

GOVERNORS' CODE OF CONDUCT

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1. INTRODUCTION

- 1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Governors, to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the Corporation and the Chief Executive. This Code is therefore aimed at promoting effective, well informed and accountable, college governance, and is not intended to be definitive or authoritative statement of the law or good practice.
- 12 In addition to this Code, Governors are recommended to familiarise themselves with the following:
- 1.2.1 the College's Instrument of Government;
 - 1.2.2 the College's Articles of Government;
 - 1.2.3 the College's Strategic Plan, including the vision, mission and values;
 - 1.2.4 the Conditions of Funding Agreement entered into by the College with the Education and Skills Funding Agency;
 - 1.2.5 the Further education bodies: insolvency guidance;
 - 1.2.6 the Code of Good Governance for English Colleges issued by the Association of Colleges and adopted by the Corporation on 17 December 2015
 - 1.2.7 the principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office (appendix 3); and
 - 1.2.8 the fit and proper person test (appendix 3).

The above should not be read as an exhaustive statement of duties, powers or provisions, and Governors should refer to the source documents listed above. If a Governor is in doubt about the provisions of this Code or any of the source documents, the Clerk should be consulted and, if necessary, professional advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Governor and for any act or omission in that capacity rests with the individual Governor.

- 13 This Code applies to every committee or working party of the Corporation and to every subsidiary company or joint venture of the College to which Governors may be appointed.
- 14 By accepting appointment to the Corporation, each Governor agrees to accept the provisions of this Code.

2. DUTIES

- 21 Governors owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its best interests. Each Governor should act honestly, diligently and (subject to the provisions appearing in section 8 of this Code relating to collective responsibility) independently. The actions of Governors should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.
- 22 Decisions taken by Governors at meetings of the Corporation and its committees must not be for any improper purpose or personal motive. Decisions taken must always be for the

benefit of the College, its students and Staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, Governors must not be bound in their speaking and voting by mandates given to them by other bodies or persons.

- 23 Governors must observe the provisions of the College's Instrument and Articles of Government and in particular the responsibilities given to the Corporation by the College's Articles of Government. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out in Appendix 1.
- 24 Governors should comply with Standing Orders to ensure that the Corporation conducts itself in an orderly, fair, open and transparent manner and must keep those Standing Orders under periodic review.
- 25 Governors should also have regard to the different, but complementary, responsibilities given to the Chief Executive. Whereas it is the Corporation's function to decide strategic policy and overall direction and to monitor the performance of the Chief Executive and any other senior postholders, it is the Chief Executive's role to implement the Corporation's decisions, and to manage the College's affairs within the budgets and framework fixed by the Corporation. Governors should work together so that the Corporation and the Chief Executive perform their respective roles effectively.
- 26 Governing Body Members should also have regard to the functions for which the Clerk is expressly stated to be responsible under the College's Articles of Government.

3. STATUTORY ACCOUNTABILITY

- 3.1 Governors are collectively responsible for observing the duties set out in the Conditions of Funding Agreement which the College has entered into with the Education and Skills Funding Agency (ESFA) as a condition of receiving public funds. A summary of some of the more important requirements of the Agreement is set out in Appendix 2.
- 3.2 Although the ESFA is the main provider of funds to the College, Governors should note that they are also responsible for the proper use of income derived from other sources, such as the Office for Students and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit.
- 3.3 As accounting officer for the ESFA, its chief executive is directly responsible and accountable to Parliament for ensuring that the uses to which the ESFA puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Chief Executive, as accounting officer for the College, is also directly responsible and accountable to Parliament, through the Committee of Public Accounts, for the effective stewardship by the College of public funds. The Chief Executive may be required to appear before the Committee of Public Accounts, alongside the chief executive of the ESFA, to give an account of the use made by the College of such funds. The Corporation is accountable to Parliament for ensuring the financial health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law.

4. PUBLIC SERVICE VALUES

- 4.1 The Corporation is a guardian of the College's values.
- 4.2 Public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on the, seven principles of Public Life and the Fit and Proper Persons requirements (see Appendix 3), alongside the recognition that students and other users of the College's services come first, are a requirement of being a Governor, and should underpin all decisions taken by the Corporation.

5. SKILL, CARE AND DILIGENCE

A Governor should in all his or her work for the College exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Governors act as agents of the College, for example, when functions are delegated to a committee of the Corporation or to the Chair. Governors should be careful to act within the terms of reference of any committees on which they serve.

