

TRAFFORD COLLEGE

**COLLEGE CODE OF CONDUCT
FOR GOVERNORS**

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COLLEGE CODE OF CONDUCT FOR GOVERNORS

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 Governing Body and Principal as the Chief Executive. This Code therefore is aimed at promoting effective, well informed and accountable college governance, and is not intended to be a definitive or authoritative statement of the law or good practice.
- 1.2 In addition to this Code, Governors are recommended to familiarise themselves with the source documents listed in the Schedule.
- 1.3 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 of the College and for any act or omission in that capacity rests with the individual Governor.
- 1.4 This Code applies to every committee or working party of the Governor Body and to every subsidiary company or joint venture of the College to which Governors may be appointed.
- 1.5 By accepting appointment to the Governor Body, each Governor agrees to accept the provisions of this Code.

2 Interpretation

In this Code:-

- 2.1 'College' means this College;
- 2.2 'College Mission Statement' means the statement referred to at paragraph 3.1 of this Code or such other mission statement as may be agreed by the Governor Body from time to time;
- 2.3 'College Core Values' means those Core Values set out at paragraph 3.2 of this Code or such other core values as may be agreed by the Governor Body from time to time, for example in a Public Value Statement;
- 2.4 Governing Body means the further education Governing Body which was established for the purpose of conducting the College;
- 2.5 Governor, Chair, Principal and Clerk mean respectively the Member of the Governing Body of the College, the Chair of the Governor Body, the Principal of the College and the Clerk of the Governor Body;
- 2.6 'DBIS' means the Department for Business, Innovation and Skills;
- 2.7 'EFA' means the Education Funding Agency or any successor body;
- 2.8 'Foundation Code' means the English Colleges' Foundation Code issued by the Association of Colleges in November 2011;
- 2.9 'SFA' means the Skills Funding Agency or any successor body;
- 2.10 All other definitions have the same meanings as given in the College's Instrument and Articles of Government; and
- 2.11 words importing one gender import any gender.

3 Aims and Values

3.1 Through its Innovative approach to learning and exceptional engagement with business, Trafford College prepare learners for success in work and life.

3.2 We will achieve our vision through effective leadership and by being self-motivated and seeking to inspire and motivate others.

We will manage performance by Aspiring to succeed and by taking individual and collective responsibility.

We will work together as a team Utilising our strengths to find solutions and achieve success.

We will demonstrate our commitment to Equality and Diversity by Valuing and meeting the needs of others.

We will look to continuously improve by Embracing change and actively seeking opportunities to achieve excellence.

3.3 The College Mission Statement together with the corporate objectives of the College agreed by the Governor Body from time to time seek to encapsulate the core purposes and aims of the College. Governors, should have due regard to these purposes and aims and to the Core Values when conducting the business of the Governor Body and considering the activities and proposed activities of the College.

3.4 The Governor Body recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, other educational institutions and the wider community. In particular, the Governor Body is committed to:

- having close regard to the voice of the learner;
- combating any discrimination within the College on the grounds of the characteristics protected by the Equality Act 2010;
- upholding the principles set out in the College's Student Charter, copies of which are available from the Corporation Secretary; and
- engaging with the community which the College serves in order to understand and meet its needs in accordance with the College's community/local engagement policy¹.

3.5 The Governor Body is also committed to ensuring that it conducts its business in accordance with the highest ethical standards as set out in more detail in this Code.

4 Duties

4.1 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 paragraph 10 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.

4.2 Decisions taken by Governors at meetings of the Governor Body 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 (including but not limited to the bodies that elected them).

¹ On this point see *A Dynamic Nucleus, Colleges at the heart of local communities*, the Final Report of the Independent Commission on Colleges in their Communities, November 2011

- 4.3 Governors must observe the provisions of the College's Instrument and Articles of Government and in particular the duty to give immediate notice to the Corporation Secretary should they become disqualified from continuing to hold office and also the responsibilities given to the Governor Body 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 3.
- 4.4 Governors should comply with the Standing Orders and terms of reference of the Governor Body and its committees to ensure that the Governor Body conducts itself in an orderly, fair, open and transparent manner. Governors must keep those Standing Orders and terms of reference under periodic review.
- 4.5 Governors should also have regard to the different, but complementary, responsibilities given to the Principal as the College's Chief Executive. The responsibilities given to the Principal by the College's Articles of Government are set out in Appendix 4. Whereas it is the Governor Body's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior post holders, it is the Principal's role to implement the Governor Body's decisions, and to manage the College's affairs within the budgets and framework fixed by the Governor Body. Governors should work together so that the Governor Body and the Principal as Chief Executive perform their respective roles effectively.
- 4.6 Governors should refer to the Corporation Secretary for advice relating to the governance functions which are set out in Appendix 4 and have regard to the Secretary's independent advisory role.

