



**BLACKBURN COLLEGE**  
**CODE OF CONDUCT**  
**FOR CORPORATION MEMBERS**

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2020

Throughout this Code the words “Corporation” and “Corporation Members” have been used. “Governing Body” and “Governors” are commonly used in the sector to mean “Corporation” and “Corporation Members” respectively.

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# COLLEGE CODE OF CONDUCT FOR CORPORATION MEMBERS

(made by the Corporation in June 1995 and last revised March 2020)

## 1. INTRODUCTION

- 1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Corporation Members, to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the Corporation and Principal as the Chief Executive. This Code is therefore 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, Corporation Members are recommended to familiarise themselves with the following:
- 1.2.1 the College's Instrument of Government;
  - 1.2.2 the College's Articles of Government;
  - 1.2.3 the Standing Orders and terms of reference of the Corporation and its committees;
  - 1.2.4 the Conditions of Funding Agreement entered into by the College with the Education and Skills Funding Agency (ESFA);
  - 1.2.5 the College's Mission Statement and corporate objectives;
  - 1.2.6 the College's Strategic Plan;
  - 1.2.7 the College's policies that extend to Corporation members, 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 receiving gifts, the College's policy on Conflict of Interest and the College's policy on safeguarding learners;
  - 1.2.8 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 of the report of the Nolan Committee setting out these principles in more detail is set out at Appendix 1.

- 1.2.9 the Post-16 Audit Code of Practice issued by the ESFA;
- 1.2.10 the Code of Good Governance for English Colleges as amended from time to time;
- 1.2.11 the UK Corporate Governance Code as amended from time to time
- 1.2.12 The Department for Educations' Further education and sixth-form college corporations governance guide
- 1.2.13 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 Corporation Members), 4 (Responsibilities of the Principal), 5 (Responsibilities of the Clerk); 6 (Financial Memorandum of the Council) and 7 (Powers of the Corporation) are attached to this Code for reference. They should not be read as an exhaustive statement of duties, powers or provisions, and Corporation Members should refer to the source documents listed above.

- 1.3 If a Corporation Member 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 Corporation Member of the College and for any act or omission in that capacity rests with the individual Corporation Member.
- 1.4 This Code applies to every committee or working party of the Corporation and to every subsidiary company or joint venture of the College to which Corporation Members may be appointed
- 1.5 By accepting appointment to the Corporation, each Corporation Member agrees to accept the provisions of this Code.
- 1.6 Each Corporation member by accepting the provision 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**

In this Code:-

- 2.1 'College' means this College;
- 2.2 'College Mission Statement' means the statement set out at paragraph 3.1 of this Code or such other mission statement as may be agreed by the Corporation from time to time;
- 2.3 'College Value Statement' means those Value Statements as set out at paragraph 3.2 of this Code or such other value statements as may be agreed by the Corporation from time to time, for example in a Public Value Statement;
- 2.4 'Corporation' means the further education corporation which was established and designated by the Secretary of State for the purpose of conducting the College;
- 2.5 'Corporation Member'. 'Chair', 'Principal' and 'Clerk' mean respectively the Member of the Corporation of the College, the Chair of the Corporation, the Principal/Chief Executive of the College and the Clerk of the Corporation;
- 2.6 'DfE' means the Department for Education;
- 2.7 'ESFA' means the Education and Skills Funding Agency or any successor body
- 2.8 'Code of Good Governance' means the Code of Good Governance for English Colleges published by the Association of Colleges on 31 March 2015, as updated January 2019;
- 2.9 'Secretary of State' means the Secretary of State for Education;
- 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 Blackburn College's mission statement: Transforming students' lives and our community, through excellent education, training and support
- 3.2 The College's Value Statements are:
  - Excellence – we strive for excellence to realise the potential of all learners
  - Knowledge – we promote the value of learning in fostering curious minds and to aid the acquisition of knowledge and skills
  - Equity – we promote equality, diversity and inclusion in our teaching, training, support and customer services
  - Empowerment – we empower and support our students to develop their lives through education and training