6. POWERS

Governors are collectively responsible for taking decisions which are within the powers given to the Corporation by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992 (amended by Learning and Skills Act 2000). A summary of those powers is set out in Appendix 4. If a Governor thinks that the Corporation is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk for advice.

7. CONFLICTS OF INTEREST

- 7.1 Like other persons who owe a fiduciary duty, Governors should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.
- 7.2 Governors are reminded that under the College's Instrument of Government they must not take or hold any interest in any of the College's properties or receive any remuneration for their services as a Governor (save as a member of the College's staff or for re-imbursment of legitimate expenses in accordance with the College's policy) without the written approval of the Secretary of State for Education and Employment.
- 7.3 Governors are reminded that under the College's Instrument of Government they must disclose to the Corporation the nature and extent of any direct or indirect financial interest they have, or may have, in the supply of work or goods to or for the purposes of the College or any member of the College Group or in any contract or proposed contract concerning the College or any member of the College Group or in any other matter relating to the College or any member of the College Group or any duty which is material and which conflicts or may conflict with the interests of the Corporation.
- 7.4 If an interest is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Governor's independent judgement, then the interest, financial or otherwise, should:-
- 7.4.1 be reported to the Clerk; and
 - 7.4.2 be fully disclosed to the Corporation before the matter giving rise to the interest is considered.

Having declared a financial or other interest, a Governor may not discuss the issue further, may not vote on it, and ceases to count towards the quorum necessary for taking a decision on the matter in question. Individual Governors may be required to withdraw from the meeting. Where the Chair declares an interest, the members shall appoint a replacement from among themselves for the duration that the interest applies. The declaration of an interest by a Governor during the course of a meeting shall be recorded in the minutes.

- 75 Governors must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.
- 76 The Clerk will maintain a Register of Governors' Interests which will be open for public inspection. Governors must disclose routinely to the Corporation all business interests, financial or otherwise, which they may have, and the Clerk will enter such interests on the Register. Governors must give sufficient details to allow the nature of the interests to be understood by enquirers. Governors should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Governors should have regard to the meaning given to "interest" in section 7 of this Code.

8. COLLECTIVE RESPONSIBILITY

- 8.1 The Corporation operates by Governors taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Corporation, even when it is not unanimous, is a decision taken by the Governors collectively and each individual Governor has a duty to stand by it, whether or not he or she was present at the meeting of the Corporation when the decision was taken.
- 8.2 If a Governor disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Governor strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Governor should refer to the power of the Chair or any five Governors under the College's Instrument of Government to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the Governor's views in advance to the other Governors. Alternatively, as a final resort, the Governor may decide to offer his or her resignation from office, after consulting the Chair. In no circumstances should any Governor express or direct their differences of opinion to staff or students in a manner which would, or may, create dissension or polarisation in the College or publicly undermine a decision of the Corporation.
- 8.3 The Chief Executive and the rest of the Staff are answerable to the Corporation acting as a body, not to individual Governors. While the Corporation expects individual Governors to be given common courtesy, it does not require the Chief Executive or other staff to heed any individual Governor's instructions.

9. CONFIDENTIALITY

- 9.1 Because of the Corporation's public accountability, Governors should ensure that, as a general principle, students and Staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved for publication by the Chair.
- 9.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in a confidential folder by the Clerk and will be circulated in confidence to Governors. However, Staff and Student Governors have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the College's Instrument of Government.
- 9.3 It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Governors with a shared corporate responsibility for decisions. Governors should keep confidential any

matter which, by reason of its nature, the Chair or members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.

- 94 Governors may not make statements to the press or media or at any public meeting relating to the proceedings of the Corporation or its committees unless specifically authorised to do so by the Chair and the Chief Executive. It is unethical for Governors publicly to criticise, canvass or reveal the views of other Governors which have been expressed at meetings of the Corporation or its committees.

10. ATTENDANCE AT MEETINGS

A high level of attendance at meetings of the Corporation is expected so that Governors can perform their functions properly. The expectation is that all Governors achieve at least 75% attendance.

11. GOVERNANCE DEVELOPMENT

- 11.1 Governors must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes.
- 11.2 In order to promote more effective governance, Governors will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing and critical process of self-evaluation.
- 11.3 The Corporation shall seek to ensure that all Governors are appointed on merit, in accordance with an open selection procedure and are drawn widely from the community which the College serves, having regard to provisions relating to the membership of the Corporation in the College's Instrument of Government and the need for continuity, balance and a range of appropriate skills and interests.

