



## **Instrument and Articles of Government**

***(15 October 2015)***

Middlesbrough College is a General Further Education Corporation established under the terms of the Further and Higher Education Act 1992

The Instrument and Articles of Government 2012 have been updated in accordance with the terms of the Further Education Corporations (Former Further Education Colleges) (Modification of Instruments and Articles of Government) Order(s) 2012 which came into force on 31 March 2012.

They revoke all previous versions of the Instrument and Articles and were approved by the Governing Body of Middlesbrough College on 15 October 2015.

# Instrument of Government

1. Interpretation of the Terms Used
2. Composition of the Corporation
3. Changes to the Composition of the Corporation
4. Appointment of Governors of the Corporation
5. Appointment of the Chair and Vice-Chair
6. Appointment of the Clerk to the Corporation
7. Persons who are Ineligible to be Governors
8. Term of Office
9. Termination of Membership
10. Governors Not to Hold Interests in Matters Relating to the College
11. Meetings
12. Quorum
13. Proceedings of Meetings
14. Minutes
15. Public Access to Meetings
16. Publication of Minutes and Papers
17. Payment of Allowances
18. Copies of the Instrument of Government
19. Change of Name of the Corporation
20. Application of the Corporation Seal

# 1 Interpretation of the Terms Used

In this Instrument of Government:

- (a) Any reference to “the Principal / Chief Executive” will include a person acting as Principal / Chief Executive.
- (b) “Corporation” means the Corporation of Middlesbrough College.
- (c) “College” means Middlesbrough College which the Corporation is established to conduct in exercise of its powers under the Further and Higher Education Act 1992.
- (d) “Instrument” means this Instrument of Government.
- (e) “Meeting” includes a meeting at which the Governors attending are present in more than one room, provided that by the use of video-conferencing facilities it is possible for every person present at the meeting to communicate with each other.
- (f) “Necessary Skills” means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for Governors to have.
- (g) “Governor” means a College Governor, Principal / Chief Executive, Student Governor or Staff Governor and the term will also include External Members where one is appointed by the Corporation to serve on a Committee of the Corporation.
- (h) “College Governor” means a member of the Corporation who is appointed through the Search & Governance Committee but is not the Principal / Chief Executive, nor a Student Governor nor a Staff Governor.
- (i) “External Member” is a Co-opted Member of a Committee of the Corporation but is **not** a member of the Corporation.
- (j) “Student” is defined under Instrument 2.
- (k) “Staff” means a person or persons who have a contract of employment with Middlesbrough College.
- (m) “Secretary of State” means the Secretary of State for Business Innovation and Skills (BIS) or the successor organisation to BIS from time to time.
- (n) “Staff Matters” means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff.

- (o) “Students’ Union” means any association of students formed to further the educational purposes of the College and the interests of students, as students.
- (p) “Committee” is a sub Committee of the Corporation and the latest list of Committees is displayed on the Governors’ Website and also listed in the Standing Orders.

## **2 Composition of the Corporation**

- (1) The Corporation will consist of:
    - (a) Between twelve and sixteen “College Governors” who have the necessary skills and competencies to ensure that the Corporation can carry out its functions under Article 3; and
    - (b) The Principal / Chief Executive; and
    - (c) Two members of staff, one being an Academic member of staff who has been nominated and elected by Academic Staff, and one being a Non-Academic member of Staff who has been nominated and elected by Non Academic Staff (“Staff Governors”); and
    - (d) Between one and two students of the College
      - (i) one being a student who has been nominated and elected by students as the NUS Sabbatical Officer for a period of one year commencing 1 August; and
      - (ii) one student who has been nominated and elected by students, or if the Corporation so decides by a Student Council or other recognised association representing such students
- (‘Student Governors’).
- (2) The Clerk to the Corporation will be responsible for advising the Corporation whether a person is eligible for nomination, election and appointment as a Governor of the Corporation.

### **3 Changes to the Composition of the Corporation**

- (1) Subject to paragraph (2) changes to the composition of the Corporation can only be made by resolution of the Corporation.
- (2) The Corporation may at any time vary the composition of the Corporation provided that:
  - (a) The total number of Governors of the Corporation will not be less than twelve or more than twenty.
  - (b) The numbers of Governors of each Governorship Category will be subject to the limit which applies to that category set out in Instrument 2.
- (3) No determination under this Instrument will terminate the appointment of any person who is already a Governor of the Corporation at the time when the determination is made.