Commitment – we are committed to the education, training and support of our students and staff

Respect – we treat everyone as equals and with respect

- 3.3 The College Mission Statement together with the strategic pillars of the College agreed by the Corporation from time to time, seek to encapsulate the core purposes and aims of the College. Corporation Members should have due regard to these purposes and aims and to the Core Value Statements when conducting the business of the Corporation and considering the activities and proposed activities of the College.
- 3.4 The Corporation 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 Corporation is committed to:
  - 3.5 having close regard to the voice of the learner;
  - 3.6 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;
  - 3.7 upholding the principles set out in the College’s Student Charter, copies of which are available from the Clerk; and
  - 3.8 engaging with the community which the College serves in order to understand and meet its needs; and
  - 3.9 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.
- 3.10 The Corporation is committed to ensuring that it conducts its business in accordance with the highest ethical standards as set out in more detail in this Code.
- 3.11 The Corporation is also fully committed to child protection and expects its members to conduct themselves at all times in accordance with the highest standards of behaviour.

#### **4. DUTIES**

- 4.1 Corporation Members 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 Corporation Member should act honestly, diligently and (subject to the provisions appearing in paragraph 10 of this Code relating to collective responsibility) independently. The actions of Corporation Members 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 Corporation Members at meetings of the Corporation and its committees must not be for any improper purpose or personal motive. Decisions taken must always be for the benefit of the College, its students and

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<sup>1</sup> See the College’s Code of Practice on freedom of speech

staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, Corporation Members 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 Corporation Members 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 Corporation by the College's Articles of Government. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out in Appendix 3.
- 4.4 Corporation Members should comply with Standing Orders and terms of reference of the Corporation and its committees to ensure that the Corporation conducts itself in an orderly, fair, open and transparent manner and must keep those standing orders and terms of reference under periodic review.
- 4.5 Corporation Members 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 Corporation'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 Corporation's decisions, and to manage the College's affairs within the budgets and framework fixed by the Corporation. Corporation Members should work together so that the Corporation and the Principal as Chief Executive perform their respective roles effectively.
- 4.6 Corporation Members should refer to the Clerk for advice relating to the governance functions which are set out in Appendix 4 and have regard to the Clerk's independent advisory role.

## **5. STATUTORY ACCOUNTABILITY**

- 5.1 Corporation Members are collectively responsible for observing the duties set out in the Conditions of Funding Agreement which the College has entered into with the ESFA as a condition of receiving public funds. A brief summary of the ESFA's funding framework is set out in Appendix 6.
- 5.2 Although the ESFA is the main provider of funds to the College, Corporation Members should note that they are also responsible for the proper use of income derived from other sources, such as the Office for Students (OfS), 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. Where funding is received directly from OfS the College will have an agreement with OfS, as set out in the OfS's terms and conditions of funding, which confirms the basis on which such funding is provided. Where OfS funding is received indirectly via a collaboration with an OfS funded institution such funding will be subject to obligations contained in the memorandum of co-operation between the College and that institution.
- 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 ESFA Chief Executive, to give an account of the use made by the College of such funds. The Corporation is accountable to Parliament for ensuring the financial health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law.

## **6. PUBLIC SERVICE VALUES**

Although further education corporations 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 Appendix 1 and of this Code, and the recognition that students and other users of the College's services come first, are a requirement of being a member and should underpin all decisions taken by the Board.

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

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

## **8. POWERS**

Corporation Members are responsible for taking decisions which are within the powers given to the Corporation by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992, as amended. A summary of those powers is set out in Appendix 7. If a Corporation Member thinks that the Corporation is likely to exceed its powers by taking a particular decision, they should immediately refer the matter to the Clerk for advice.

## **9. CONFLICTS OF INTEREST**

- 9.1 Like other persons who owe a fiduciary duty, Corporation Members should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.
- 9.2 Corporation Members 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 Corporation 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 Corporation in any matter relating to the College, or any

duty which is material and which conflicts or may conflict with the interests of the Corporation.