5 Statutory Accountability

- 5.1 Governors are collectively responsible for observing the duties set out in the Financial Memorandum which the College has entered into with the SFA [and the Funding Agreement which the College has entered into with the EFA] as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum [and the Funding Agreement with the EFA] is set out in Appendix 5.
- 5.2 Although the SFA 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 Higher Education Funding Council for England (HEFCE) 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.
- 5.3 As accounting officer for the Agency, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the SFA puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Principal, 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 Principal may be required to appear before the Committee of Public Accounts, alongside the Chief Executive of Skills Funding, to give an account of the use made by the College of such funds. The Governor Body 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.

6 Public Service Values

Public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on the principles set out in Appendices 1 and 2 of this Code, and 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 Governor Body.

7 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 Governor Body or to the Chair. Governors should be careful to act within the terms of reference of any committees on which they serve.

8 Powers

Governors are responsible for taking decisions which are within the powers given to the Governor Body by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992, as amended. A summary of those powers is set out in Appendix 6. If a Governor thinks that the Governor Body is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Corporation Secretary for advice.

9 Conflict of Interest

9.1 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 Governor Body. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

9.2 Governors are reminded that under the College's Instrument of Government and its policy on Conflicts of Interest and the general law they must disclose to the Governor Body any direct or indirect financial interest they have, or may have, in the supply of work to the College or the supply of goods for the purposes of the College, or in any contract or proposed contract concerning the College, or in any other matter relating to the College or any other interest of a type specified by the Governing Body in any matter relating to the College, or any duty which is material and which conflicts or may conflict with the interests of the Governor Body.

9.3 If an interest of any kind (including an interest of a spouse or partner of a Governor or of a close relative of the Governor or his or her partner or spouse) is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Governor's independent judgement, then:-

9.3.1 the interest, financial or otherwise, should be reported to the Corporation Secretary;

9.3.2 the nature and extent of the interest should be fully disclosed to the Governor Body before the matter giving rise to the interest is considered;

9.3.3 if the Governor concerned is present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter constituting the interest is to be considered, he or she should:-

9.3.4 not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum for that meeting; and

9.3.5 withdraw from that Governor Body or committee meeting where required to do so by a majority of the members of the Governing Body or committee present at the meeting.

9.4 For the purposes of clause 9.3 "close relative" includes but is not limited to a father, mother, brother, sister, child, grandchild and step-father/mother/ brother/sister/child.

- 9.5 Where it is proposed that the Governing Body should grant a member a financial interest (such as a contract for the supply of goods or services) the Governing Body must observe the requirements of the Charities Act 2011. The Governing Body may wish to take legal advice before granting such an interest to a member.
- 9.6 Governors must not receive gifts, hospitality or benefits of any kind from a third party which might be in breach of the Bribery Act 2010 and the College's anti-bribery policy [and the College's policy on receiving gifts] or 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 Corporation Secretary.
- 9.7 The Corporation Secretary will maintain a Register of Governors' Interests which will be open for public inspection. Governors must disclose routinely to the Governor Body all business interests, financial or otherwise, which they may have, and the Corporation Secretary 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 Corporation Secretary 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 paragraphs 9.3 and 9.5 of this Code.

10 Collective Responsibility

- 10.1 The Governor Body operates by Governors taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Governor Body, 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 Governor Body when the decision was taken.
- 10.2 If a Governor disagrees with a decision taken by the Governor Body, 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 Governor Body 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 Corporation Secretary 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.

