



**Greenhead College  
Corporation**

**Code of Conduct for Governors**

*Reviewed June 2020*

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## GREENHEAD 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 **Schedule 1**.
- 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 Governing 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 Governing Body, each Governor agrees to accept the provisions of this Code.
- 1.6 Each Governor by accepting the provisions of this Code agrees that any breach of the Code by them may lead to the termination of their appointment as a Member in accordance with clause 10 of the Corporation's Instrument and Articles of Government.

### 2. INTERPRETATION

- 2.1 In this Code the following expressions shall have the following meanings:

<b>"College"</b>	this College
<b>"College Mission Statement"</b>	means the statement referred to at <b>clause 3.1</b> of this Code or such other mission statement as may be agreed by the Governing Body from time to time
<b>"Corporation"</b>	<i>the sixth form college corporation which was established and designated by the Secretary of State for the purpose of conducting the College</i>
<b>"Governor"</b>	<i>"Governor", "Chair", "Principal" and "Clerk" mean respectively the Member of the Corporation of the College, the Chair of the Governing Body, the Principal of the College and the Clerk of the Governing Body</i>
<b>"DfE"</b>	the Department for Education
<b>"ESFA"</b>	the Education and Skills Funding Agency or any successor body

2.2 all other definitions have the same meanings as given in the College's Instrument and Articles of Government; and

2.3 words importing one gender import any gender.

### 3. **AIMS AND VALUES**

#### 3.1 The College Mission Statement

- to provide a safe, supportive and inclusive environment in which individuals feel valued, and where students can grow in confidence and fulfil their potential for academic, moral, social and physical development;
- to continue to be a centre of excellence in everything we do, providing education, training and pastoral care of outstanding quality for individual students;
- to be a major force in enabling individual students to reach and exceed nationally set learning targets through the offer of a curriculum concentrating on A-levels;
- to prepare every student for life beyond Greenhead College – both university and the world of work – through the provision of outstanding enrichment activities, careers guidance and opportunities to develop employability skills

3.2 The College Mission Statement together with the corporate objectives of the College agreed by the Governing 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 when conducting the business of the Governing Body and considering the activities and proposed activities of the College.

3.3 The Governing 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 Governing Body is committed to:

3.3.1 having close regard to the voice of the learner;

3.3.2 combating any discrimination within the College on the grounds of the characteristics protected by the Equality Act 2010 ("**the 2010 Act**") and promoting equality in accordance with its duty under the 2010 Act;

3.3.3 engaging with the community which the College serves in order to understand and meet its needs; and

3.3.4 observing its duty under the Education (No.2) Act 1986 to take reasonable steps to ensure freedom of speech<sup>1</sup> for members of the College community and visiting speakers and its duty under the Counter Terrorism and Security Act 2015 to have regard to the need, when exercising its functions, to prevent people from being drawn into terrorism]<sup>2</sup>.

3.4 The Governing 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.

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<sup>1</sup> On freedom of speech see the College's code of practice on freedom of speech.

<sup>2</sup> On the Prevent duty see the Home Office guidance on compliance with the duty in section 26 of the 2015 Act: <https://www.gov.uk/government/publications/prevent-duty-guidance>

## 4. DUTIES

- 4.1 Governors are in the position of charity trustees and as such 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 **clause 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 Governing 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 the bodies that elected them).
- 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 Clerk should they become disqualified from continuing to hold office and also the responsibilities given to the Governing 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 8**.
- 4.4 Governors should comply with the Standing Orders and terms of reference of the Governing Body and its committees to ensure that the Governing 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 9**. Whereas it is the Governing 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 Governing Body's decisions, and to manage the College's affairs within the budgets and framework fixed by the Governing Body. Governors should work together so that the Governing Body and the Principal as Chief Executive perform their respective roles effectively.
- 4.6 Governors should refer to the Clerk for advice relating to the governance functions which are set out in **Appendix 9** and have regard to the Clerk's independent advisory role.

## 5. STATUTORY ACCOUNTABILITY

- 5.1 Governors are collectively responsible for observing the duties set out in the Funding Agreement which the College has entered into with the ESFA as a condition of receiving public funds. A summary of some of the more important requirements of the Funding Agreement is set out in **Appendix 10**.
- 5.2 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.
- 5.3 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 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 the ESFA, to give an account of the use made by the College of such funds. The Governing 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**

Although sixth form college Governing Bodies are classified as part of the private not for profit sector for government accounting purposes, they remain public bodies in many legal contexts. In particular, 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 Governing Body Member, and should underpin all decisions taken by the Governing Body.