9.3 If an interest of any kind (including an interest of a spouse, partner or business associate of a Corporation Member or of a close relative of the Corporation Member or their spouse, partner or business associate) is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Corporation 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 Corporation before the matter giving rise to the interest is considered.

9.4 If a Corporation Member 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, they should:

9.4.1 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

9.4.2 withdraw from that Corporation or committee meeting where required to do so by a majority of the members of the Corporation or committee present at the meeting.

9.5 For the purpose 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.

9.6 Where it is proposed that the Corporation should grant a member a financial interest (such as a contract for the supply of goods or services) the Corporation must observe the requirements of the Charities Act 2011. The Corporation may wish to take legal advice before granting such an interest to a member.

9.7 Corporation Members 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 Clerk.

9.7 The Clerk will maintain a Register of Corporation Members' Interests which will be open for public inspection. Corporation Members must disclose routinely to the Corporation 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. Corporation Members must give sufficient details to allow the nature of the interest to be understood by enquirers. Corporation Members should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Corporation Members should have regard to the meaning given to "interest" in paragraph 9.2 to 9.4 of this Code.

## **10. COLLECTIVE RESPONSIBILITY**

10.1 The Corporation operates by Corporation Members taking majority decisions in a corporate manner at quorate meetings, including meetings held by telephone, via a virtual platform and by alternative methods such as written resolutions. In

all cases only if so provided for in the Instrument and Articles. Therefore, a decision of the Corporation, even when it is not unanimous, is a decision taken by the Corporation Members collectively and each individual Corporation Member has a duty to stand by it, whether or not they were present at the meeting of the Corporation when the decision was taken.

- 10.2 If a Corporation Member disagrees with a decision taken by the Corporation, their first duty is to have any disagreement discussed and minuted. If the Corporation Member strongly disagrees, they should consult the Chair and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Corporation Member should refer to the power of the Chair or any five Corporation Members under the College's Instrument of Government to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the Corporation Member's views in advance to the other Corporation Members. Alternatively, as a final resort, the Corporation Member may decide to offer their resignation from office, after consulting the Chair.

## **11. OPENNESS AND CONFIDENTIALITY**

- 11.1 Because of the Corporation's public accountability and the importance of conducting its business openly and transparently, Corporation Members should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved for publication by the Chair.
- 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 Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in a confidential folder by the Clerk, and will be circulated in confidence to Corporation Members 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 Corporation should specify how long such items should be treated as confidential or, if this is not possible, such items should be reviewed regularly 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. The Corporation Members must also consider the personal data that is contained within the excluded items in accordance with the Corporations' obligations under the UK GDPR and the Data Protection Act 2018 ("Data Protection laws") and whether or not disclosure of that personal data would be in breach of the Data Protection Laws or the rights and freedoms of the individual(s) in question. When considering such issues the Corporation Members must also consider the College's publication scheme issued under the Freedom of Information Act 2000 and Environmental Information Regulations 2004, and the Corporation Policy on Public Access to Meetings and Publication of Minutes and Papers. Nothing in this section overrides the College's obligation to disclose in response to a request received under these information law regimes (unless an appropriate exemption applies in each case).

- 11.3 However, staff and student Corporation Members 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 Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Corporation Members with a shared corporate responsibility for decisions. Corporation Members should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.
- 11.5 Corporation Members should not make statements to the press or media or at any public meeting relating to the proceedings of the Corporation or its committees without first having obtained the approval of the Chair or, in their absence, the Vice Chair. It is unethical for Corporation Members publicly to criticise, canvass or reveal the views of other Corporation Members which have been expressed at meetings of the Corporation 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. Corporation Members 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 Conditions of Funding Agreement with colleges clause 15.3), 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, 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. Corporation Members in particular are reminded that under the ESFA's Procedure for dealing with complaints about post-16 education and training provision funded by the ESFA (November 2018), the ESFA can investigate complaints about:
- 12.2.1 quality, management or experience of education and training;
  - 12.2.2 undue delay or non-compliance with published complaints procedures;
  - 12.2.3 poor administration;
  - 12.2.4 the quality of assessments;
  - 12.2.5 equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter through the courts or tribunals or other organisations);
  - 12.2.6 advance learner loans;
  - 12.2.7 apprenticeship providers from employers; and

12.2.8 from employers, parents or other third parties on behalf of apprentice(s).