11 Openness and Confidentiality

- 11.1 Because of the Governor Body's public accountability and the importance of conducting its business openly and transparently, Governors should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Governor Body. Accordingly, agendas, minutes and other papers relating to meetings of the Governor Body are normally available for public inspection when they have been approved for publication by the Chair.

- 11.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection; for example, when the Governor Body considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in a confidential folder by the Corporation Secretary, and will be circulated in confidence to Governors. Some confidential items are likely to be of a sensitive nature for a certain period of time only (for example information relating to a proposed commercial transaction or collaboration with another institution). The Governor Body should specify how long such items should be treated as confidential or, if this is not possible, such items should be regularly reviewed to consider whether the confidential status should be removed or whether the public interest in disclosure outweighs that confidential status and the item made available for public inspection. When considering such issues the Governors must also consider the College's publication scheme issued under the Freedom of Information Act 2000.
- 11.3 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.
- 11.4 It is important that the Governor Body 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 Governor Body are satisfied should be dealt with on a confidential basis.
- 11.5 Governors should not make statements to the press or media or at any public meeting relating to the proceedings of the Governor Body or its committees without first having obtained the approval of the Chair or, in his or her absence, the Vice Chair. It is unethical for Governors publicly to criticise, canvass or reveal the views of other Governors which have been expressed at meetings of the Governor Body or its committees.

12 Complaints

- 12.1 In order to ensure that the affairs of the College are conducted in an open and transparent manner and that the College is accountable for its use of public funds but also to its employees, its students and the community it serves, it is important for there to be appropriate complaints procedures in place and for these to be well publicised. Governors are reminded of their specific responsibility under the Articles of Government to make rules specifying the procedures in accordance with which employees may seek redress of any grievances relating to their employment, of the importance of having formal complaints procedures in place to handle issues raised by students, former students and third parties and of the legal requirement to have a whistle blowing procedure in place.
- 12.2 Under the SFA's Financial Memorandum with colleges (Part 2, clause 15.1), students, employers and other third parties have a right to make a complaint to the SFA in respect of the College or of any of its decisions [*and this right is referred to in the College's relevant complaints and disciplinary procedures. Copies of these procedures can be obtained from the Clerk*]. Governors in particular are reminded that under the SFA's Procedure for dealing with complaints about Providers of Education and Training (April 2013) the SFA:
- can investigate complaints about quality or management of learning provision, undue delay or non-compliance with published procedures, poor administration by the Provider, equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter through the court or tribunals or other organisations), health and safety concerns and complaints made by learners following HE courses in FE colleges;

- will not investigate complaints about examination results or curriculum content where a more appropriate form of redress would be the examining body or Ofqual, individual employment issues, contractual disputes, save where this relates to a course funded by a 24+ Advanced Learning Loan, or matters subject of legal action or where legal proceedings are the most appropriate way of resolving the dispute.

13 Attendance at Meetings

A high level of attendance at meetings of the Governor Body is expected, the College's policy in this respect is set out in the College's Standing Orders, so that Governors can perform their functions properly.

14 Governance Development

- 14.1 The Governor Body shall seek to ensure that all Governors are appointed on merit, in accordance with an open selection procedure carried out by the Governing Body's Search Committee, and are drawn widely from the community which the College serves so as to be representative of that community. The Governor Body should have regard to the provisions relating to the membership of the Governor Body in the College's Instrument of Government, the need to combat discrimination and to promote equality, and the need to make available a range of necessary skills and experience to ensure that the Governing Body carries out its functions under the College's Articles of Government.
- 14.2 Governors must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including regular refresher workshops.
- 14.3 In order to promote more effective governance, Governors will carry out an annual self-assessment by the Governor Body of its duties and responsibilities, as part of a continuing and critical process of self evaluation.

Schedule – List of Source Documents

- 1 the College's Instrument of Government;
- 2 the College's Articles of Government;
- 3 the Standing Orders and terms of reference of the Governor Body and its committees;
- 4 the Financial Memorandum entered into by the College with the SFA [and the Funding Agreement entered into by the College with the EFA];
- 5 the College's Mission Statement and corporate objectives;
- 6 the College's Strategic Plan;
- 7 the College's policies that extend to Governors, including the College's policies on equal opportunities and freedom of speech, [and] the anti-bribery policy as required by the Bribery Act 2010, [the College's policy on receiving gifts] [and] [the College's policy on conflicts of interest][and] [the College's policy on safeguarding learners];
- 8 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; and
 - leadership.

