noted that the granting of such a long lease to the School will require the prior approval of the Holy See in Rome as the proposed lease would be an alienation of church property. In the event that such approval has not been given in time for the separation the parties intend to enter into a simple licence to occupy to cover such period until approval has been given. It is expected that

9. Chapter will be approached again for its final approval to the separation this spring. By such time we should have final form documentation in place to enable Chapter to give its final agreement. Although that step has yet to be taken I am confident that Chapter will approve the final arrangements and the formal separation will take place. One or two people have commented to me that the approval given by Chapter in July 2018 was “in principle” only, questioning whether the Abbey was in fact committed to achieving the separation. In practice, we could only seek their approval “in principle” at that stage as no final form documentation is yet available for them to scrutinise and approve. The use of the words “in principle” should not be seen as a two-way conditional approval with the intention that the process could and perhaps might be reversed. It was simply not possible at the time to ask for final approval.
  
10. Both Abbey and School are committed to ensuring that the new School entity is self-governing in the manner I have set out. We issued a public call for new trustees in September and held interviews during the last week of November. We established a panel for the purpose comprising the current chair of governors Adrian Aylward, who will also be the inaugural chair of the new school entity, Downside’s HR Manager Caroline Brawley and myself. As a result of this process we identified six suitable candidates, and they were approved by the current Board of Trustees on 7<sup>th</sup> December 2018. Together they bring a mixture of skills and experience, including expertise in education, finance, legal, governance, risk management and compliance, property and marketing. We expect to continue to seek up to three further trustees to further enhance the board. The current chair of governors (who has been fully trained in safeguarding) will continue with his safeguarding responsibilities as inaugural chair of the new board until such time as a further suitable trustee with appropriate safeguarding expertise is appointed. A number of the six candidate trustees have safeguarding experience and all know and understand the importance of the board’s role in promoting safeguarding excellence.
  
11. The articles of association of the new entity state that the board of trustees will comprise a minimum of eight trustee/directors and a maximum of 12. In addition to those already appointed it will have two ex-officio members, the Prior Administrator from Downside and a nominee of the Diocesan Bishop. The latter is required to enable the School to retain its Catholic status. There will be a very limited number of “reserved matters” over which the Prior Administrator and the Bishop’s nominee will have a veto: any change to the Catholicity of the school, a merger of the entity with another, or a

voluntary winding up. In all other respects neither of the two ex officio role holders will have any powers different to other trustees.

12. It is written into the articles of association that no member of the monastic community may be eligible or able to chair the board of trustees. There is no requirement in the articles of association that the chair of governors needs either to be Catholic or a practising one. The trustees from time to time will also be the members of the company from time to time. There are no corporate members.
13. As set out above, the Abbey will be granting a long lease to the School so that it has security of tenure. As stated above, heads of terms have been tabled and discussed with consideration of long form documents being the next step. The Abbey Trust is in receipt of a number of services, provided both externally but also by staff within. Work is being undertaken to prepare SLAs for the principal services and where relevant who will be providing them. Such SLAs are necessary in themselves but they are an important step to achieving a settled understanding of which staff support which area of the Abbey Trust and what the Trust's requirements are. We need this settled understanding to be in place in order to carry out a staff consultation exercise under the TUPE regulations. If we are to achieve an April separation we need to be able to start the consultation exercise in during January, as Downside is legally required by virtue of the number of staff affected to give 90 days' notice of a change of employer. It is possible that the TUPE consultation process will commence after January but the parties are progressing matters.

#### **Liaison with the Charity Commission**

14. In addition to reporting to the Steering Group mentioned above and to the Board of Trustees I have been keeping the Charity Commission updated as to where we are in terms of the separation process. We have had three meetings with them since my appointment: the first at my request in London in August with Richard Bevan at his offices at Deloitte and two subsequent meetings with case officers at the School (one in September and another in October). I believe that they are satisfied with all aspects of progress to date from emails we have received from them including how things stand with the crucial area of safeguarding policies and practices. The case officer at the Charity Commission is Anthony Breen. I have agreed to keep Mr Breen up to speed with a monthly email, the first of which I sent in November. The second email was sent during December and I have just sent January's update.