12.3 The ESFA will not investigate complaints about:

12.3.1 issues that are more than 12 months old (except for exceptional cases related to advanced learner loans;

12.3.1 examination results, grades, marks, assessment outcomes or curriculum content;

12.3.3 individual employment issues;

12.3.4 governor or other voluntary employment issues;

12.3.5 contractual or commercial disputes or arrangements;

12.3.6 disputes between an employer and a provider in relation to the apprenticeship levy;

12.3.7 matters which are the subject of legal action or matters that are better investigated by the police;

12.3.8 the cancellation or reimbursement of advanced learner loans (which should be referred to the student loan company;

12.3.9 claims for compensation, a refund of fees or costs incurred when a learner has to transfer to another provider;

12.3.10 issues classified as serial; or

12.3.11 allegations of fraud, financial irregularity, whistleblowing and allegations of incentives and inducements (which should be directed to the allegations team); and

12.3.12 safeguarding concerns.

12.4 Complaints made by learners following HE courses in FE colleges are directed to the Office of the Independent Adjudicator for HE.

### **13. ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Corporation is expected so that Corporation Members can perform their functions properly. The Corporation Standing Orders contain the agreed attendance requirements.

### **14. GOVERNANCE DEVELOPMENT**

14.1 The Corporation shall seek to ensure that all Corporation Members are appointed on merit, in accordance with an open selection procedure carried out by the Corporation's Governance Panel, and are drawn widely from the community which the College serves so as to be representative of that community. The Corporation should have regard to the provisions relating to the membership of the Corporation 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 Corporation carries out its functions under the College's Articles of Government.

- 14.2 Corporation Members 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, Corporation Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, including a review of their own performance as part of a continuing and critical process of self-evaluation.

## **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**

Being clear about the organisation's purposes and its intended outcomes for citizens and services users;

Making sure that users receive a high quality service;

Making sure that taxpayers receive value for money.

**2. Good governance means performing effectively in clearly defined functions and roles**

Being clear about the functions of the governing body;

Being clear about the responsibilities of the non-executives and the executive, and making sure that those responsibilities are carried out;

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**

Putting organisational values into practice;

Individual governors behaving in ways that uphold and exemplify effective governance.

**4. Good governance means taking informed, transparent decisions and managing risk**

Being rigorous and transparent about how decisions are taken;

Having and using good quality information, advice and support;

Making sure that an effective risk management system is in operation.

**5. Good governance means developing the capacity and capability of the governing body to be effective**

Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;

Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group;



Striking a balance, in the membership of the governing body, between continuity and renewal.

6. **Good governance means engaging stakeholders and making accountability real**

Understanding formal and informal accountability relationships;

Taking an active and planned approach to dialogue with accountability to the public;

Taking an active and planned approach to responsibility to staff;

Engaging effectively.

## APPENDIX 3

### Summary of Main Responsibilities of Corporation Members under the Articles of Government

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

Under the College's Articles of Government<sup>2</sup> the Corporation shall be responsible:-

- (a) for the determination and periodic review 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 the educational character and mission of the institution and the oversight of its activities;
- (c) for monitoring the quality strategy of the institution;
- (c) for the effective and efficient use of resources, the solvency of the institution and the Corporation 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 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;
- (f) for setting a framework for the pay and conditions of service of all other staff;  
and
- (g) 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).

"Senior Post" means the post of Principal and such other senior posts if any<sup>3</sup> as the Corporation Members may designate for the purposes of the Articles.

#### ***Responsibilities which must not be delegated***

The Articles of Government prohibit<sup>4</sup> the Corporation from delegating the following:-

- (a) the determination and periodic review of the educational character and mission of the institution;

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<sup>2</sup> The position is as set out in the 2008 Instrument & 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 asterix. The list that follows summaries the effect of Articles 3, 9, 10 and 19.