### **4 Appointment of Governors of the Corporation**

- (1) The Corporation is the appointing authority in relation to the appointment of all Governors.
- (2) If the number of Governors falls below the number needed for a quorum, the Secretary of State is the appointing authority for the purpose of ensuring a quorum.
- (3) A Governor will hold office for a term determined by the Corporation on appointment.
- (4) A Governor retiring at the end of their Term of Office may be eligible for re-appointment subject to the rules on Terms of Office laid down in the Corporation's Standing Orders.
- (5) The Corporation or the Secretary of State where applicable in accordance with Instrument (2), may decline to appoint a person if:
  - (a) It is satisfied that the person has been removed from office as a Governor of a Further Education Corporation in the previous ten years; or
  - (b) The appointment of the person would contravene any Rule, Policy or Procedure made by the Corporation under Article 21 concerning the number of Terms of Office which a person may serve; or
  - (c) The person is ineligible to be a Governor of the Corporation because of Instrument 7.

- (6) Where the office of any Governor becomes vacant the Corporation (or the Secretary of State where applicable in accordance with Instrument (2)) will as soon as practicable take all necessary steps to appoint a new Governor to fill the vacancy.

## **5 Appointment of the Chair and Vice-Chair**

- (1) The Governors of the Corporation will appoint a Chair and a Vice-Chair but neither the Principal / Chief Executive nor the Staff Governor(s) or the Student Governor(s) will be eligible to be appointed as Chair or Vice-Chair or act as Chair.
- (2) If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the Governors present will choose someone from among themselves to act as Chair for that meeting.
- (3) The Chair and Vice-Chair will hold office for such period as the Corporation decides.
- (4) The Chair or Vice-Chair may resign from office at any time by giving notice in writing to the Clerk to the Corporation.
- (5) If the Corporation is satisfied that the Chair or Vice-Chair is unfit or unable to carry out the functions of office, it may give written notice, removing the Chair or Vice-Chair (as the case may be) from office and the office will then be vacant.
- (6) At the last meeting before the end of the term of office of the Chair or Vice-Chair, or at the first meeting following the Chair or Vice-Chair's resignation or removal from office, the Governors will appoint a replacement from among themselves but only after the procedure for election of Chair and Vice-Chair of Governors has been followed.
- (7) The Election of Chairman and Vice Chairman of Governors can be carried out using a Postal Vote System. All College Governors, Staff Governors, Student Governors and the Principal / Chief Executive will be eligible to vote and the Clerk to the Corporation will manage the process on behalf of the Governing Body.
- (8) At the end of their respective Terms of Office, the Chair and Vice-Chair will be eligible for reappointment.
- (9) Paragraph (8) is subject to any Rule, Policy or Procedure made by the Corporation under Article 21 concerning the number of Terms of Office which a person may serve.

## **6 Appointment of the Clerk to the Corporation**

- (1) The Corporation will appoint a person to serve as its Clerk to the Corporation, but the Principal / Chief Executive may not be appointed as Clerk to the Corporation.
- (2) In the temporary absence of the Clerk to the Corporation, the Corporation will appoint a person to serve as a Temporary Clerk to the Corporation (“the Temporary Clerk to the Corporation”). This could be the Deputy Clerk to the Corporation where one is appointed or in their absence another member of staff but the Principal / Chief Executive or Senior Postholder may not be appointed as Temporary Clerk to the Corporation.
- (3) Subject to Instrument 13, the Clerk to the Corporation will be entitled to attend all meetings of the Corporation and any of its Committees.
- (4) The Clerk to the Corporation may also be a member of staff at the College.

## **7 Persons who are Ineligible to be Governors**

The following persons are ineligible to be appointed as a Governor of or from continuing to be a Governor of the Corporation:

- (1) No one under the age of 18 years may be a Governor except as a Student Governor.
- (2) A person who is ineligible to serve as a Charity Trustee for any reason other than age will be ineligible to be a Governor.
- (3) The Clerk to the Corporation may not be a Governor.
- (4) A person who is a member of staff of the College may not be, or continue as, a Governor, except as a Staff Governor or in the capacity of Principal / Chief Executive.
- (5) Paragraph (4) does not apply to a student who is employed by the Corporation as the “NUS Sabbatical Officer”.
- (6) A Governor shall be disqualified from holding, or from continuing to hold, office if that person is adjudged bankrupt or is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Insolvency Act 1986, or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement. The period of disqualification shall continue until such bankruptcy or composition or arrangement is discharged.

- (7) A Governor shall be disqualified from holding, or from continuing to hold, office if:
- (a) That person has been convicted, whether in the United Kingdom or elsewhere, of any offence (except a road traffic offence not involving death or personal injury or driving under the influence of alcohol or drugs) unless the Corporation resolve otherwise; or
  - (b) That person is no longer eligible to be a Charity Trustee; or
  - (c) That person is certified by a Registered Medical Practitioner as being physically or mentally incapable of discharging his or her duties and will remain so for 3 months or more and the Corporation may resolve to remove that person from office; or
  - (d) That person is unfit or unable to discharge his or her functions as a Governor or his or her conduct calls himself or herself or the Corporation into disrepute then the Corporation may resolve to remove that person from office; or
  - (e) That person without the consent of the Corporation is absent from meetings of the Corporation for 6 months or more and the Corporation may resolve to remove that person from office; or
  - (f) That person breaches the Corporation's Code of Conduct for Governors and the Corporation resolves to remove that person from office.
- (8) Upon a Governor of the Corporation becoming disqualified from continuing to hold office under paragraph (4) the Governor will immediately give notice of that fact to the Clerk to the Corporation.
- (9) Restrictions on eligibility are also as stated in the Charities Act 2011 and the relevant sections of the Act are available on request from the Clerk to the Corporation.