## 7. **SKILL, CARE AND DILIGENCE**

A Governing Body Member 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 Governing 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 Governing Body by Parliament under sections 33E and 33F of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011. A summary of those powers is set out in **Appendix 11**. If a Governing Body Member thinks that the Governing Body is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk for advice.

## 9. **CONFLICTS 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 Governing 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 Governing 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 Governing Body.

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

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

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

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

9.3.3.1 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

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

9.4 For the purposes of **clause 9.4** "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 to the College) 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 or the College's anti-bribery policy 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 Clerk.

9.7 The Clerk will maintain a Register of Governors' Interests which will be open for public inspection. Governors must disclose routinely to the Governing Body all business interests, financial or otherwise, which they or persons associated with them 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 **clauses 9.3** and **9.5** of this Code.

## 10. **COLLECTIVE RESPONSIBILITY**

10.1 The Governing Body operates by Governors taking majority decisions in a corporate manner at quorate meetings, including meetings held by telephone, and decisions reached by alternative methods such as written resolutions, in both cases only if so provided for in the College's Instrument and Articles. Therefore, a decision of the Governing Body, even when it is not unanimous, is a decision taken by the Governors collectively and each individual Governing Body Member has a duty to stand by it, whether or not he or she was present at the meeting of the Governing Body when the decision was taken.

10.2 If a Governing Body Member disagrees with a decision taken by the Governing Body, his or her first duty is to have any disagreement discussed and minuted. If the Governing Body Member strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Governing Body when it next meets. If no meeting is scheduled, the Governing Body Member should refer to the power of the Chair or of 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 Governing Body Member's views in advance to the other Governors. Alternatively, as a final resort, the Governing Body Member may decide to offer his or her resignation from office, after consulting the Chair.

## 11. **OPENNESS AND CONFIDENTIALITY**

11.1 Because of the Governing 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 Governing Body. Accordingly, agendas, minutes and other papers relating to meetings of the Governing 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 Governing Body 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 save for those Members who have a conflicting interest in the particular sensitive matter. 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 Governing 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 Governing 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 Governing 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 Governing 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 Governing 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 ESFA's Funding Agreement (Part Two clause 9.1), students, employers and other third parties have a right to make a complaint to the ESFA in respect of the College or of any of its decisions. Governors in particular are reminded of the ESFA's Procedure for dealing with complaints about Providers of Education and Training (issued by the EFA in October 2015). The Procedure provides that the EFA will investigate complaints about institutions that fall into the following two areas:
  - 12.2.1 the institution has not complied with its own complaints procedure when considering the complaint.
  - 12.2.2 the institution has failed to comply with an obligation imposed on it under its funding agreement.
- 12.3 Complaints under this section may include, but are not limited to:
  - 12.3.1 the quality or management of learning provision; and
  - 12.3.2 poor administration.
- 12.4 The ESFA **will not** investigate complaints where another body or legal route of challenge is more appropriate. Examples include:



- 12.4.1 exam results or curriculum content. Complaints of this nature should be dealt with by the appropriate examination awarding body or by Ofqual;
- 12.4.2 individual employment issues that are a matter for the employer and the employee, and where employment law provides appropriate remedies;
- 12.4.3 institutional contractual disputes, including for example, complaints about the terms of sub-contracting agreements between an institution and a sub-contractor;
- 12.4.4 matters that are already the subject of legal action, proposed legal action, or where legal proceedings are the most appropriate way of resolving the dispute;
- 12.4.5 matters relating to child protection/safeguarding which will be referred immediately to the relevant local authority.

**13. ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Governing Body is expected so that Governors can perform their functions properly.

**14. GOVERNANCE DEVELOPMENT**

- 14.1 The Governing 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 and Governance Committee, and are drawn widely from the community which the College serves so as to be representative of that community. The Governing Body should have regard to the provisions relating to the membership of the Governing 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 review of the performance by the Governing Body of its duties and responsibilities, (including a review of their own performance) as part of a continuing and critical process of self-evaluation.

