Governing Body

Code of Conduct

(16 October 2017)
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Governing Body
Code of Conduct For
College Governors or External Members

1. Introduction

1.1 This Code of Conduct is intended as a guide, to indicate the standards of conduct and accountability which are expected of College Governors or External 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 Governing Body and Principal / Chief Executive.

This Code of Conduct therefore is aimed at promoting effective, well informed and accountable college governance, and is not intended to be a definitive and authoritative statement of the law or good practice.

1.2 In addition to this Code of Conduct, College Governors or External Members are recommended to familiarise themselves with the source documents listed in the Schedule on page 15.

1.3 If a College Governor or External Member is in doubt about the provisions of this Code of Conduct or any of the source documents, the Clerk to the Corporation should be consulted and, if necessary, professional advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a College Governor or External Member of the College and for any act or omission in that capacity rests with the individual.

1.4 This Code of Conduct applies to every committee or working party of the Governing Body and to every subsidiary company or joint venture of the College to which College Governors or External Members may be appointed.

1.5 By accepting appointment to the Governing Body, each College Governor or External Member agrees to accept the provisions of this Code of Conduct.

1.6 Each College Governor or External Member, by accepting the provisions of this Code of Conduct, agrees that it may lead to the termination of their appointment as a Member in accordance with Clause 9 of the Governing Body's Instrument and Articles of Government.
2. **Interpretation**

For the purposes of this Code of Conduct, words importing one gender import and all other definitions have the same meaning as given in the College’s Instrument & Articles of Government.

In this Code of Conduct:

2.1 ‘Code of Governance’ means the Code of Governance for English Colleges issued by the Association of College’s Governors’.

2.2 ‘College’ means Middlesbrough College.

2.3 ‘College Mission Statement’ means the statement as detailed in paragraph 3.1 which may be amended from time to time, normally reviewed on an annual basis.

2.4 ‘College Values’ means those Values detailed in paragraph 3.2 which may be amended from time to time, normally reviewed on an annual basis and also includes the publication of a Public Value Statement.

2.5 ‘Governing Body” means the Further Education Corporation which was established for the purpose of conducting the College.

2.6 ‘DBIS’ means the Department for Business, Innovation and Skills.

2.7 ‘Education Funding Agency (EFA)’ means the Education Funding Agency or any successor body.

2.8 ‘Skills Funding Agency (SFA)’ means the Skills Funding Agency or any successor body.

2.8 ‘Foundation Code’ means the English Colleges’ Foundation Code issued by the Association of Colleges in November 2011.
3. **Aims And Values**

3.1 College’s **Mission Statement or Strategic Priorities**.  
*(agreed 13 July 2015)*

**Mission Statement**

Driving Ambition, Inspiring Success

**Overarching Strategic Aim**

Growth based on quality and reputation which improves educational achievement, employment prospects, economic prosperity and wellbeing for all

**Strategic Priorities**

**One Ambition**

To be an outstanding provider of education and training that provides pathways to employment, further or higher education.

**One Commitment**

To enhance the region’s economic competitiveness by directly aligning our offer to the skills requirements of employers.

**One Community**

To respond to the needs of our students and the wider community.

**One Team**

To work as one highly skilled, professional and creative team within a supporting, aspirational and entrepreneurial environment.

**One Network (unchanged)**

To foster the development of a network of educational and training excellence that raises aspirations and promotes opportunities.
3.2 The College’s Values
(agreed 13 July 2015).

- Aim High.
- Work Hard.
- Take Responsibility.
- Do What’s Right.
- Respect Others.
- Challenge Yourself.
- Take Pride.

The College’s Public Value Statement
(agreed 13 July 2015).

Middlesbrough College is committed to adding value to the social, economic and physical well-being of the local community it serves.

We are committed to raising aspiration, increasing opportunity and providing a foundation for sustainable economic growth and prosperity.

Central to our responsibility is our work with partner organisations and our obligation to enrich the social, cultural, economic and physical well-being of our whole community.

In practice, this means we are ready, willing and able to respond to the needs of our community whatever and wherever they may be.