APPENDIX 1- Summary of Main Responsibilities of the Corporation under the Articles of Government

3. Responsibilities of the Corporation, the Chief Executive and the Clerk

3.1. The Corporation shall be responsible for:

- a) the determination and periodic review of the educational character and mission of the College and the oversight of its activities including publishing arrangements for obtaining the views of staff and students on such matters;
- b) ensuring it receives and considers information on the needs of its communities to inform its strategic direction;
- c) the approval of the College's overarching strategic direction and Strategic Plan;
- d) approving the quality strategy of the College annually
- e) the effective and efficient use of resources, the solvency of the institution and the Corporation and safeguarding their assets, and achieving value for money in all transactions involving public funds;
- f) approving annual estimates of income and expenditure;
- g) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk, including, where the Clerk is, or is to be appointed as, a member of Staff, the Clerk's appointment, grading, suspension, dismissal and determination of pay in the capacity of a member of Staff; and
- h) approving a framework for the pay and conditions of service of all other Staff.

3.2. Subject to these Articles, the Chief Executive:

- a) shall be responsible for making proposals to the Corporation about the educational character and mission of the institution and implementing decisions of the Corporation;
- b) shall determine the institution's academic and other activities;
- c) shall be personally responsible (which responsibility may not be delegated) for assuring the Corporation that there is compliance with all terms and conditions of funding and shall advise the Corporation in writing if at any time, in his or her opinion, any action or policy under consideration by the Corporation is incompatible with the terms and conditions of funding;
- d) may be required to appear before the Parliamentary Committee of PublicAccounts on matters relating to the College's use of public funds;
- e) shall be responsible for the preparation of annual estimates of income and expenditure for approval and monitoring by the Corporation, and the management of budget and resources within the estimates approved and monitored by the Corporation; and
- f) shall be responsible for the organisation, direction and management of the institution and leadership of Staff;
- g) shall be responsible for the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk, where the Clerk is also a member of the staff;
- h) shall be responsible for maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons, unless this responsibility has been delegated; and
- i) shall ensure that all activities are carried out in such a way as to positively promote equality of opportunity which encourages diversity and inclusion.

3.4. Subject to these Articles, the Clerk shall be responsible for advising the Corporation with regard to the operation of its powers; procedural matters; the conduct of its business and matters of governance practice.

7. Delegable and non-delegable functions

7.1. The Corporation shall not delegate the following functions:

- a) the determination of the educational character and mission of the College;
- b) the approval and monitoring of the annual estimates of income and expenditure;
- c) the responsibility for ensuring the solvency of the College and the Corporation and for safeguarding their assets;
- d) the appointment of the Chief Executive or the holder of any other senior post;
- e) the appointment of the Clerk (including, where the Clerk is, or is to be, appointed as a member of Staff the Clerk's appointment in the capacity of a member of staff); and
- f) the modification or revocation of these Articles.

7.2. The Corporation may not delegate:

- (a) the consideration of the case for dismissal; and
- (b) the power to determine an appeal in connection with the dismissal of the Chief Executive, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation.

APPENDIX 2 - Summary of key responsibilities - ESFA Condition of Funding Agreement (2019-20)

The full agreement can be accessed here: <https://www.gov.uk/guidance/esfa-education-and-skills-contracts-2019-to-2020>

2. RESPONSIBILITIES OF THE GOVERNING BODY

2.1 The Governing Body of the College has responsibilities for ensuring that the College's funds are used only in accordance with the corporation's powers as set out in the Further and Higher Education Act 1992 and the College's own statutory duties and other obligations.

2.2 The Governing Body of the College has responsibilities for ensuring that the College's funds are used only in accordance with the College's powers as set out in the Further and Higher Education Act 1992 and/or the College's own statutory duties, articles of association or trust deeds.

2.3 The Governing Body will appoint an accounting officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the accounting officer will be the Principal of the College. The Governing Body will inform the Department in writing of the name and position of the accounting officer, and if the accounting officer is absent from the College for an extended period, as determined by the corporation, the name of the person who will discharge the accounting officer's responsibilities during the absence.

2.4 The College will inform the Department in writing, as soon as is reasonably practicable, of the vacating or filling of the positions of the Chair of the Governing Body, the Principal and the clerk.

3. CHARITABLE REGULATION

3.1 The Secretary of State for Education is the Principal Regulator for further education and sixth form college corporations as exempt charities.

3.2 The Governing Body of the College (save where the College is an institution designated under section 28 of the Further and Higher Education Act 1992) is responsible for ensuring it operates in line with its exempt charitable status.