<i>Author:</i>	<i>Clerk</i>
<i>Date drafted:</i>	
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***“This policy has been impact assessed to ensure it complies with all aspects of equality and diversity. Members are reassured that this policy is compliant with current equality legislation”.***

# SCHEDULE 1

## 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 Governing Body and its committees.
4. The Funding Agreement entered into by the College with the ESFA.
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, the anti-bribery policy as required by the Bribery Act 2010, the College's policy on conflicts of interest, the College's policy on safeguarding learners; and the College's policy on preventing people from being drawn into terrorism.
8. The principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely:
  - 8.1 selflessness;
  - 8.2 integrity;
  - 8.3 objectivity;
  - 8.4 accountability;
  - 8.5 openness;
  - 8.6 honesty; and
  - 8.7 leadership.
9. An extract from the report of the Nolan Committee setting out these Principles in more detail is set out at **Appendix 2**.
10. The Joint Audit Code of Practice issued by the EFA and the SFA.
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 7**.
12. Appendices 2 (the Seven Principles of Public Life), 3 (Six Core Principles of Good Governance), 4 (Responsibilities of Governors), 5 (Responsibilities of the Principal and Clerk), 6 (Financial Memorandum) and 7 (Powers of the Governing Body) are attached to this Code for reference.

**AS A GOVERNING BODY MEMBER I AGREE TO OBSERVE THIS CODE OF CONDUCT TO THE BEST OF MY ABILITIES.**

Signed.....

Dated:

.....

Name of Governing Body Member

## **APPENDIX 2**

### **The Seven Principles of Public Life**

#### **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 7

### 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 8

### Summary of Main Responsibilities of Governors under the Articles of Government

**[Note that this summary is for convenience set out as a consolidated list bringing together a number of provisions from different Articles.]**

1. Under the College's Articles of Government<sup>3</sup> the Governing Body shall be responsible:
  - 1.1 for the determination and periodic review of the educational character and mission of the institution and for oversight of its activities;
  - 1.2 for publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
  - 1.3 for approving the quality strategy of the institution;
  - 1.4 for the effective and efficient use of resources, the solvency of the institution and the Governing Body and for safeguarding their assets;
  - 1.5 for approving annual estimates of income and expenditure;
  - 1.6 for 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 as a member of staff;
  - 1.7 for setting a framework for the pay and conditions of service of all other staff; and
  - 1.8 for setting the policy by which the tuition and other fees payable to the College are determined (subject to any terms and conditions attached to grants, loans or other payments paid or made by the ESFA).
1. "Senior Post" means the post of Principal and such other senior posts if any<sup>4</sup> as the Governors may designate for the purposes of the Articles.

#### Responsibilities which must not be delegated

1. The Articles of Government prohibit the Governing Body from delegating the following:
  - 1.1 the determination of the educational character and mission of the institution\*\*;
  - 1.2 the approval of the annual estimates of income and expenditure;
  - 1.3 the responsibility for ensuring the solvency of the institution and the Governing Body and the safeguarding of their assets\*\*;
  - 1.4 the appointment of the Principal or holder of a senior post;
  - 1.5 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 as member of staff);

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<sup>3</sup> 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 corporation under the revised Schedule 4 are shown with a double asterisk. The list that follows summarises the effect of Articles 3,9,10 and 19.

<sup>4</sup> Under the new Schedule 4 FHEA it is open to corporations not to designate any posts as senior ones.

- 1.6 the modifying or revoking of the Articles of Government;
  - 1.7 the consideration of the case for dismissal, of the Principal, the Clerk or the holder of a senior post unless such function is delegated to a committee of Members of the Governing Body; and
  - 1.8 the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post unless such power is delegated to a committee of Members of the Governing Body.
2. The Governing Body may, from time to time, resolve to add other functions which must not be delegated to this list of "reserved" responsibilities.



## **APPENDIX 9**

### **Summary of main responsibilities of the Principal under the Articles of Government**

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

1. making proposals to the Governing Body about the educational character and mission of the institution, and for implementing the decisions of the Governing Body;
2. the determination, of the institution's academic activities and the determination of its other activities;
3. preparing annual estimates of income and expenditure, for consideration and approval by the Governing Body, and the management of budget and resources within the estimates approved by the Governing Body;
4. the organisation, direction and management of the institution and leadership of the staff;
5. the appointment, assignment, grading, appraisal, suspension, dismissal, and determination, within the framework set by the Governing Body, 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; and
6. 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 Clerk under the Articles of Government<sup>5</sup>**

Under the College's Articles of Government the Clerk shall be responsible for advising the Governing Body with regard to:

1. the operation of its powers;
2. procedural matters;
3. the conduct of its business; and
4. matters of governance practice.