An extract from the report of the Nolan Committee setting out these Principles in more detail is set out at Appendix 1;

- 9 the Joint Audit Code of Practice issued by the SFA and the EFA;
- 10 [the Foundation Code²] [the UK Corporate Governance Code (formerly the Combined Code on Corporate Governance) published by the Financial Reporting Council³];
- 11 the Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services (Good Governance Standard).

An extract from the Good Governance Standard setting out the six core principles of good governance is set out at Appendix 2;

Appendices 1 (the Seven Principles of Public Life), 2 (Six Core Principles of Good Governance), 3 (Responsibilities of Governors), 4 (Responsibilities of the Principal and Clerk), 5 (Financial Memorandum of the SFA) and 6 (Powers of the Governor Body) are attached to this Code for reference.

As a Governor I agree to observe this Code of Conduct to the best of my abilities.

Dated:

.....
Name of Governor

Appendix 1

The Seven Principles of Public Life

The following is an extract from the Second Report of the Nolan Committee on Standards in Public Life, May 1996.

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix 2

Six Core Principles of Good Governance

The following is an extract from the Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services, January 2005.

- 1 Good governance means focusing on the organisation's purposes and on outcomes for citizens and service users**
 - 1.1 Being clear about the organisation's purposes and its intended outcomes for citizens and service users;
 - 1.2 Making sure that users receive a high quality service;
 - 1.3 Making sure that taxpayers receive value for money.

- 2 Good governance means performing effectively in clearly defined functions and roles**
 - 2.1 Being clear about the functions of the governing body;
 - 2.2 Being clear about the responsibilities of the non-executives and the executive, and making sure that those responsibilities are carried out;
 - 2.3 Being clear about relationships between the governors and the public.

- 3 Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**
 - 3.1 Putting organisational values into practice;
 - 3.2 Individual governors behaving in ways that uphold and exemplify effective governance.

- 4 Good Governance means taking informed, transparent decisions and managing risk**
 - 4.1 Being rigorous and transparent about how decisions are taken;
 - 4.2 Having and using good quality information, advice and support;
 - 4.3 Making sure that an effective risk management systems is in operation.

- 5 Good governance means developing the capacity and capability of the governing body to be effective**
 - 5.1 Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;
 - 5.2 Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group;
 - 5.3 Striking a balance, in the membership of the governing body, between continuity and renewal.

- 6 Good governance means engaging stakeholders and making accountability real**
 - 6.1 Understanding formal and informal accountability relationships;
 - 6.2 Taking an active and planned approach to dialogue with accountability to the public;
 - 6.3 Taking an active and planned approach to responsibility to staff;
 - 6.4 Engaging effectively with institutional stakeholders.

Appendix 3

Summary of Main Responsibilities of Governors under the Articles of Government

Responsibilities that cannot be delegated are indicated with a double asterix.

Under the College's Articles of Government⁴ the Governor Body shall be responsible:

- a) for the determination, preservation and development of the educational character and mission of the institution and for oversight of its activities**;
- b) for publishing arrangements for obtaining the views of staff and students on the determination and periodic review of staff and students of the educational character and mission of the institution and the oversight of its activities;
- c) for the effective and efficient use of resources, the solvency of the institution and the Governor Body and for safeguarding their assets**;
- d) for approving annual estimates of income and expenditure;
- e) for the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Corporation Secretary, including, where the Secretary is, or is to be appointed as, a member of staff, the Secretary's appointment, grading, suspension, dismissal and determination of pay in the capacity as a member of staff;

Responsibilities which must not be delegated

The Articles of Government prohibit⁵ the Governor Body from delegating the following:-

- a) the determination and periodic review of the educational character and mission of the institution**;
- b) the approval of the annual estimates of income and expenditure;
- c) the responsibility for ensuring the solvency of the institution and the Governor Body and the safeguarding of their assets**;
- d) the appointment of the Principal or holder of a senior post;
- e) the appointment of the Corporation Secretary (including, where the Corporation Secretary is, or is to be, appointed as a member of staff the Secretary's appointment in the capacity as member of staff);
- f) the modifying or revoking of the Articles of Government;
- g) the consideration of the case for dismissal, of the Principal, the Corporation Secretary or the holder of a senior post unless such function is delegated to a committee of [*Members of the Governing Body*]; and
- h) the power to determine an appeal in connection with the dismissal of the Principal, the Corporation Secretary or the holder of a senior post unless such power is delegated to a committee of [*Members of the Governing Body*].