<sup>3</sup> Under the revised Schedule 4 FHEA it is open to corporations not to designate any posts as senior ones.

<sup>4</sup> The Corporation may, from time to time, resolve to add other functions which must not be delegated to this list of "reserved" responsibilities

- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the institution and the Corporation and the safeguarding of their assets\*\*;
- (d) the appointment or the dismissal of the Principal or holder of a senior post;
- (e) the appointment of the Clerk to the Corporation (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);
- (f) the modifying or revoking of the Articles of Government;
- (g) 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 Corporation; and
- (h) 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 Corporation.

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

## APPENDIX 4

### Summary of Main Responsibilities of the Principal under the Articles of Government<sup>5</sup>

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

- (a) making proposals to the Corporation about the educational character and mission of the institution, and for implementing the decisions of the Corporation;
- (b) the determination of the College's academic activities, and for the determination of its other activities;
- (c) preparing annual estimates of income and expenditure, for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;
- (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 Corporation, of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk where the Clerk is also a member of the staff; and
- (f) maintaining student discipline and, within the rules and procedures provided for within the Articles, suspending or expelling students on disciplinary grounds and expelling students for academic reasons.

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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 Chief Executive, as the Principal may now be known, so a corporation may delegate any responsibility it thinks fit to the Principal, subject to it retaining responsibility for those reserved matters shown with a double asterix.

## APPENDIX 5

### Summary of Main Responsibilities of the Clerk under the Articles of Government<sup>6</sup>

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

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

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<sup>6</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 6

### Summary of the ESFA's College Funding Framework

The ESFA implemented a new funding framework from May 2019, with the purpose of:

- Reducing the number of separate agreements that providers will hold with ESFA;
- Ensuring consistency across ESFA agreements;
- Updating the contracts with the latest commercial best practice.

The agreements are formed of a main terms and conditions document and schedules. Further information about the new framework can be accessed here:

<https://www.gov.uk/guidance/esfa-education-and-skills-agreements-2020-to-2021>

Schedule 9 (which follows) of the Conditions of Funding Agreement sets out the key issues for Corporation Members to take account of. Nevertheless, all governors should ensure that they have reviewed and are familiar with the Funding Agreement in its entirety and any other ESFA agreement that applies to the College.

## **SCHEDULE 9: COLLEGE GOVERNANCE<sup>7</sup>**

### **1. BACKGROUND**

- 1.1 As the Accounting Officer, the Chief Executive of Education and Skills Funding Agency is accountable for assuring the use of funds which the Department receives from the Secretary of State and that the use of funds is consistent with the Secretary of State's statutory remit and any conditions imposed by the Secretary of State. The Department is also responsible for the regularity and propriety of expenditure for the use of funds.
- 1.2 The Department's Conditions of Funding, including this Agreement, therefore reflect the obligations and responsibilities of the Department for monitoring the use of funds allocated to Colleges. However, the Department's expectation is that, as independent corporate bodies or charitable trusts (subject to their own statutory duties, other obligations and the Department's Conditions of Funding), Colleges will take full control of their own financial affairs.

### **2. RESPONSIBILITIES OF THE GOVERNING BODY**

- 2.1 The Governing Body of the College has responsibilities for ensuring that the College's funds are used only in accordance with the corporation's powers as set out in the Further and Higher Education Act 1992 and the College's own statutory duties and other obligations.
- 2.2 The Governing Body of the College has responsibilities for ensuring that the College's funds are used only in accordance with the College's powers as set out in the Further and Higher Education Act 1992 and/or the College's own statutory duties, articles of association or trust deeds and other obligations.
- 2.3 The Governing Body will appoint an accounting officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the accounting officer will be the Principal of the College. The Governing Body will inform the Department in writing of the name and position of the accounting officer, and if the accounting officer is absent from the College for an extended period, as determined by the corporation, the name of the person who will discharge the accounting officer's responsibilities during the absence.
- 2.4 The College will inform the Department in writing, as soon as is reasonably practicable, of the vacating or filling of the positions of the Chair of the Governing Body, the Principal, the accounting officer, and the clerk/head of governance.