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<sup>5</sup> 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 Clerk, 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 10

### Summary of main provisions of the Conditions of Funding Agreement with the EFA

#### Format of the Agreement

- (a) The lead funding body for sixth form colleges is the EFA, and that for further education colleges the SFA. All sixth form college Governing Bodies will therefore have a Conditions of Funding Agreement with the EFA and all further education college Governing Bodies a Financial Memorandum with the SFA. This ensures that colleges have proper lines of accountability to the relevant funding body.
- (b) Some sixth form colleges receive funding from the SFA for adult provision and accordingly have a Financial Memorandum with that body and many general FE colleges also receive funding for provision for students aged under 18 from the EFA and accordingly have a Conditions of Funding Agreement with that body.
- (c) The form of the documentation varies because of the different legal basis on which the EFA and SFA fund provision. 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 Conditions of Funding Agreement which is contractual in nature. The Conditions of Funding Agreements which EFA provides to colleges are broadly similar in nature to those that EFA has with academy schools. 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.
- (d) The EFA Conditions of 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 Conditions of 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 will be 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 college's Conditions of Funding Agreement with the EFA.
- (e) In practice, if a college, receiving funding from both EFA and SFA, 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, i.e. the EFA (for sixth form colleges) and SFA (for general FE colleges).
- (f) Colleges will need to familiarise themselves with the detailed content of the Conditions of Funding Agreement and Financial Memorandum in the versions applicable to their type of college. The EFA Conditions of Funding Agreement for sixth form colleges is in two parts, Part One is in effect the Financial Memorandum and contains provisions which are appropriate only to providers, such as sixth form college Governing Bodies, which are entitled to receive funding by way of grant under statute. Part Two contains provisions which are appropriate to all providers, including private sector providers which receive funding under contract rather than grant. The Agreement came into force on 1 August 2015. The Agreement states that sixth form colleges receiving funding under the Agreement agree also to the EFA's Funding Guidance, the Joint Audit Code of Practice and 12 other sets of government rules and regulations relevant to funding listed in the Background section of the Agreement. The terms and conditions of funding will be updated annually. There follows an outline of the main provisions with some commentary.

## **Part One**

### **Responsibilities of the Governing Body**

These include:

- using its funds only in accordance with its statutory powers and duties;
- ensuring the SFC's solvency and informing the EFA of any transaction that could jeopardise this;
- appointment of an accounting officer, normally the Principal, and informing the EFA of the name of any person appointed to discharge the accounting officer responsibilities in any absence of the permanent office holder;
- informing the EFA in writing as soon as possible of the vacating and filling of the posts of Chair, Principal and Clerk;
- ensuring the SFC operates in accordance with its status as an exempt charity.

### **Responsibilities of the Accounting Officer**

These are:

- to take personal responsibility for compliance with the EFA's conditions of funding: this cannot be delegated;
- to advise the Governing Body if any action or policy under consideration is incompatible with the Conditions of Funding, and to inform the Chief Executive of the EFA in writing as soon as reasonably practicable if they have evidence that the Governing Body is acting in breach of the Conditions.

#### **(g) Allocation of Funds**

- (h) EFA will determine the amount of funds it will pay the SFC in accordance with the activities outlined in Part Two of the Agreement and in line with government policy. It will normally give four months' notice of the amount before the start of the academic year.

#### **(i) Payment of Funds**

- (j) The EFA will normally make payments of recurrent funding to the SFC in monthly instalments. Payment of capital funding will be in accordance with the terms agreed.
- (k) SFCs are expected to manage their estates to ensure the best possible learning and teaching environment and in accordance with health and safety law and good estate management practice. It is no longer necessary for SFCs to obtain EFA consent to disposals and major borrowing arrangements but advance notice of any such transactions should be given to EFA in order to comply with the requirement to provide information and, for example, to ensure that the Exchequer Interest in buildings acquired or developed with public funds is protected.

### **Non-compliance by SFC**

- (l) In the event of non-compliance by the SFC with EFA conditions of funding EFA may deduct the value of those funds from future funding. In the case of a breach of conditions, as defined by Clause 16 of the Agreement, EFA may require immediate repayment of funding in whole or part.

### **Contingent Liabilities**

- (m) SFCs, being charities, can only give guarantees and indemnities "in the normal course of business". This may be relevant e.g. where a college company is being used.