The Governor Body may, from time to time, resolve to add other functions which must not be delegated to this list of "reserved" responsibilities.

⁴ The position is as set out in the 2008 Instrument and Articles. Corporations are free to amend these within the parameters set by the revised Schedule 4 Further and Higher Education Act 1992 as inserted by the Education Act 2011. Responsibilities which must be retained by the Governing Body under the revised Schedule 4 are shown with a double asterix. The list that follows summarises the effect of Articles 3, 9, 10 and 19.

⁵ See note 6

Appendix 4

Summary of main responsibilities of the Principal under the Articles of Government⁶.

Under the College's Articles of Government the Principal shall be the Chief Executive of the College and shall be responsible for:

- a) making proposals to the Governor Body about the educational character and mission of the institution, and for implementing the decisions of the Governor Body;
- b) the determination, of the institution's academic activities and the determination of its other activities;
- c) preparing annual estimates of income and expenditure, for consideration and approval by the Governor Body, and the management of budget and resources within the estimates approved by the Governor Body;
- d) the organisation, direction and management of the institution and leadership of the staff;
- e) the appointment, assignment, grading, appraisal, suspension, dismissal, and determination, within the framework set by the Governor Body, of the pay and conditions of service of staff, other than the holders of senior posts or the Corporation Secretary, where the Corporation Secretary is also a member of the staff; and
- f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds and expelling students for academic reasons.

Summary of main responsibilities of the Corporation Secretary under the Articles of Government⁷.

Under the College's Articles of Government the Corporation Secretary shall be responsible for advising the Governor Body with regard to:

- a) the operation of its powers;
- b) procedural matters;
- c) the conduct of its business; and
- d) matters of governance practice.

⁶ The position is set out as required by the 2008 Articles. The revised Schedule 4 FHEA 1992 contains no statement of the responsibilities of the Chief Executive, as the Principal may now be known, so a Governing Body may delegate any responsibility it thinks fit to the Principal, subject to it retaining responsibility for those reserved matters shown with a double asterix.

⁷ The position is set out as required by the 2008 Articles. The revised Schedule 4 FHEA 1992 contains no statement of the responsibilities of the Corporation Secretary, however it is suggested that the list in the 2008 Articles remain appropriate. Legal advice should be obtained if any change to the list is being considered.

Appendix 5

Summary of Main Provisions of the Financial Memorandum with the Skills Funding Agency

Purpose

The SFA issued a revised draft version of the financial memorandum for further education colleges, together with a version for sixth form colleges that recruit adult students, for comment in May 2013. At the same time EFA issued a draft funding agreement for further education colleges that provide EFA funded education for those under 19. The final versions of these documents came into force on 1 August 2013.

The SFA and EFA explained in a letter to the Association of Colleges that the proposed arrangements will ensure that both general FE and sixth form colleges have proper lines of financial accountability to the relevant funding body. Many general FE colleges also receive funding for provision for students aged under 18 from the EFA. Conversely, some sixth form colleges receive funding from the SFA for adult provision.

Format

The form of the documentation varies because of the different legal basis on which the SFA and EFA fund provision. The SFA provides funding under the Apprenticeships, Skills, Children and Learning Act 2009 on the basis of grant – in aid. Such grants are provided subject to conditions set out in the Financial Memorandum. The EFA provides funding under the Education Act 2002. Such funding is not limited to provision by grant – in aid so the appropriate document is a Funding Agreement which is contractual in nature. The Funding Agreements which EFA will provide to colleges are broadly similar in nature to those that EFA has with academy schools.