### **3. CHARITABLE REGULATION**

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

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<sup>7</sup> ESFA Conditions of Funding Agreement 2021-2022

- 3.2 The Governing Body of the College (save where the College is an institution designated under section 28 of the Further and Higher Education Act 1992) is responsible for ensuring it operates in line with its exempt charitable status.
- 3.3 Where the College is a designated institution which is an exempt charity by virtue of its relationship with a higher education institution, the OfS is the Principal Regulator. As such the College will comply with paragraphs 3.4-3.6 below which act in place of paragraphs 3.1 and 3.2.
- 3.4 The College must comply with all requests from the OfS to enable the OfS to comply with its duties as Principal Regulator.
- 3.5 The College will provide the OfS with the information it requires under paragraph 3.4 at the times and in the formats specified. This information will be of sufficient quality to meet the purposes for which it has been requested.
- 3.6 Failure to comply with any request for information under paragraph 3.4, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.

#### **4. RESPONSIBILITIES OF THE ACCOUNTING OFFICER**

- 4.1 The Governing Body will require the accounting officer to take personal responsibility, which will not be delegated, to assure them that there is compliance with the Department's Conditions of Funding. The accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College's use of funds.
- 4.2 The accounting officer will be responsible for advising the Governing Body in writing if at any time, in his or her opinion, any action or policy under consideration by the Governing Body is incompatible with the Department's Conditions of Funding. If the accounting officer has evidence that the Governing Body is acting, or intending to act, in breach of the Department's Conditions of Funding, the accounting officer must inform the Department's Chief Executive in writing as soon as is reasonably practicable.
- 4.3 The College must notify the Department in writing if there is a change in its legal entity name.

#### **5. SPECIFIC GOVERNANCE REQUIREMENTS**

- 5.1 Any person who is selected by the governing Body for appointment as clerk/head of governance must have a qualification relevant to the role or equivalent experience.
- 5.2 The Governing Body must report in its annual reports on activities undertaken over the year to develop governors and clerks/heads of governance.
- 5.3 The Governing Body must conduct an annual governance self-assessment and must have an external governance review at least once every three years, based on the governance code(s) used by the Governing Body. In



accordance with the obligation to supply information to the Secretary of State (see Clause 38 Provision of Information), the Governing Body must supply the Department with details of the outcomes of governance reviews, and of progress in meeting review recommendations, when so requested.

## **6. AUDIT COMMITTEE**

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

## **7. PAYMENT OF FUNDS**

7.1 The Department will normally make payments of recurrent funding to the College in monthly instalments in accordance with a funding profile for the whole year.

7.2 In addition to its statutory health and safety responsibilities, the College will manage and develop its estate to ensure that it manages resources to provide the best possible learning and teaching environments. The College will use all appropriate statutory and advisory information provided by relevant agencies. The Department will provide on its website reference and signposting information to support Colleges to follow good practices in estate management and development.

## **8. FINANCIAL REPORTING**

8.1 The Department shall specify in the Accounts Direction and Post 16 Audit Code of Practice its requirements as to the information to be contained in the College's financial statements and how they should be reported.  
<https://www.gov.uk/government/publications/college-accounts-direction>.

8.2 The college must submit financial plans to the Department as set out in the Financial Planning Handbook.  
<https://www.gov.uk/government/publications/financial-planning-handbook>.

8.3 The College will provide the Department with copies of its audited financial statements. Colleges are required to make their financial statements available to members of the public on request.