In making this commitment we may be challenged to work in new ways and, at times, our own capability or capacity may be tested.

We are nevertheless determined to devote ourselves to, and measure ourselves against, this endeavour.

3.3 The College’s Mission Statement, together with the Strategic Priorities seeks to encapsulate the core purposes and aims of the College. College Governors or External Members should have due regard to these purposes and aims when conducting the business of the Governing Body and considering the activities and proposed activities of the College.
3.4 The Governing Body recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, other educational institutions and the wider community.

In particular, the Governing Body is committed to:

- Having close regard to the Student Voice.
- 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.
- Engaging with the community which the College serves in order to understand and meet its needs.
- Observing its duty under the Education (No.2) Act 1986 to take reasonable steps to ensure freedom of speech 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.

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

4. Duties

4.1 College Governors or External 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 College Governor or External Member should act honestly, diligently and (subject to the provisions appearing in paragraph 10 of this Code of Conduct relating to collective responsibility) independently. The actions of College Governor or External Member 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 College Governors or External Members at meetings of the Governing Body and its committees must not be for any improper purpose or personal motive. Decisions taken must always be for the benefit of the College, its students and staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, College Governors or External Members must not be bound in their speaking and voting by mandates given to them by other bodies or persons including, but not limited to, the bodies that elected them.
4.3 College Governors or External 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 to the Corporation should they become disqualified from continuing to hold office and also the responsibilities given to the Governing Body by the College’s Articles of Government. Those responsibilities, including a list of “reserved” responsibilities which are so important that they must not be delegated, are set out in Appendix 3.

4.4 College Governors or External Members should comply with the Standing Orders and Terms of Reference to ensure that the Governing Body conducts itself in an orderly, fair, open and transparent manner. College Governors or External Members must keep those Standing Orders and Terms of Reference under periodic review.

4.5 College Governors or External Members should also have regard to the different, but complementary, responsibilities given to the Principal / Chief Executive. The responsibilities given to the Principal / Chief Executive by the College’s Articles of Government are set out in Appendix 4. Whereas it is the Governing Body’s function to decide strategic policy and overall direction and to monitor the performance of the Principal / Chief Executive and any other Senior Post Holders, it is the Principal / Chief Executive’s role to implement the Governing Body’s decisions, and to manage the College’s affairs within the budgets and framework fixed by the Governing Body. College Governors or External Members should work together so that the Governing Body and the Principal / Chief Executive perform their respective roles effectively.

4.6 College Governors or External Members should refer to the Clerk to the Corporation for advice relating to the governance functions which are set out in Appendix 5 and have regard to the Clerk to the Corporation’s independent advisory role.

5. Statutory Accountability

5.1 College Governors or External Members are collectively responsible for observing the duties set out in the Financial Memorandum, which the College has entered into with the Skills Funding Agency (SFA) and the Funding Agreement which the College has entered into with the Education Funding Agency (EFA) as a condition of receiving public funds. Further information is available from the Clerk to the Corporation. The Audit & Risk Committee and the Corporate Services are briefed on any changes to the Financial Memorandum and Funding Agreements.

A summary of this information is in Appendix 6.
5.2 Although the Skills Funding Agency (SFA) is the main provider of funds to the College, College Governors or External Members should note that they are also responsible for the proper use of income derived from other sources, such as the Higher Education Funding Council for England (HEFCE) and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit. Where HEFCE funding is received indirectly via a collaboration with a HEFCE 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 Skills Funding Agency (SFA), its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the Skills Funding Agency (SFA) puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Principal / Chief Executive, 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 / Chief Executive may be required to appear before the Committee of Public Accounts, alongside the Skills Funding Agency's Chief Executive, to give an account of the use made by the College of such funds. The Governing Body is accountable to Parliament for ensuring the Financial Health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law.