3.3 Where the College is a designated institution which is an exempt charity by virtue of its relationship with a higher education institution, the OfS is the Principal Regulator. As such the College will comply with paragraphs 3.4-3.6 below which act in place of paragraphs 3.1 and 3.2.

3.4 The College must comply with all requests from the OfS to enable the OfS to comply with its duties as Principal Regulator.

3.5 The College will provide the OfS with the information it requires under paragraph 3.4 at the times and in the formats specified. This information will be of sufficient quality to meet the purposes for which it has been requested. 3.6 Failure to comply with any request for information under paragraph 3.4, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.

4. RESPONSIBILITIES OF THE ACCOUNTING OFFICER

4.1 The Governing Body will require the accounting officer to take personal responsibility, which will not be delegated, to assure them that there is compliance with the Department's Conditions of Funding. The accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College's use of funds.

4.2 The accounting officer will be responsible for advising the Governing Body in writing if at any time, in his or her opinion, any action or policy under consideration by the Governing Body is incompatible with the Department's Conditions of Funding. If the accounting officer has evidence that the Governing Body is acting, or intending to act, in breach of the Department's Conditions of Funding, the accounting officer must inform the Department's Chief Executive in writing as soon as is reasonably practicable.

4.3 The College must notify the Department in writing if there is a change in its legal entity name.

5. AUDIT COMMITTEE

5.1 The Governing Body must establish an independent and objective audit committee to advise the Governing Body's governance, risk management, internal control and assurance frameworks, in line with the detail set out in the post-16 audit code of practice and any other directions drawn up and published by the Department in consultation with the College. Any mandatory requirements under the post-16 audit code of practice will be a condition of funding under this Agreement.

APPENDIX 3 – Seven Principles of Public Life and Fit and Proper Person Test

SEVEN PRINCIPLES OF PUBLIC LIFE

The Principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely: -

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

DECLARATION OF FIT AND PROPER PERSON STATUS

In accordance with both Governors' charity trustee status and the conditions of registration with the Office for Students, the Higher Education regulator, there is a requirement for Governors to declare that they meet the requirements of a Fit and Proper Person.

The Office for Students defines a fit and proper person as follows. A fit and proper person:

- is of good character
- has the qualifications, competence, skills and experience that are necessary for their role
- is able by reason of their health, after reasonable adjustments are made, to properly perform the tasks of the office or position for which they are appointed
- has not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in their employment or in the conduct of any entity with which they are or have been associated.

The Office for Students provides the following indicators that a person may not be a fit and proper person:

- disqualification from acting as a company director, or from acting as a charity trustee, as set out in the Company Directors Disqualification Act 1986 or the Charities Act 2011
- conviction of a criminal offence anywhere in the world¹
- subject of any adverse finding in civil proceedings, where relevant, including, but not limited to bankruptcy or equivalent proceedings (in the last three years)
- subject of any adverse findings in any disciplinary proceedings by any regulatory authorities or professional bodies

¹ The OfS regulations state the OfS would not expect individuals to disclose matters that are 'spent' under the Rehabilitation of Offenders Act 1974, but they may do so if they wish. Particular consideration will be given by the OfS to offences of dishonesty, fraud, financial crime or an offence under legislation relating to higher education, further education and charities, whether or not in the UK.

- involvement in any abuse of the tax systems
- involvement with any entity that has been refused registration to carry out a trade or has had that registration terminated
- involvement in a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection
- dismissal from a position of trust or similar
- involvement with a higher education provider that has had its registration refused or revoked by the OfS or has had similar action taken against it by another regulator (this includes, but is not limited to, serving on a board/governing body, having voting rights, being a significant shareholder/owner, serving in a senior position, etc.)

APPENDIX 4 - Summary of the Statutory Powers of the Corporation

The Further and Higher Education Act 1992, Section 18, as amended by section 142(i) of the Learning and Skills Act 2000, sets out a further education corporation's principal powers.

These are:

- to provide further, higher and secondary education and to participate in the provision of secondary education at a school
- to supply goods or services in connection with the provision of education

Section 19 as amended by Schedule 9 (para 22) of the Learning and Skills Act 2000, sets out the further education corporation's supplementary powers. These include:

- conducting an educational institution
- providing facilities such as accommodation and recreational facilities for staff and students
- acquiring and disposing of property
- entering into contracts e.g. employment of staff
- borrowing money and granting security (subject to LSC approval)
- investing money
- subscribing or otherwise acquiring shares or securities in a company.