

GREENHEAD COLLEGE

Governing body - roles and responsibilities

1 What is the governing body responsible for?

1.1 In general terms the governing body is responsible for the overall functioning of the college. It is accountable for the quality of the service to its students and their welfare, the financial health of the college and the proper use of public funds and sound management.

2 What are the specific powers?

2.1 The Further and Higher Education Act 1992 specifies the powers of the governing body.

2.2 The principal powers are to:

- provide further and higher education
- (in certain circumstances) provide secondary education to pupils in the fourth key stage
- supply goods or services in connection with the provision of education.

2.3 In order to exercise their principal powers the governing body may:

- conduct an educational institution
- provide facilities which appear to the board to be necessary to support its principal powers which could include providing boarding accommodation and recreational facilities for students or staff
- acquire and dispose of land and other property, enter into employment and other contracts, borrow subject to LSC approval and invest money.

3 What are the duties of the governing body?

3.1 What the governing body must do and how it should carry out its business are set down in the college's own articles of government. Each college in the sector funded by the Council operates under articles of government or, at some designated colleges, an equivalent document.

3.2 Each college has an instrument of government that sets out the arrangements for membership and meetings of the governing body and its committees. The articles of government define the responsibilities of the governing body and the principal (and the extent to which those responsibilities can be delegated), and various matters relating to staff and students. It is important that governors obtain a copy of, and are conversant with, the articles of government for their own college.

3.3 In general, the duties of the governing body are:

- to determine the educational character and mission of the college and ensure that there are effective means of knowing whether the college is being properly managed to fulfil its mission
- the effective management of resources to ensure the solvency of the college and the safeguarding of its assets
- to approve annual estimates of income and expenditure
- appointment, grading, suspension, dismissal and determination of pay and conditions of service of the holders of senior posts and the clerk to the governing body
- to set a framework for the pay and conditions of service of all other staff.

4 What are the considerations for individual governors in carrying out their responsibilities?

The seven principles of public life

4.1 A governor of a college is a holder of public office and in carrying out the roles and responsibilities should abide by the seven principles of public life, as recommended by the Nolan committee's report, Standards in Public Life. In summary the principles are:

- selflessness: holders of public office should take decisions solely in terms of public interest and not in the interests of themselves their family or friends
- integrity: holders of public office should not place themselves under any obligation to a third party which might influence them in the performance of their public duties
- objectivity: all decisions involving awarding of contracts, benefits or rewards should be made on merit
- accountability: holders of public office are accountable to the public for their actions and should submit themselves to the appropriate scrutiny
- openness: all decisions taken should be as open as possible
- honesty: holders of public office have a duty to declare any private interests relating to their public duty and resolve conflicts so as to protect the public interest
- leadership: holders of public office should promote and support these principles by leadership and example.

Fairness in the decision-making process

4.2 There is an obligation on governors in taking their decisions to act reasonably with regard to natural justice. Whilst such criteria may seem self-evident, there is a risk that on occasion they may be neglected, especially when difficult decisions have to be taken quickly, and when important procedural safeguards could be overlooked and/or full consideration curtailed. A decision made by a governing body may be subject to judicial review and the governing body might see its decision set aside by the courts in the event of an adverse finding. Where staffing issues are involved, the governing body's decision may also be subject to the findings of employment tribunals.

Personal liabilities of governors

4.3 The law relating to the personal liabilities of governors is complex and its interpretation is ultimately a matter for the courts. However, governors should satisfy themselves that they understand their own position in their particular college. Some important aspects are that governors should:

- be satisfied that a course of action proposed is in accordance, as appropriate, with the college's articles of government or memorandum and articles of association and, in the case of a registered charity, is within the terms of the trust deed, or scheme, regulating the charity
- not bind the college to a course of action it cannot carry out or act outside the college's powers
- seek to ensure that the college, or any enterprise company run by the college, does not continue to operate if it is insolvent
- seek to persuade fellow governors, and register dissent, if they are concerned that an action would be contrary to any of the above; governors are entitled to vote against any resolution put before the board and have their position recorded in the minutes
- act honestly, diligently and in good faith, noting that to do so reasonably could require taking professional advice in appropriate circumstances
- avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and those of the college, particularly where those interests are financial.