### **College Companies**

- (n) The Governing Body is free to participate in companies within the limits of its statutory powers but must ensure that appropriate arrangements are in place for the company's governance and management and must inform EFA if participation in the company poses a risk to the solvency of the SFC.

## **Financial Reporting**

- (o) The SFC must provide copies of its audited financial statements, in the form required by EFA, to EFA and to members of the public who request them. The SFC must inform EFA as soon as practicable if there is a risk to its solvency and viability. EFA may require the SFC to carry out actions prescribed by EFA such as a strategic options review and/or a financial recovery plan.

## **Audit**

- (p) The Governing Body must appoint an audit committee (see commentary on article 6) and arrange financial statements and regularity audit in accordance with the Joint Audit Code of Practice. The SFC must investigate and report to EFA all significant cases of fraud or suspected fraud or irregularity.

## **Payments to employees on termination of employment**

- (q) The Governing Body must demonstrate that such payments are regular and secure value for money and not made, e.g. where disciplinary action would have been more appropriate. Settlements should be brought to the attention of the financial statements auditors.

## **Provision of information**

- (r) EFA reserves its right to request information from SFC in order to exercise its responsibilities.

## **Part Two**

- (s) Part Two of the Agreement contains a range of detailed provisions, e.g. requirements that the SFC undertake to meet obligations under the Data Protection and Freedom of Information Acts and to ensure equality of opportunity. The 2015-16 Agreement contains new or extended obligations to promote fundamental British values and to comply with and keep appropriate records regarding health and safety and safeguarding laws (including the Prevent duty under the Counter-Terrorism and Security Act 2015). In addition there are additional standard clauses of a type common to business contracts. Legal advice on the detail of these provisions should be obtained where a particular issue arises but the following points are of general interest:

The SFC is solely responsible to EFA not only for its own acts but also those of related parties such as sub-contractors;

The SFC is not permitted to vire (transfer) funding between learning programmes except by revising the Agreement;

Where the SFC fails to meet the minimum standards of quality or financial health as set by DfE, Ofsted etc the SFC may be required to meet additional requirements and/or suspend or cap enrolment of students and/or the EFA may recommend to Ministers that the SFC be subject to intervention. If Ofsted finds provision to be unsatisfactory EFA may terminate the Agreement. The 2015-16 Agreement gives the EFA an early intervention power: if from the information available to EFA about an SFC's financial position it considers there to be a significant risk that the SFC may become financially unviable and/or financially inadequate within a three year period it will invite the SFC to respond; in the absence of an adequate response the EFA may take action, including asking the SFC to undertake a financial or structural review and give proper consideration to implementing the findings. Such requirements may form additional obligations under the Agreement, breach of which may trigger the EFA's powers including ultimately the power to terminate the Agreement.

Payment of funding is on a lagged basis save in exceptional circumstances and may be recovered from the SFC where it is found on audit to have been made in error.

The SFC is deemed to agree to publication of the Agreement, including the financial schedules;

On termination of the Agreement the SFC shall do its utmost to minimise disruption to learners and to assist in the implementation of any contingency plan proposed by the EFA;

Should a dispute between the SFC and the EFA arise this will be referred in the first instance to the EFA Territorial Team, then to mediation and if still not resolved to arbitration under the Arbitration Act 1996.

# APPENDIX 11

## Summary of the Statutory Powers of the Governing Body

### Principal Powers

1. Under section 33E of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 a sixth form college Governing Body may:
  - 1.1 provide further and higher education;
  - 1.2 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
  - 1.3 supply goods or services in connection with their provision of education.
2. These powers are known as the Governing Body's "principal powers".

### Supplementary Powers

3. Under section 33F of the 1992 Act as amended 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 33E of the Act, including in particular the following:
  - 3.1 the power to acquire and dispose of land and other property;
  - 3.2 the power to enter into contracts, including in particular:
    - 3.2.1 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 Governing Body's principal powers; and
    - 3.2.2 contracts with respect to the carrying on by the Governing Body of any such activities;
  - 3.3 the power to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation.
  - 3.4 the power 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 Governing Body;
  - 3.5 power to invest any sums not immediately required for the purposes of carrying on any activities the Governing Body has power to carry on;
  - 3.6 power to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes;
  - 3.7 power 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

- 3.8 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.
4. 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.
5. The powers conferred by section 33F of the 1992 Act are known as "**supplementary powers**".