



# Module 5

## The process of effective governance

For suggestions on how to get the most out of these self-study materials, see the booklet on 'Using the materials'.

# Preface to Governance Training Materials

At the time of writing the Governance Training Modules, the **Education Act 2011** had been implemented. It abolished the Young People's Learning Agency, with funding for colleges now being administered by either the Education Funding Agency and / or the Skills Funding Agency. It significantly reduced the complexity of colleges' Instrument and Articles of Government, giving them greater flexibility to run their own affairs. The details are included in Schedule 12 of the Act which makes a number of amendments to prior legislation. Section 29b of Schedule 12 states that "the governing body of the institution may modify or replace its instrument of government and articles of government". These must however comply with certain requirements set out in Part 2 of Schedule 4, thereby retaining some of the key responsibilities previously enshrined in legislation. In some cases, the statutory provision for sixth form colleges differs from that of general further education (GFE) colleges with the **Department for Education (DfE)** overseeing the former and the **Department for Business, Innovation and Skills (BIS)** the latter; however all colleges will now be actively considering the changes that affect them and all governors will need to be aware of the implications for their own organisation. At the same time as the Education Act 2011 was passed into law, the Association of Colleges published **The English Colleges' Foundation Code of Governance**.

This voluntary code of practice was developed by the sector following extensive consultation and all GFE colleges have been encouraged formally to adopt it. It has the full support of the government and is seen as "an important milestone in making colleges more locally accountable and in freeing them to respond more effectively to local learners, employers and community partners".

The government's reform plan for the further education and skills system was set out in **New Challenges, New Chances** published on 1 December 2011 and further refined in **Rigour and Responsiveness in Skills** published in April 2013. A **summary of NCNC** is available from LSIS. In November 2011 the final report of the Independent Commission on Colleges in their Communities, **A Dynamic Nucleus**, was published. Alongside New Challenges, New Chances, these two documents establish the foundation for the future development of the further education and skills sector.

The 2013 version of the Governance Training materials incorporate these significant changes to the operation of further education but all governors are recommended to familiarise themselves with and take account of the key documents referred to in this preface. The materials enshrine the six principles set out in the Good Governance Standard for Public Services by the Independent Commission on **Good Governance in Public Services** (2005), to which all governing bodies are referred.

The **Association of Colleges** has also compiled a **Governance Resource Library** which provides a wide range of online resources for governors and which will usefully complement these materials.

The **Learning and Skills Improvement Service** which has produced these updated and much valued governance training modules will cease to exist after August 2013. It is hoped the essential updating of these resources will be regularly carried out by other existing organisations or newly-emerging ones.

## Acknowledgements

The first edition of these training materials was published by the Further Education Funding Council in 2000 and further updated and amended in 2002 following the establishment of the Learning and Skills Council in 2002. They were commissioned by LSC in 2002 under the Standards Fund and produced by a partnership of national organisations involved in further education.

This third edition of the training materials has been published by **The Learning and Skills Improvement Service (LSIS)**, as part of the **Leadership Skills for Governance** programme, and incorporates the changes brought about by the Education Act 2011 and government policy initiatives as at January 2013.

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# Introduction

This module looks at how effective governing bodies function in practice, and focuses on the pivotal role of the clerk who leads the process of governance. It is aimed at new and experienced governors and clerks and provides information to help you review, and, where appropriate, improve the practice of governance in your college.

If the role of governors can be compared to non-executive directors, and the senior management to that of executive directors, the role of the clerk can be compared to that of the company secretary. The clerk has a crucial role to play in supporting members, individually and collectively, and in advising on and implementing high-quality arrangements for the governance of a college.

Inspection includes governance as a component of 'Leadership and Management' and governance may come under scrutiny in the funding body's review of financial management and control which can take place at the same time as inspection. Where governance overall is judged to be 'good' or better, the high standard of clerking is also often commented upon. These days the starting point for an inspection judgement on governance is the quality of outcomes rather than the process of governance itself, reflecting the maturity of the sector. An established process of governance should now be a 'given'. However, quality processes can genuinely smoothe the way for those outcomes that are judged at inspection and if these processes are not working properly they will eventually have an adverse impact on outcomes.

A word of warning: one size does not fit all. There are standard ways to undertake certain basic functions, especially when these are, or previously were, specified in the Instrument and Articles of Government. Beyond this there is a range of very effective practices undertaken by governing bodies; each governing body has to decide the best way to operate given its unique context. Each college will have, for example, its own standing orders, terms of reference for committees, and appointment procedures which take the Instrument and Articles as a starting point for further development.

Until April 2012 the consent of the Secretary of State was required to vary the Instrument and Articles of individual colleges. The Education Act 2011 led to a relaxation of the Instrument and Articles in April 2012. The compulsory sections of the Instrument and Articles are now limited and colleges themselves have the power to vary their Instrument and Articles. However colleges should bear in mind that prior to April 2012 the Instrument and Articles were developed by government in line with good practice and changing legislation, and that careful consideration should be given to any changes that colleges wish to make to their Instrument and Articles. Some procedures that were previously contained in the Instrument and Articles may be moved to college standing orders, bye-laws, or other governance policies and procedures where they may be updated more easily and frequently. See also Module 3: the main statutory framework.

Many colleges have adopted, or are planning to adopt, the AoC '**English Colleges' Foundation Code of Governance**' (the Foundation Code) which aims to establish "a common set of recommended threshold standards of good governance expected of all governing bodies of colleges in the English FE college sector". The practice described in this module is consistent with the Foundation Code.