4.4 It is desirable to take out insurance against the costs of any charge of negligence that may be made against the governors in carrying out their duties.

Considerations in decision-making

4.5 Governors nominated by particular groups must not speak or vote at meetings as if they are delegates of the group by whom they were nominated. Whilst the composition of the governing body is intended to ensure that the views of a wide range of interests are available to the governing body, the instrument states that no governor may be bound by mandates given to him/her by others. Each governor must take a view on each matter coming before him/her on the merits of the issue in hand. The strength of the governing body will depend on the quality and variety of individual contributions made to its discussions by each governor. Such contributions will not just be at formal meetings, but also through working parties and committees looking at particular issues on behalf of the governing body.

4.6 Once a matter is determined, individual governors are expected to be bound by the collective decision of the governing body. Only the chair, the principal or the clerk should make statements on behalf of the governing body, unless the governing body approves otherwise. Governors who voted against a resolution should respect the decision of the majority and not actively undermine the decision of the governing body.

Disclosure of interests

4.7 Any governor who has a financial interest in any matter under discussion by the governing body must:

- declare that interest to the governing body before any discussion of the item
- not take part in the discussion
- not form part of the quorum
- not vote.

He/she is not required to withdraw physically from the meeting, although this may be advisable so as not to inhibit discussion.

4.8 Declaration of interest may also be required under company law for governors of those colleges conducted as companies. If a governor is unsure as to whether personal interest may be involved or whether or not it would be appropriate to withdraw from the meeting for the discussion of that item, he/she should seek advice from the clerk.

4.9 The rules on financial interest are waived in the case of any consideration by the governing body of the need for insurance against liabilities arising out of the governors' office.

4.10 The instrument also specifies that no governor may take or hold any interest in any college property or receive any remuneration for his/her services, other than as a member of staff, without the written approval of the secretary of state for education and employment.

Level of information needed

4.11 Governors will need to have the following information from the executive of the college:

- standing information
 - the college's instrument and articles of government
 - a copy of any relevant standing orders
 - committee terms of reference and membership
 - any codes relating to the conduct of the governing board's business
 - a schedule of delegated authorities
 - a timetable of business
 - a register of members' interests
- monitoring information
 - regular financial reports
 - regular reports on decisions taken under authority delegated to the chair, chief executive or committees
 - reports on committee business
 - annual information on the achievement of any targets set in relation to governance systems.

4.12 Governing bodies will need to receive and regularly review the following:

- the conduct of their own business
- the annual cycle of governing body and committee business
- arrangements for reporting decisions made under delegated authority
- standing orders
- the policy and arrangements for training members

- terms of reference and membership of committees.

4.13 Governing bodies will also seek professional advice from time to time, for example on legal, accountancy or property issues. Governors, other than the principal, who are themselves members of relevant professions will wish to contribute to debate on those issues, but should be clear that any comments they make do not constitute professional advice.

5 What are the consequences of not carrying out the roles and responsibilities properly?

5.1 The secretary of state for education and employment may intervene, on the advice of the Council, by virtue of section 57 of the Act in the event of mismanagement or breach of duty. If the secretary of state considers that the affairs of any college within the sector have been or are being mismanaged, he/she may remove all or some of the governors and/or modify the instrument of government. Similarly, the secretary of state may act on any complaint made to him/her that a governing body has failed to discharge any duty imposed on it. Action could include declaring the governing body in default, and giving such directions as he/she thinks fit with which the governing body would be required to comply. An additional order to the instrument, made in October 1999, allows the Council to nominate two members of the governing body, or two observers to attend meetings.

6 Where can governors find further guidance?

Sections 18, 19, 57 and 68 of the Further and Higher Education Act 1992. Circular 99/48 Financial Memorandum.

Instrument and articles of government.

Circular 99/30 Instruments and Articles of Government: Modifications. Circular 99/17 Arrangements for considering complaints to the Council. Education (Government of Further Education Corporations) Regulations 1992. The report of the Nolan Committee, Standards in Public Life.

Standards for the Board, Institute of Directors, 1999