## **8 Term of Office**

- (1) A Governor of the Corporation will hold and vacate office in accordance with the terms of the appointment but the length of the Term of Office will not exceed four years with the exception of the Principal / Chief Executive who will continue to serve as a Governor until their post becomes vacant and the Student Governor(s) whose Term of Office is usually one Academic Year.
- (2) Governors retiring at the end of their Term of Office will be eligible for reappointment and Instrument 4(4) will apply to the reappointment as it does to the appointment.
- (3) Paragraph (2) is subject to any Rule, Policy & Procedure made by the Corporation under Article 21 concerning the number of Terms of Office which a Governor may serve.

## **9 Termination of Membership**

- (1) A Governor may resign from office at any time by giving notice in writing to the Clerk to the Corporation.
- (2) If at any time the Corporation is satisfied that any Governor:
  - (a) Is unfit or unable to discharge the functions of a Governor; or
  - (b) Has been absent from meetings of the Corporation for a period longer than six consecutive months without the permission of the Corporation:then the Corporation may by notice in writing remove the Governor from office and the office will then become vacant.
- (3) Any person who is a Governor of the Corporation by virtue of being a member of the staff at the College, including the Principal / Chief Executive, will cease to hold office upon ceasing to be a member of the staff and the office will then be vacant.
- (4) A Student Governor will cease to hold office:
  - (a) At the end of the student's academic year, or at such other time in the year after ceasing to be a student as the Corporation may decide; or
  - (b) If expelled from the College.
  - (c) If in the case of a Student Governor being a NUS Sabbatical Officer they leave the post of NUS Sabbatical Officer.

and the office will then be vacant.

## **10 Governors Not to Hold Interests in Matters Relating to the College**

- (1) A Governor to whom paragraph (2) applies will:
  - (a) Disclose to the Corporation the nature and extent of the interest; and
  - (b) If present at a meeting of the Corporation, or of any of its Committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, not take part in the consideration or vote on any question with respect to it and not be counted in the quorum present at the meeting in relation to a resolution on which that Governor is not entitled to vote; and
  - (c) Withdraw, if present at a meeting of the Corporation, or any of its Committees, at which supply, contract or other matter as is mentioned in paragraph (2) is to be considered, where required to do so by a majority of Governors of the Corporation or Committee present at the meeting.
  
- (2) This paragraph applies to a Governor who:
  - (a) Has any financial interest in:
    - i. The supply of work to the College, or the supply of goods for the purpose of the College.
    - ii. Any contract or proposed contract concerning the College; or
    - iii. Any other matter relating to the College; or
  - (b) Has any other interest of a type specified by the Corporation in any matter relating to the College, as defined in the Register of Interests Policy which is available on the College Website [www.mbro.ac.uk](http://www.mbro.ac.uk).
  
- (3) This Instrument will not prevent the Governors considering and voting upon proposals for the Corporation to insure them against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

- (4) Where the matter under consideration by the Corporation or any of its Committees relates to the pay and conditions of all staff, or all staff in a particular class, a Staff Governor:
  - (a) Need not disclose a financial interest; and
  - (b) May take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that meeting, provided that in so doing, the Staff Governor acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body; but
  - (c) Shall withdraw from the meeting if the matter is under negotiation with staff and the Staff Governor is representing any of the staff concerned in those negotiations.
- (5) The Clerk to the Corporation will maintain a Register of Interests which will be made available during normal office hours to any person wishing to inspect it.

## **11 Meetings**

- (1) The Corporation will meet at least once in every term and will hold such other meetings as may be necessary.
- (2) Subject to paragraphs (4) and (5) and to Instrument13, all meetings will be called by the Clerk to the Corporation, who will, at least seven calendar days before the date of the meeting, send to the Governors of the Corporation either by hard copy or by e-mail or by some other electronic means (use of e-governance) notice of the meeting and a copy of the proposed agenda.
- (3) If it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk to the Corporation, the Chair will, at least seven calendar days before the date of the meeting, send to the Governors a copy of the agenda item concerned, together with any relevant papers.
- (4) A meeting of the Corporation, called a "Special Meeting", may be called at any time by the Chair or in the Chair's absence the Vice-Chair or at the request in writing of any five Governors.
- (5) Where the Chair, or in the Chair's absence the Vice-Chair, decides that there are matters requiring urgent consideration, the written notice convening the Special Meeting and a copy of the proposed agenda may be given within less than seven calendar days.
- (6) Every Governor will act in the best interests of the Corporation and will not be bound to speak or vote by mandates given by any other body or person.