While the EFA Funding Agreements are broadly similar to those previously in place with sixth form colleges, the new SFA Financial Memorandum for FE colleges (and its counterpart for sixth form colleges) is in a different format from the one used until recently. The SFA's Financial Memorandum has previously been in two separate parts, with the general conditions of grant in part 1 and conditions specific to the individual college in part 2. However, over time part 2 has itself become largely standardised, to deal with issues such as data protection, freedom of information, learner health and safety and so on. The replacement Financial Memorandum brings the two parts together into one document, with only the financial annexes differing between institutions, unless there is a particular need for special provisions specific to a particular institution.

The EFA Funding Agreements are structured in two parts. Part 1 is broadly similar to the former part 1 of the SFA Financial Memorandum. In the version of the EFA funding agreement for general FE and specialist colleges, this material is omitted, since EFA will take assurance from the equivalent provisions in these colleges' Financial Memoranda with SFA. For the same reason, the version of the Financial Memorandum which is now provided by the SFA to sixth form colleges omits those provisions which are central to the financial accountability arrangements, e.g. those setting out the responsibilities of the governing body and of the accounting officer, the requirement to provide information, and the requirements in relation to financial reporting and audit. This is because the SFA will rely on equivalent provisions in the sixth form colleges' Funding Agreements with the EFA.

In practice, if a general FE college, receiving funding from both SFA and EFA, were to get into serious financial or quality difficulties, there would be liaison between the two funding bodies and regulatory action would be co-ordinated by the lead funding body, ie the SFA (for general FE colleges) and the EFA (for sixth form colleges).

There follows a commentary on the main provisions of the SFA Financial Memorandum for further education colleges.

Definitions

It should be noted that references to public funds include funds provided by HEFCE as well as those provided by the SFA.

Statutory framework

The conditions set out in the Financial Memorandum are intended to enable the Chief Executive of Skills Funding to carry out his functions under the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). Note that ASCLA gives these functions to the holder of this post rather than to the SFA itself. The SFA has no separate legal status and will in due course become an agency of the Department for Business, Innovation and Skills (DBIS). The Chief Executive of Skills Funding (the "Chief Executive") has responsibilities as accounting officer to his or her department for ensuring that the use of funds which he/she receives from the Secretary of State is consistent with his/her statutory remit and any conditions imposed by the Secretary of State.

Responsibilities of a Governing Body

The Financial Memorandum recognises that a Governing Body is an independent body responsible for managing the college and ensuring its financial viability. However, the Governing Body must inform the Chief Executive of any transaction that could jeopardise the college's financial viability and must also be able to demonstrate that all transactions achieve value for money for funds provided under the financial memorandum.

The governing body must appoint an accounting officer (expected to be the chief executive/principal of the college). There must be an accounting officer in place at all the times and the SFA must be informed of the accounting officer's name and position and who will discharge their various responsibilities if they are absent from the college for an extended period.

The accounting officer takes personal responsibility, which is not delegable, to ensure compliance with the Financial Memorandum and conditions of funding. The accounting officer may be required to appear before the Public Accounts Committee on matters relating to the Corporation's use of funds.

The accounting officer must advise the governing body if at any time in his/her opinion any action under consideration by the governing body is incompatible with the Financial Memorandum. If the governing body resolves to continue with such action the accounting officer must inform the Chief Executive.

Allocation of funds

The Chief Executive will allocate funds to the Governing Body annually provided that he/she is satisfied that the Governing Body is financially viable and able to deliver education of a reasonable quality meeting the needs of learners and employers and the Governing Body has met the previous year's conditions of funding. The Governing Body is free to spend its funding as it sees fit provided it fulfils the conditions of funding but funds must not be used to deliver provision in respect of which the Governing Body has already received other funding, public or otherwise, unless agreed by the Chief Executive.

Capital transactions

The Governing Body must manage its property with regard to good practice guidance in the FE sector. It is no longer necessary to obtain approval of the Chief Executive to the disposal of land or buildings which had been acquired or developed with the help of capital grants from the SFA or previous associated bodies, but the Chief Executive must be notified in writing of such transactions and reserves the right to require repayment of some or all of the associated grant.

Financial reporting

The Chief Executive specifies the information to be contained in the Corporation's financial statements. Audited financial statements must be provided to the Chief Executive within five months of the Corporation's year end. The Governing Body must have an effective policy on risk management. The Governing Body must notify the Chief Executive in writing if at any time there is a risk to the college's solvency and viability.