6. Public Service Values

Although further education Governing Bodies are classified as part of the private not for profit sector for government accounting purposes, they remain public bodies in many legal contexts. In particular, public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on the principles set out in Appendix 1 and Appendix 2 of this Code of Conduct, and the recognition that students and other users of the College’s services come first, are a requirement of being a College Governor or External Member and should underpin all decisions taken by the Governing Body.
7. **Skill, Care or Diligence**

A College Governor or External Member should in all his or her work for the College exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when College Governors or External Members act as agents of the College, for example, when functions are delegated to a committee of the Governing Body or to the Chairman of Governors. College Governors or External Members should be careful to act within the Terms of Reference of any committees on which they serve.

8. **Powers**

College Governors or External Members are responsible for taking decisions which are within the powers given to the Governing Body by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992, as amended. A detailed summary of those powers is set out in *Appendices 3 & 7*. If a College Governor or External Member thinks that the Governing Body is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk to the Corporation for advice.

9. **Conflicts of Interest**

9.1 Like other persons who owe a fiduciary duty, College Governors or External 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 Governing Body. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

9.2 College Governors or External Members are reminded that under the College’s Instrument of Government and the Register of Interests Policy and the general law they must disclose to the Governing Body any direct or indirect financial interest they have, or may have, in the supply of work to the College or the supply of goods for the purposes of the College, or in any contract or proposed contract concerning the College, or in any other matter relating to the College or any other interest of a type specified by the Governing Body in any matter relating to the College, or any duty which is material and which conflicts or may conflict with the interests of the Governing Body.
9.3 If an interest of any kind, including an interest of a spouse, partner or business associate of a College Governor or External Member or of a close relative of the College Governors or External Members or his or her spouse, partner or business associate, is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a College Governors or External Members’ independent judgement, then:

9.3.1 The interest, financial or otherwise, should be reported to the Clerk to the Corporation.

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

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

(a) 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

(b) Withdraw from that Governing Body or committee meeting where required to do so by a majority of the College Governors or Committee Members present at the meeting.

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

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

9.6 College Governors or External 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-Fraud or Bribery Policy and the Gifts & Hospitality Policy or be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk to the Corporation.
9.7 The Clerk to the Corporation will maintain a Register of Interests which will be open for public inspection. College Governors or External Members must disclose routinely to the Governing Body all business interests, financial or otherwise, which they or persons associated with them may have, and the Clerk to the Corporation will enter such interests on the Register. College Governors or External Members must give sufficient details to allow the nature of the interests to be understood by enquirers. College Governors or External Members should inform the Clerk to the Corporation whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, College Governors or External Members should have regard to the meaning given to “interest” in paragraphs 9.3 and 9.5 of this Code of Conduct.

10. Collective Responsibility

10.1 The Governing Body operates by taking majority decisions in a corporate manner at quorate meetings, including meetings held by alternative methods such as Written Resolutions. Therefore, a decision of the Governing Body, even when it is not unanimous, is a decision taken by the College Governors or External Members collectively and each individual College Governor or External Member has a duty to stand by it, whether or not he or she was present at the meeting of the Governing Body when the decision was taken.

10.2 If a College Governor or External Member disagrees with a decision taken by the Governing Body, his or her first duty is to have any disagreement discussed and minuted. If the College Governor or External Member strongly disagrees, he or she should consult the Chairman of Governors and, if necessary, then raise the matter with the Governing Body when it next meets. If no meeting is scheduled, the College Governor or External Member should consult with the Clerk to the Corporation and determine whether a Special Meeting needs to be called. Alternatively, as a final resort, the College Governors or External Members may decide to offer his or her resignation from office, after consulting the Chairman of Governors.
11. **Openness or Confidentiality**

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

11.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection e.g. when the Governing Body considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in a confidential folder by the Clerk to the Corporation. The Governing Body should specify how long such items should be treated as confidential or, if this is not possible, such items should be regularly reviewed to consider whether the confidential status should be removed or whether the public interest in disclosure outweighs that confidential status and the item made available for public inspection. When considering such issues, the College Governors or External Members must also consider the College’s publication scheme issued under the Freedom of Information Act 2000.

11.3 However, Staff and Student Governors have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the College’s Instrument of Government.

11.4 It is important that the Governing Body and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between College Governors or External Members with a shared corporate responsibility for decisions. College Governors or External Members should keep confidential any matter which, by reason of its nature, the Governing Body and / or Committee are satisfied should be dealt with on a confidential basis.