- (7) A resolution in writing agreed by a simple majority of the Governors who would have been entitled to vote upon it had it been proposed at a meeting shall be effective provided that:
- (a) a copy of the proposed resolution has been sent to every eligible Governor or, in the case of a resolution to be considered by a Committee, to every eligible Governor of that Committee.
  - (b) the Chair or, in the case of a resolution to be considered by a Committee, the Committee Chair is satisfied that there are exceptional circumstances justifying use of the written resolution procedure.
  - (c) a simple majority of the Governors have signified agreement to the resolution; and
  - (d) it is contained in a document authenticated by the Clerk to the Corporation which has been received at the address specified by the College for the receipt of documents within the period of 28 days beginning with the circulation date.

Furthermore:

- (e) A resolution in writing may comprise several copies to which one or more Governors have signified their agreement.
  - (f) A written resolution will lapse if it is not passed before the end of the period of 28 days beginning with the circulation date.
  - (g) For the purposes of this Instrument 11(7)(f) "circulation date" is the day on which copies of the written resolution are sent or submitted to Governors or, if copies are sent or submitted on different days, to the first of those days.
- (8) Any meeting or communication with a Governor of the Corporation or any Committee thereof shall be capable of being made by electronic means (as defined in section 1168(3) to (6) (inclusive) Companies Act 2006).

## **12 Quorum**

- (1) Meetings of the Corporation will be quorate if the number of Governors present is at least 40% of the total number of Governors determined according to Instrument 3
- (2) For “Reserved Matters” the quorum will be five College Governors **and** the Principal / Chief Executive unless the “Reserved Matters” to be discussed by the Corporation are in relation to the Principal / Chief Executive, then the quorum will be five College Governors.
- (3) If the number of Governors present for a meeting of the Corporation does not constitute a quorum, the meeting will not be held.
- (4) If during a meeting of the Corporation there ceases to be a quorum, the meeting will be terminated at once.
- (5) If a meeting cannot be held or cannot continue for lack of a quorum, the Chair may call a Special Meeting as soon as it is convenient.
- (6) Governors who declare any interest in an item will comply with Instrument 10 and not count towards the quorum.

## **13 Proceedings of Meetings**

- (1) Every question to be decided at a meeting of the Corporation will be decided by a majority of the votes cast by Governors present and entitled to vote on the question.
- (2) Where, at a meeting of the Corporation, there is an equal division of votes on a question to be decided, the Chair of the meeting will have a second or casting vote.
- (3) A Governor may not vote by proxy or by way of postal vote.
- (4) No resolution of the Governors may be rescinded or varied at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.
- (5) Except as provided by procedures made pursuant to Article 13, a Governor who is a member of staff at the College, including the Principal / Chief Executive, will withdraw:
  - (a) From that part of any meeting of the Corporation, or any of its Committees, at which staff matters relating solely to that member of the staff, as distinct from staff matters relating to all members of staff or all members of staff in a particular class, are to be considered.

- (b) From that part of any meeting of the Corporation, or any of its Committees, at which that Governor's reappointment or the appointment of that Governor's successor is to be considered.
  - (c) From that part of any meeting of the Corporation, or any of its Committees, at which the matter under consideration concerns the pay or conditions of service of all members of staff, or all members of staff in a particular class, where the member of staff is acting as a representative (whether or not on behalf of a recognised Trade Union) of all members of staff or the class of staff (as the case may be); and
  - (d) If so required by a resolution of the other Governors present, from that part of any meeting of the Corporation or any of its Committees, at which staff matters relating to any member of staff holding a post senior to that members are to be considered, except those relating to the pay and conditions of all staff or all staff in a particular class.
- (6) A Student Governor who is under the age of 18 will not vote at a meeting of the Corporation, or any of its Committees, on any question concerning any proposal:
- (a) For the expenditure of money by the Corporation; or
  - (b) Under which the Corporation, or any Governors of the Corporation, would enter into any contract, or would incur any debt or liability, whether immediate, contingent or otherwise.
- (7) A Student Governor will withdraw from that part of any meeting of the Corporation or any of its Committees, at which a student's conduct, suspension or expulsion is to be considered.
- (8) In any case where the Corporation, or any of its Committees, is to discuss staff matters relating to a member or prospective member of staff at the College, a Student Governor will:
- (a) Take no part in the consideration or discussion of that matter and not vote on any question with respect to it; and
  - (b) Where required to do so by a majority of the Governors, other than Student Governors, of the Corporation or Committee present at the meeting, withdraw from the meeting.