8.4 The College must notify the Department in writing, within 1 Working Day, if, at any time, there is a risk to its solvency and viability or any transactions could jeopardise its solvency or financial viability. The Department may require the College, within such time as the Department deems reasonable, to:

8.4.1 provide information to demonstrate to the Department's satisfaction the College's ability to continue to meet the needs of Learners and

to discharge its responsibilities in relation to its solvency and safeguarding of assets, and

- 8.4.2 provide evidence of financial resources sufficient to enable it to continue to deliver the Provision, and
  - 8.4.3 put in place a plan, through financial intervention processes, that will secure a recovery to a specified satisfactory financial position, in the view of the Department, and
  - 8.4.4 carry out actions, as considered appropriate by the Department, including, but not limited to, a strategic options review and/or a financial recovery plan.
- 8.5 Failure to comply with any of the requirements under paragraph 8.3 and 8.4 of this Schedule 9 (College Governance) within such time as the Department deems reasonable, may result in the Department taking such actions as it deems appropriate, which may include, but is not limited to, action under Clause 34 (Minor and Serious Breach).
- 8.6 Where, in the Department's view, information obtained in respect of the College, either as a result of an assessment undertaken by the Department in line with the approach set out in the Financial Planning Handbook or audited accounts, indicates that there is, or in the foreseeable future there is likely to be, a risk to the solvency or financial viability of the College, the Department may take such action as it deems appropriate, which may include, but is not limited to, requiring the College to comply with additional conditions of funding.
- 8.7 The College must comply with any action taken or any additional conditions of funding imposed under paragraph 8.6 of this Schedule 9 (College Governance).
- 8.8 If the Department assesses that the College has failed to comply with any action taken or additional conditions of funding imposed under paragraph 8.6 of this Schedule 9 (College Governance) within such time as the Department deems reasonable, the Department may take such actions as it deems appropriate which may include, but is not limited to, under Clause 34 (Minor and Serious Breach).

## **9. CONTINGENT LIABILITIES**

- 9.1 The College will not give any guarantees or indemnities other than in the normal course of business to the extent that the College has the power to do so under the Further and Higher Education Act 1992, its articles of association or trust deeds.

## **10. COLLEGE COMPANIES**

- 10.1 The College is free to participate in companies within the limits of the powers provided by the Further and Higher Education Act 1992 as amended and its articles of association or trust deeds. The Governing

Body will ensure that appropriate arrangements are in place for the governance and management of any companies and the College will inform the Department as soon as is reasonably practicable if participation in any company may pose a risk to the solvency of the College.

## **11. INVESTMENTS**

- 11.1 The College is able to make investments provided it is within its power to do so, including the legitimate use of any public funds. The College must follow the Charity Commission's guidance and requirements about investments, including the use of trading subsidiaries.

## **12. PAYMENTS TO EMPLOYEES ON TERMINATION OF EMPLOYMENT**

- 12.1 The Governing Body will demonstrate that payments in respect of termination are regular and secure value for money and avoid spending public funds on settlements where disciplinary action would have been more appropriate. All settlements will be brought to the attention of the College's financial statements auditors. This includes via the regularity self-assessment questionnaire which must be completed with sufficient, relevant and timely information.

## **13. PROVISION OF INFORMATION**

- 13.1 The College will provide the Department on request with a copy of any Asset Deed held in respect of the Premises.
- 13.2 The College must manage its overseas investments in line with the Charity Commission guidance, and must seek not put the College's charitable assets under undue risk, and must obtain independent professional advice on key decisions.

## **14. INTERPRETATION**

- 14.1 The rights, powers and remedies reserved to the Department in the Department Conditions of Funding are in addition to any other statutory rights, powers and remedies that it and/or the Secretary of State may hold now or at any time in the future. In the event that the Department fails to exercise, or delays in exercising, any of its rights, powers and remedies this will not constitute or operate as a waiver of any of them.

## APPENDIX 7

### Summary of the Statutory Powers of the Corporation

#### ***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 Corporation 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:-

- (a) the power to acquire and dispose of land and other property;
- (b) the power 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 Corporation of any such activities;
- (c) the power to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation;
- (d) the power to borrow such sums as the Corporation 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 1<sup>st</sup> 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) the power to invest any sums not immediately required for the purposes of carrying on any activities the Corporation has power to carry on;

- (f) the 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;
- (g) the 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
- (h) the power to provide advice or assistance to any other person where it appears to the Corporation 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 Corporation 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”.