11.5 College Governors or External Members should not make statements to the press or media or at any public meeting relating to the proceedings of the Governing Body or its committees without first having obtained the approval of the Chairman of Governors or, in his or her absence, the Vice Chairman of Governors. It is unethical for College Governors or External Members publicly to criticise, canvass or reveal the views of other College Governors or External Members which have been expressed at meetings of the Governing Body or its committees.
12. Complaints

12.1 In order to ensure that the affairs of the College are conducted in an open and transparent manner and that the College is accountable for its use of public funds but also to its employees, its students and the community it serves, it is important for there to be appropriate complaints procedures in place and for these to be well publicised. College Governors or External 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 Skills Funding Agency (SFA)’s Financial Memorandum with colleges (Part 2, clause 19.4), students, employers and other third parties have a right to make a complaint to the Skills Funding Agency (SFA) in respect of the College or of any of its decisions.

12.3 College Governors or External Members in particular are reminded that under the Skills Funding Agency (SFA)’s Procedure for dealing with complaints about Providers of Education and Training (July 2014) the Skills Funding Agency (SFA):

- Can investigate complaints about quality or management of learning provision, undue delay or non-compliance with published procedures, poor administration by the Provider, equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter through the court or tribunals or other organisations), health and safety concerns unless there are matters for the Health & Safety Executive, and complaints made by learners following Higher Education courses in Further Education colleges.

- Will not investigate complaints about examination results or curriculum content where a more appropriate form of redress would be the examining body or Ofqual, individual employment issues, contractual disputes, which are the subject of legal action or complaints about Higher Education courses in college, which should be referred to the Office of the Independent Adjudicator.
13. **Attendance at Meetings**

A high level of attendance at meetings of the Governing Body is expected with a benchmark of 75% being set as detailed in the Attendance Policy which is normally reviewed annually.

14. **Governance Development**

14.1 The Governing Body shall seek to ensure that all College Governors or External Members are appointed on merit, in accordance with an open selection procedure carried out by the Search & Governance Committee, and are drawn widely from the community which the College serves so as to be representative of that community. The Governing Body should have regard to the provisions relating to the membership of the Governing Body in the College’s Instrument of Government, the need to combat discrimination and to promote equality, and the need to make available a range of necessary skills and experience to ensure that the Governing Body carries out its functions under the College’s Articles of Government.

14.2 College Governors or External Members must obtain a thorough grounding in their duties and responsibilities by participating in the College’s Governor Induction Programme including regular refresher workshops.

14.3 In order to promote more effective governance, College Governors or External Members will carry out an annual review of the performance by the Governing Body of its duties and responsibilities as part of a continuing and critical process of self-evaluation.
Schedule

List of source documents

1. Instrument of Government.
2. Articles of Government.
3. Standing Orders
4. Terms of Reference.
5. Strategic Plan.
7. Strategic Priorities.
8. Strategic Plan.
10. Funding Agreement (Education Funding Agency).
11. Joint Audit Code of Practice (now the Post 16 Audit Code of Practice)

12. The principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. An extract from the report of the Nolan Committee setting out these Principles in more detail is set out at Appendix 1.

13. 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.

14. College's policies that extend to College Governors and External Members, including the College's policies on:
   - Equal opportunities and freedom of speech.
   - Anti-Bribery Policy as required by the Bribery Act 2010.
   - Gifts & Hospitality Policy.
   - Register of Interest Policy.
   - Safeguarding Learners Policy (including Prevent).
Appendix 1

The Seven Principles of Public Life

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

**Selflessness**

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

**Integrity**

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

**Objectivity**

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

**Accountability**

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

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

Honesty

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

Leadership

Holders of public office should promote and support these principles by leadership and example.
Appendix 2

Six Core Principles of Good Governance

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

1. **Good governance means focusing on the organisation’s purposes and on outcomes for citizens and service users**