- (9) The Clerk to the Corporation:
- (a) Will withdraw from that part of any meeting of the Corporation, or any of its Committees, at which the Clerk to the Corporation's remuneration, conditions of service, conduct, suspension, dismissal or retirement in the capacity of Clerk to the Corporation are to be considered; and
  - (b) Where the Clerk to the Corporation is a member of staff at the College, the Clerk to the Corporation will withdraw in any case where a Governor is required to withdraw under paragraph (5).
- (10) If the Clerk to the Corporation withdraws from a meeting, or part of a meeting, of the Corporation under paragraph (9), the Corporation will appoint a person from among themselves to act as Temporary Clerk to the Corporation during this absence.
- (11) If the Clerk to the Corporation withdraws from a meeting, or part of a meeting, of a Committee of the Corporation under paragraph (9), the Corporation will appoint a person from among themselves to act as Temporary Clerk to the Corporation during this absence.

## **14 Minutes**

- (1) Written minutes of every meeting of the Corporation will be prepared, and, subject to paragraph (2), at every meeting of the Corporation the minutes of the last meeting will be taken as an agenda item.
- (2) Minutes of the previous meeting will not normally form part of the agenda for the purposes of a Special Meeting or a Governing Body Training Meeting or a Governing Body Strategic Planning Meeting unless otherwise determined by the Clerk to the Corporation or the Chair.
- (3) Where minutes of a meeting are taken as an agenda item and agreed to be accurate, those minutes will be signed as a true record by the Chair of the meeting.
- (4) Separate minutes may be taken of those parts of meetings from which Staff Governors, the Principal / Chief Executive, Student Governors or the Clerk to the Corporation have withdrawn from a meeting in accordance with Instrument 13 and such persons will not normally be entitled to see the minutes of that part of the meeting or any papers relating to it
- (5) Subject to confidential items not being published, the Clerk to the Corporation will ensure that the minutes of Corporation and Committee meetings, if they have been approved by the Chair of the Corporation (Corporation Minutes) or Chair of Committee (Committee Minutes), are published on the College's Website and made available for inspection during normal office hours.

## **15 Public Access to Meetings**

Persons who are not Governors or the Clerk to the Corporation will not be admitted to meetings of the Corporation or its Committees unless invited to do so by the Chair of the Corporation or Committee Chairs. The Clerk to the Corporation will ensure that this policy is published on the College's Website.

## **16 Publication of Minutes and Papers**

- (1) Subject to paragraph (2), the Clerk to the Corporation will ensure that a copy of:
  - (a) The agenda and the signed minutes for every meeting of the Corporation and its Committees; and
  - (b) Any report, document or other paper considered at any such meetingswill, within five working days, be made available during normal office hours at the College to any person wishing to inspect them.
- (2) Agenda items to be excluded for inspection will relate to:
  - (a) A named person employed at or proposed to be employed at the College.
  - (b) A named student at, or candidate for admission to, the College.
  - (c) The Clerk to the Corporation; or
  - (d) Any matter which, by reason of its nature, the Corporation is satisfied should be dealt with on a confidential basis.
- (3) The Clerk to the Corporation will ensure that signed minutes of every meeting of the Corporation and its Committees are posted on the College's Website for at least one year.
- (4) The Corporation will review every two years all material excluded from inspection under paragraph 2 and make any such material available for inspection where it is satisfied that the reason for dealing with the matter on a confidential basis no longer applies, or where it considers that the public interest in disclosure outweighs that reason.



## **17 Payment of Allowances**

- (1) No Governor will, without the consent of the Charity Commission or other Principal Regulator, be paid for acting as a Governor except that:
  - (a) They may be paid reasonable expenses for attendance at meetings of the Corporation and any Committee thereof.
  - (b) They may be paid reasonable expenses for attendance at any training events that are planned either by the Corporation or by the Clerk to the Corporation that are related to the skills and competencies required for being a College Governor or External Member.
  - (c) They may be beneficiaries of the Corporation.
  - (d) They may have an interest in contracts for services, work or goods approved in accordance with paragraph 10 (1) above.

## **18 Copies of the Instrument of Government**

A copy of this Instrument of Government shall be given free of charge to every Governor, and free of charge to any other person who so requests a copy, and shall be available for inspection at the College upon request during normal office hours to every member of staff and every student.

The Instrument will also be posted on the College's Website.

## **19 Change of Name of the Corporation**

The Corporation may change its name with the approval of the Secretary of State.

## **20 Application of the Corporation Seal**

The application of the Corporation Seal will be authenticated by:

- (1) The signature of either the Chair or Vice-Chair, or of some other Governor authorised either generally or specially by the Corporation to act for that purpose; and
- (2) The signature of any other Governor.