Audit

The Governing Body must appoint an audit committee and arrange to provide internal and financial statements audit, including regularity audit, in accordance with the Joint Audit Code of Practice. The Governing Body must investigate and report to the Chief Executive all significant cases of fraud or suspected fraud.

Payment to employees on termination of employment

The Governing Body must only make payments to employees on the termination of their employment for the purpose of meeting contractual obligations. Payments must be demonstrated to be regular, secure value for money and avoid spending funds on settlements where disciplinary action would have been more appropriate. Where employment claims are brought by a senior post holder it should take appropriate professional advice on any proposed settlement and the terms of the final agreement should be agreed by the governing body and brought to the attention of the financial statements auditors.

Provision of information

The Chief Executive reserves the right to request information from the Governing Body in order to exercise his responsibilities. The Governing Body must inform the Chief Executive in writing of the vacating or filling of the positions of Chair of the governing body, Principal and Corporation Secretary.

Additional conditions of funding

The Chief Executive reserves the right to impose additional conditions where he/she considers it necessary to secure the delivery of education and training of a reasonable quality or to require the Governing Body to address concerns about its financial viability.

Repayment of funds

In the case of a breach of the conditions of funding the Chief Executive reserves the right to require repayment of all or part of the funds.

Raising Standards, Feedback and Complaints

The college must deliver the funded provision to an acceptable standard of quality and comply with the Performance Management Rules published by the Chief Executive. There is a set procedure for dealing with inadequate provision which may lead to issue of a Notice of Concern or ultimately a Notice of Withdrawal of Funding. We understand that these provisions are to be amended in the light of the BIS/DfE intervention policy now set out in *Rigour and Responsiveness in Skills*.

Colleges are expected to have acceptable procedures for gathering and acting upon feedback and complaints from learners and/or their representatives and employers and the wider community. These must be made available to those who may wish to complain. Where a complaint is not resolved satisfactorily the complainant must be informed of their right to complain to the Chief Executive.

Additional matters

The Financial Memorandum now incorporates a number of other clauses on compliance matters such as health and safety, equal opportunities, data protection and freedom of information, and State Aid. These were formerly in Part 2 of the previous Financial Memorandum.

Interpretation

Nothing in the Financial Memorandum shall require the Governing Body to act in a manner which would cause the Governing Body to cease to be a charity.

Colleges need to familiarise themselves with the detailed content of the new financial memorandum and funding agreement in the versions applicable to their type of college. However, despite the presentational differences in the documentation, colleges will find that the substance of the requirements that they need to meet is largely unchanged.

Appendix 6

Summary of the Statutory Powers of the Governor Body

Principal Powers

Under section 18(1) of the Further and Higher Education Act 1992 a further education corporation may:-

- a) provide further and higher education;
- b) provide secondary education suitable to the requirements of persons who have attained the age of 14 years, or provide secondary education or participate in the provision of secondary education at a school (subject to the consultation with the appropriate local education authority); and
- c) supply goods or services in connection with their provision of education.

These powers are known as the Corporation's "principal powers".

Supplementary Powers

Under section 19 of the 1992 Act the Governing Body may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers conferred by section 18 of the Act, including in particular the following powers:-

- a) to acquire and dispose of land and other property;
- b) to enter into contracts, including in particular:
 - i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the Corporation's principal powers; and
 - ii) contracts with respect to the carrying on by the Governing Body of any such activities;
- c) to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation;
- d) to borrow such sums as the Governing Body thinks fit for the purposes of carrying on any activities it has power to carry on or to meet any liability transferred to it under sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage, charge or other security in respect of any land or other property of the Corporation;
- e) to invest any sums not immediately required for the purposes of carrying on any activities the Governing Body has power to carry on;
- f) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes;
- g) to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes and
- h) to provide advice or assistance to any other person where it appears to the Governing Body to be appropriate for them to do so for the purpose of or in connection with the provision of education by the other person

The Governing Body may also provide facilities of any description (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties) which appear to be necessary or desirable for the purposes of or in connection with the carrying on of the principal powers.

The powers conferred by section 19 of the 1992 Act are known as "supplementary powers".