   1.1 Being clear about the organisation’s purposes and its intended outcomes for citizens and service users.

   1.2 Making sure that users receive a high quality service.

   1.3 Making sure that taxpayers receive value for money.

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

   2.1 Being clear about the functions of the governing body.

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

   2.3 Being clear about relationships between the governors and the public.

3. **Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**

   3.1 Putting organisational values into practice.

   3.2 Individual governors behaving in ways that uphold and exemplify effective governance.
4. **Good Governance means taking informed, transparent decisions and managing risk**

4.1 Being rigorous and transparent about how decisions are taken.

4.2 Having and using good quality information, advice and support.

4.3 Making sure that an effective risk management systems is in operation.

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

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

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

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

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

6.1 Understanding formal and informal accountability relationships.

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

6.3 Taking an active and planned approach to responsibility to staff.

6.4 Engaging effectively with institutional stakeholders.
Appendix 3

Summary of Main Responsibilities of College Governors or External Members under the Articles of Government
(as agreed 15 October 2015)

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.
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.

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.
Appendix 4

Summary of Main Responsibilities of the Principal / Chief Executive under the Articles of Government
(as agreed 15 October 2015)

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.
Appendix 5

Summary of Main Responsibilities of the Clerk to the Corporation under the Articles of Government
(as agreed 15 October 2015)

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.
Appendix 6

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

Purpose

The SFA has issued a revised version of the financial memorandum for further education colleges, together with a version for sixth form colleges that recruit adult students. The EFA has issued a funding agreement for further education colleges that provide EFA funded education for those under 19. These documents came into force on 1 August 2015.

These arrangements ensure that both general FE and sixth form colleges have proper lines of financial accountability to the relevant funding body. Many general FE colleges also receive funding for provision for students aged under 18 from the EFA. Conversely, some sixth form colleges receive funding from the SFA for adult provision.

The financial memorandum records the agreement between Secretary of State for Business, Innovation and Skills, acting through the SFA, and the college concerning the amount of funding that will be paid to the college by the SFA. As a result of the Deregulation Act 2015 the references to the Chief Executive of Skills Funding have been removed as the statutory powers of the holder of that post have been transferred to the Secretary of State. The SFA is now an agency within BIS in the same way that the EFA is an agency within the DfE.

The conditions set out in the Financial Memorandum are intended to enable the Secretary of State to carry out his/her functions under the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). The Secretary of State has responsibilities as accounting officer to his/her department for ensuring that the use of funds which he/she receives is consistent with his/her statutory remit and any conditions imposed by the Treasury.
Format

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

The Financial Memorandum applies to all SFA funded FE colleges, with only the financial annexes differing between institutions, unless there is a particular need for special provisions specific to a particular institution.

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

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

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

Definitions

It should be noted that references to public funds include funds provided by HEFCE as well as those provided by the SFA.
Responsibilities of the Governing Body and the Accounting Officer

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

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

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

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

Allocation of Funds

The SFA will allocate funds to the Corporation annually provided that it is satisfied that the Corporation is financially viable and able to deliver education of a reasonable quality meeting the needs of learners and employers and the Corporation has met the previous year’s conditions of funding. The Corporation is free to spend its funding as it sees fit provided it fulfils the conditions of funding but funds must not be used to deliver provision in respect of which the Corporation has already received other funding, public or otherwise, unless agreed by the SFA. The SFA can require assurance that delivery of provision complies with the Financial Memorandum and can require, at the College’s cost, evidence to support payment claims.

Capital Transactions

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

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

Audit

The Corporation must appoint an audit committee and arrange to provide internal and financial statements audit, including regularity audit, in accordance with the Joint Audit Code of Practice.

The Corporation must investigate and report to the SFA all significant cases of fraud or suspected fraud.

Payment to Employees on Termination of Employment

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

Provision of Data on Learners and Staff and of Information

A college must supply learner data in accordance with SFA requirements. A new requirement for 2015-16 is the need to provide data about staff teaching GCSE English and Maths.