# Articles of Government

1. Interpretation of the Terms Used
2. Conduct of the College
3. Responsibilities of the Corporation, the Principal / Chief Executive and the Clerk to the Corporation
4. Establishment of Committees and Delegation of Functions
5. The Search & Governance Committee
6. The Audit & Risk Committee
7. Composition of Committees
8. Access to Committees By Non-Governors and Publication of Minutes
9. Delegable and Non-Delegable Functions
- 10 Chair and Vice-Chairs Action
11. Appointment and Promotion of Staff
12. Rules Relating to the Conduct of Staff
13. Academic Freedom
14. Grievance, Suspension and Disciplinary Procedures
15. Suspension and Dismissal of the Clerk to the Corporation
16. Students
17. Financial Matters
18. Co-operation With the Skills Funding Auditor
19. Internal Audit
- 20 Accounts and Audit of Accounts
21. Rules, Policies & Procedures
22. Copies of Articles of Government
23. Modification or Replacement of the Instrument and Articles of Government
- 24 Dissolution of the Corporation

# 1 Interpretation of the Terms Used

In these Articles of Government:

- (a) Any reference to “Principal / Chief Executive” will include a person acting as Principal / Chief Executive.
- (b) “Articles” means these Articles of Government.
- (c) “Chair” and “Vice-Chair” mean respectively the Chair and Vice-Chair of the Corporation appointed under Clause 5 of the Instrument of Government.
- (d) “Corporation” has the same meaning as in the Instrument of Government.
- (e) “Funding Bodies” means the Skills Funding Agency and the Education Funding Agency (or their successor organisations) and any other body which funds the College from time to time.
- (f) “Staff” and “Student” have the same meanings as in the Instrument of Government.
- (g) “Secretary of State” means the Secretary of State for Business, Innovation and Skills (“BIS”) or the successor organisation to BIS from time to time.
- (h) “Senior Postholder” means the post of Principal / Chief Executive and such other senior posts as the Corporation may decide for the purposes of these Articles.
- (i) “Staff” means all the staff who have a contract of employment with the College.
- (j) “Governor” means a College Governor, Principal / Chief Executive, Student Governor or Staff Governor and the term will also include External Members where one is appointed by the Corporation to serve on a Committee of the Corporation.
- (k) “College Governor” means a member of the Corporation who is appointed through the Search & Governance Committee but is not the Principal / Chief Executive, nor a Student Governor nor a Staff Governor.
- (l) “External Member” is a Co-opted Member of a Committee of the Corporation but is **not** a member of the Corporation.
- (m) “Students’ Union” has the same meaning as in the Instrument of Government.

- (n) “Committee” is a sub Committee of the Corporation and the latest list of Committees is displayed on the Governors’ Website and also listed in the Standing Orders.

## **2 Conduct of the College**

The College will be conducted in accordance with the provisions of:

- (1) The Instrument of Government.
- (2) These Articles.
- (3) College Rules, Policies & Procedures.
- (4) The Seven Principles of Public Life as set out in the “Second Report of the Nolan Committee on Standards in Public Life May 1996.
- (5) United Kingdom and European Union Legislation, directives and case law; and
- (6) Any other regulatory requirements for Further Education Corporations including but not limited to the Financial Memorandum and Audit Code of Practice.

## **3 Responsibilities of the Corporation, the Principal / Chief Executive and the Clerk to the Corporation**

- (1) The Corporation will be responsible for the following functions:
  - (a) The determination and preservation and development review of the Educational Character and Mission of the College and the oversight of its activities.
  - (b) Approval of the College’s overarching strategic direction and strategy.
  - (c) Publishing arrangements for obtaining the views of staff and students on the determination and preservation and development review of the Educational Character and Mission of the College.
  - (d) Approving the Quality Strategy.
  - (e) Effective and efficient use of resources, the solvency of the College and the Corporation and safeguarding their assets.
  - (f) Approving annual estimates of income and expenditure.

- (g) The appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the Senior Postholders and the Clerk to the Corporation, including, where the Clerk to the Corporation is, or is to be appointed as, a member of staff, the Clerk to the Corporation's appointment, grading, suspension, dismissal and determination of pay in the capacity of a member of staff; and
  - (h) Setting a framework for the pay and conditions of service of all other staff including Senior Postholders and the Clerk to the Corporation.
- (2) Subject to the responsibilities of the Corporation, the Principal / Chief Executive will be the Chief Executive of the College, and will be responsible for the following functions:
- (a) Making proposals to the Corporation about the Educational Character and Mission of the College and implementing the decisions of the Corporation.
  - (b) The determination of the College's academic and 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 College 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 Senior Postholders or Clerk to the Corporation, where the Clerk to the Corporation is also a member of the staff.
  - (f) Maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.
- (3) The Clerk to the Corporation will be responsible for advising the Corporation on the operation of its powers, procedural matters, conduct of its business and matters of governance practice.