The SFA reserves the right to request information from the Corporation in order to exercise his responsibilities. The Corporation must inform the SFA in writing of the vacating or filling of the positions of Chair of the governing body, Principal and Clerk. The SFA has the right to share information provided by the college, for example with Parliamentary bodies.
Conditions of Funding

The detailed requirements in relation to each learning programme are set out in the SFA Funding Rules 2015-16. The maximum value of funds for each learning programme is set out in Appendix 1 to the financial memorandum. The SFA reserves the right to reduce the overall maximum value for each learning programme by giving three months’ notice. This can be done without the need to give a reason, although if the SFA did so it would lay itself open to a legal challenge based on the argument that it had done so unreasonably. A new condition for 2015-16 is that a college must provide evidence that it has worked in partnership with the LEP to ensure its provision takes account of the LEP’s priorities. The SFA reserves the right to impose additional conditions where he/she considers it necessary to secure the delivery of education and training of a reasonable quality or to require the Corporation to address concerns about its financial viability.

Sub-contracted Provision

SFA considers extensive sub-contracting of provision to be a significant risk factor for colleges. It requires colleges to make a Declaration of Subcontractors bi-annually and comply with requirements set out in the Funding Rules. These include requirements in relation to the form of the legally binding sub-contract which must be put in place. Under the 2015-16 memorandum where a college has sub-contracts in aggregate worth more than £100,000 per year it must obtain an annual report from its external auditors providing assurance on its arrangements for managing the sub-contractors and provide SFA with an auditor’s certificate that a report confirming satisfactory assurance has been received.

Repayment of Funds

In the case of a breach of the conditions of funding the SFA reserves the right to require repayment of all or part of the funds.
Raising Standards, Feedback and Complaints

The college must deliver the funded provision to an acceptable standard of quality and comply with the Performance Management Rules published by the SFA. There is a set procedure for dealing with inadequate provision which may lead to issue of a Notice of Concern or ultimately a Notice of Withdrawal of Funding. The college must inform the SFA if it is sanctioned by an awarding body. It must also notify the SFA of the date of the feedback meeting following an inspection by Ofsted so that SFA can send a representative to the meeting. If a Notice of Concern is issued the college’s ability to start new learners on a programme may be suspended. Under the 2015-16 Financial Memorandum the SFA may invite a college to discuss with it if considers that there is a significant risk that a college may become financially inadequate over a three-year period. If the college’s response is inadequate the SFA may ask the college to undertake a financial or structural review. Such a “request” may be made a condition of funding. If it is made a condition and the condition is not complied with the SFA may issue a Notice of Concern or of Withdrawal of Funding.

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

Additional Matters

The Financial Memorandum incorporates a number of other clauses on compliance matters such as health and safety, equal opportunities, data protection and freedom of information, and State Aid.

Interpretation

Nothing in the Financial Memorandum shall require the Corporation to act in a manner which would cause the Corporation to cease to be a charity. Colleges need to familiarise themselves with the detailed content of the new financial memorandum and funding agreement in the versions applicable to their type of college. However, despite the presentational differences in the documentation, colleges will find that the substance of the requirements that they need to meet is largely unchanged.
Appendix 7

Summary of the Statutory Powers of the Governing Body

Principal Powers

Under section 18(1) of the Further and Higher Education Act 1992 a further education Governing Body 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 Governing Body’s “principal powers”.

Supplementary Powers

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

(a) To acquire and dispose of land and other property.

(b) To enter into contracts, including in particular:

   (i) Contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the Governing Body’s principal powers; and

   (ii) Contracts with respect to the carrying on by the Governing Body of any such activities.
(c) To form, participate in forming or invest in a company or become a member of a charitable incorporated organisation.

(d) To borrow such sums as the Governing Body thinks fit for the purposes of carrying on any activities it has power to carry on or to meet any liability transferred to it under sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage, charge or other security in respect of any land or other property of the Governing Body.

(e) To invest any sums not immediately required for the purposes of carrying on any activities the Governing Body has power to carry on.

(f) To accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes.

(g) To do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes and

(h) To provide advice or assistance to any other person where it appears to the Governing Body to be appropriate for them to do so for the purpose of or in connection with the provision of education by the other person

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

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

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Governing Body

Code of Conduct

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

Name

______________________________

Position

______________________________

Signed

______________________________

Date

______________________________