#### **4 Establishment of Committees and Delegation of Functions**

- (1) In addition to any legal requirements, the Corporation may establish Committees for any purpose or function, other than those assigned in these Articles to the Principal / Chief Executive or Clerk to the Corporation and may delegate powers to:
  - (a) Such Committees.
  - (b) The Chair, or in the Chair's absence, the Vice-Chair or
  - (c) The Principal / Chief Executive.
- (2) The number of Governors serving on a Committee and the terms on which they are to hold and to vacate office will be decided by the Corporation.
- (3) The Corporation may also establish Committees under collaboration arrangements made with other Further Education Colleges or maintained schools (or with both), and such joint Committees will be subject to any statutory or regulatory requirements.

#### **5 The Search & Governance Committee**

- (1) The Corporation will establish a "Search & Governance Committee" to advise on:
  - (a) The appointment of Governors other than Staff Governors, Student Governors or the Principal / Chief Executive; and
  - (b) Such other matters relating to corporate governance and appointments as the Corporation may ask it to.
- (2) The Corporation will not appoint any person as a Governor, other than as a Staff Governor, Student Governor or Principal / Chief Executive, without first consulting and considering the advice of the Search & Governance Committee.
- (3) The Corporation may make rules specifying the way in which the Search & Governance Committee is to be conducted. A copy of these rules, together with the Search & Governance Committee's Terms of Reference and its advice to the Corporation, other than any advice which the Corporation is satisfied should be dealt with on a confidential basis, will be published on the College's Website and will be made available for inspection during normal office hours.

## **6 The Audit & Risk Committee**

- (1) The Corporation will establish an “Audit & Risk Committee” to advise on matters relating to the Corporation’s audit arrangements and systems of internal control.
- (2) The Audit & Risk Committee will consist of at least three Governors and may include Staff Governors with the exception of Senior Postholders and will operate in accordance with any requirements laid down by the Funding Bodies.

## **7 Composition of Committees**

Any Committee established by the Corporation, other than the Committee referred to in Article 9, may include persons known as External Members.

## **8 Access to Committees by Non-Governors and Publication of Minutes**

The Corporation will ensure that the policy governing access to Committees by non-governors and the minutes of all Committee Meetings, with the exception of the Remuneration Committee, Settlement Committee and Special Committees are published on the College’s Website and made available for inspection at the College by any person, during normal office hours. The publication of Committee Minutes on the College’s Website will take place once the Committee has formally approved them.

## **9 Delegable and Non-delegable Functions**

- (1) The Corporation will not delegate the following functions:
  - (a) Determination of the Educational Character and Mission of the College.
  - (b) Approval of the College’s overarching strategic direction and strategy.
  - (c) Approval of the annual estimates of income and expenditure.
  - (d) Responsibility for ensuring the solvency of the College and the Corporation and for safeguarding their assets.
  - (e) Modification or revocation of these Instrument or Articles.
  - (f) Appointment of the Principal / Chief Executive.
  - (g) Appointment of a Senior Postholder.

- (h) Appointment of the Clerk to the Corporation including, where the Clerk to the Corporation is, or is to be, appointed as a member of staff, the Clerk to the Corporation's appointment in the capacity of a member of staff.
- (2) The Corporation will also not delegate:
    - (a) The consideration of the case for dismissal of the Principal / Chief Executive, the Clerk to the Corporation or the Senior Postholder; or
    - (b) The power to determine an appeal in connection with the dismissal of the Principal / Chief Executive, the Clerk to the Corporation or the Senior Postholder other than to a Committee of the Corporation.
  - (3) The Corporation will make rules specifying the way in which a Committee having functions under paragraph 9 (2) will be established and conducted.
  - (4) The Principal / Chief Executive may delegate functions to other designated members of the College Leadership Team other than the management of budget and resources and any other functions that have been delegated specially to the Principal / Chief Executive by the Corporation.

## **10 Chair and Vice-Chairs action**

Both the Chair and in the Chair's absence the Vice-Chair will, on terms specified in Rules, Policies & Procedures from time to time, be empowered to act for the Corporation between meetings of the Corporation where action is required to be taken between such meetings.

## **11 Appointment and Promotion of Staff**

- (1) The Corporation will appoint the Principal / Chief Executive, Senior Postholder(s) and Clerk to the Corporation in accordance with its policies and procedures.
- (2) Where there is a vacancy or expected vacancy for a Principal / Chief Executive, Senior Postholder or the Clerk to the Corporation, the Corporation will appoint a Selection Committee (Senior Posts).
- (3) The Selection Committee (Senior Posts) will normally comply with Human Resources best practice and in accordance with current employment legislation.



- (4) The Selection Committee (Senior Posts) will:
- (a) Decide on the arrangements for selecting the applicants for interview.
  - (b) Interview the applicants.
  - (c) Where they consider it appropriate to do so, recommend to the Corporation for appointment one of the applicants they have interviewed.
  - (d) If the Corporation approves the recommendation of the Selection Committee (Senior Posts), that person will be appointed.

In the event of a Senior Postholder vacancy, or long term absence, a member of staff:

- (e) May be required to act as Principal / Chief Executive or in the place of any other Senior Postholder; and
  - (f) If so required, will have all the duties and responsibilities of the Principal / Chief Executive or such other Senior Postholder during the period of the vacancy or temporary absence.
- (5) The Corporation may also decide to use the Remuneration Committee in certain circumstances to discuss the arrangements for selecting applicants and this may include the setting of the Terms & Conditions of Service and other associated documentation but only the Selection (Senior Posts) Committee will interview and recommend appointment to the Corporation.
- (6) The Principal / Chief Executive will be responsible for the appointment of all members of staff other than Senior Postholders and the Clerk to the Corporation.

## **12 Rules Relating to the Conduct of Staff**

The Corporation will approve a Code of Conduct for Governors and staff.

## **13 Academic Freedom**

In making rules under Article 12, the Corporation will have regard to the need to ensure that Academic Staff at the College have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the College.

## **14 Grievance, Suspension and Disciplinary Procedures**

After consultation with staff, the Corporation will make rules setting out:

- (a) Capability Procedures for all staff.
- (b) Grievance Procedures for all staff.
- (c) Procedures for the suspension of all staff; and
- (d) Disciplinary and Dismissal Procedures for
  - i. Senior Postholders; and
  - ii. Staff other than Senior Postholders.

and such procedures will be subject to the provisions of Articles 3(1), 3(2), 3(3), 9, 11(1) and 15 and will normally comply with current employment legislation and Human Resources best practice.

## **15 Suspension and Dismissal of the Clerk to the Corporation**

- (1) Where the Clerk to the Corporation is also a member of staff at the College, the Clerk to the Corporation is to be treated as a Senior Postholder for the purposes of Article 14.
- (2) Where the Clerk to the Corporation is suspended or dismissed under Article 14, that suspension or dismissal will not affect the position of the Clerk to the Corporation in the separate role of Clerk to the Corporation.

## **16 Students**

- (1) Any Students' Union will conduct and manage its own affairs and funds in accordance with a constitution approved by the Corporation.
- (2) The Students' Union will present an annual statement of activities to the Corporation.
- (3) After consultation the Corporation will make rules concerning the conduct of students, including procedures for their suspension and expulsion, including expulsion for an unsatisfactory standard of work or other academic reason.

## **17 Financial Matters**

The Corporation will set the policy by which the tuition and other fees payable are determined ("Tuition Policy") subject to any terms and conditions attached to grants, loans or other payments paid or made by the Funding Bodies.

## **18 Co-operation with the Skills Funding Agency's Auditor**

The Corporation will co-operate fully with any person who has been authorised by the Skills Funding Agency (or its successor) to audit any returns of numbers of students or claims for financial assistance.

## **19 Internal Audit**

- (1) The Corporation will, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other control to ensure that they contribute to the proper, economic, efficient and effective use of the Corporation's resources.
- (2) The Corporation may arrange for the examination and evaluation mentioned in paragraph (1) to be carried out on its behalf by Internal Auditors.
- (3) The Corporation will not appoint persons as Internal Auditors to carry out the activities referred to in paragraph (1) if those persons are already appointed as External Auditors under Article 20.

## **20 Accounts and Audit of Accounts**

- (1) The Corporation will:
  - (a) Keep proper accounts and proper records in relation to the accounts; and
  - (b) Prepare a statement of accounts for each financial year of the Corporation.
- (2) The statement will:
  - (a) Give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year; and
  - (b) Comply with any directions given by the Skills Funding Agency.

- (3) The accounts and the statement of accounts will be audited by External Auditors appointed by the Corporation each financial year.
- (4) The Corporation will not appoint persons as External Auditors in respect of any financial year if those persons are already appointed as Internal Auditors under Article 19.
- (5) Auditors will be appointed and audit work conducted in accordance with any legal or regulatory requirements.
- (6) If the Corporation is dissolved:
  - (a) The last financial year will end on the date of dissolution; and
  - (b) The Corporation may decide, with the Funding Agency's approval, that what would otherwise be the last two financial years, will be a single financial year for the purpose of this Article.

## **21 Rules, Policies & Procedures**

The Corporation will establish Rules, Policies & Procedures relating to the government and conduct of the College and these will be subject to the provisions of these Instrument & Articles of Government.

## **22 Copies of Articles of Government**

A copy of these Articles of Government shall be given free of charge to every Governor, and free of charge to any other person who so requests a copy, and shall be available for inspection at the College upon request during normal office hours to every member of staff and every student.

The Articles will also be posted on the College's Website.

## **23 Modification or Replacement of the Instrument and Articles of Government**

The Corporation may amend an Instrument or Article by a majority resolution at a Corporation Meeting providing that no changes would result in the Corporation ceasing to be a Charity.

## **24 Dissolution of the Corporation**

- (1) The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.
- (2) The Corporation will ensure that a copy of the draft resolution to dissolve the Corporation on a specified date will be published at least one month before the proposed date of such resolution.