## Aims

By the end of this module you should be able to:

1. outline the complementary roles and responsibilities of the Chair, the principal and the clerk;
2. explain how to appoint the key players to their governance positions according to statutory requirements and best practice;
3. describe how to ensure the smooth running of meetings, what business should be transacted, and how it should be presented;
4. be aware of how committees and working groups are structured to complement the work of the governing body;
5. understand the statutory basis for openness in communications and recognise good practice;
6. appreciate a range of issues and practice around independence and resolving difficulties;
7. appreciate the need for high-quality governance how to assess and develop it, and the requirements of inspectors and auditors; and
8. know how the performance of the clerk should be reviewed and supported, on an annual basis, to ensure effective and efficient governance.

In some cases cross-references will be made to other modules for more detail on the topics covered.

## Contents

Mark the sections you want to study and tick them off as you complete them.

| To do                    | Done                     |           |  |
|--------------------------|--------------------------|-----------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Section 1 | Key roles and responsibilities   |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 2 | Appointments of chair, vice chair, principal and clerk                   |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 3 | Meetings   |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 4 | Committees and working groups  |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 5 | Openness, communications, publications, the college website and intranet |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 6 | Independence, whistleblowing and resolving difficulties                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 7 | Governance self-assessment, development and inspection                   |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 8 | Support for the performance of the clerk                                 |

## Working on the self-study materials

These materials have been designed for flexible use. You can work through them with others or by yourself, dip in and out for reference, or complete them in one sitting. A list for further reading can be found at the end of the chapter, and those of you accessing the materials on line will find web links embedded in the text.

## What will you need

To complete the activities in this module you will need to get hold of the following documents, probably from the clerk:

- a copy of the governing body's Instrument and Articles;
- previous self-assessment or inspection reports for the governing body;
- a copy of the governing body's standing orders;
- the terms of reference of your governing body's committees;
- a copy of the clerk's job description and person specification;
- a copy of the chair's role description and person specification if this is available;
- agendas;
- minutes; and
- confidential papers.

# Section 1

## Key roles and responsibilities

### The triumvirate: – chair, principal and clerk

There is likely to be a good or even excellent standard of governance when the chair leading the governing body, the principal leading the senior management team, and the clerk leading the process of governance, work together effectively and efficiently. There needs to be regular and open communication, with all three individuals fulfilling their agreed roles in the best interests of the governing body. Exactly how these relationships work in practice will depend on the individuals concerned (see Module 4: Working relationships), and also, for instance, on whether the clerk is a full-time employee based in the college, or is contracted in part-time.

Regular meetings between the clerk, the chair and the principal can provide a focus for forward planning on medium and long-term issues needing attention in the months and years ahead, and on immediate issues such as developing agendas or whether or not reports should be labelled as confidential. Between meetings, or when meetings are difficult to arrange, they should also be in contact by phone and email.

### Activities

#### Developing agendas

What are the benefits that your governing body derives from the clerk, the chair and the principal working together to develop agendas? What can each contribute?

### Viewpoint

The clerk will look up the minutes of the last meeting, a calendar of governing body business, lists of outstanding actions, and items being referred from committees.

The principal will be aware of important or urgent issues facing the college of which governors need to be made aware or about which they may need to make decisions.

The chair will bring an external and stakeholder perspective to the shaping of the agenda.

All three (the clerk, the chair and the principal) act as a set of checks and balances which means that none of them is able to put items to one side without the agreement of the others.

There should also be a mechanism for other governors to suggest items for inclusion on the agendas of future meetings. This may well be in the standing orders.

A key point is that the agenda belongs to the whole governing body, and it is a team effort to develop it on behalf of the governing body. Improvements in communications technology mean that during the agenda-setting process it may be practical to check with all governors if there are any items that they feel should be added to the agenda.

If the meeting in question is a sub-committee meeting rather than a full governing body meeting, then a different officer may take the role described above for the principal, and the agenda belongs to the whole committee.

## The chair

The role of the chair in leading the governing body is crucial, and the Foundation Code states that the governing body should be led by an elected chair. The minimum criteria for Instrument and Articles no longer include any provisions about a chair of governors. It is good practice, and also requirement of the Foundation Code, to clearly define the role and responsibilities of the chair. The stated responsibilities of the chair should include those listed below from previous versions of the Instrument and Articles. These may continue to be included in the Instrument and Articles or may be transferred to standing orders, bye-laws, or a role description for the chair.

The responsibilities of the Chair are:

1. to call a special meeting (if necessary);
2. to send out papers about the clerk's employment or contract;
3. to have a casting vote where there is an equal division of votes;
4. to sign the minutes as a true record when these are agreed by the meeting;
5. to approve draft minutes before they are made public;
6. to act as one of the signatories for the application of the seal if so authorised;
7. to have powers delegated by the corporation; and
8. to be a member of the selection panel for the appointment of a principal. The vice chair may be an alternate to the chair.

Under the Foundation Code it is also the chair's responsibility to ensure that the governing body receives information in such a way that it enables the governing body to monitor and scrutinise effectively and to challenge performance when required.

Each college will have its own procedures which set out in more detail the proceedings and responsibilities of governance. These will include the responsibilities and role of the chair in relation to, for instance, steering procedures in meetings, speaking on behalf of the governing body, and making decisions when urgent action is needed between meetings. The role description may well include building the governing body as a team and leading the ongoing development of governance, ensuring good working relations with the principal and officers, appraising the principal and clerk, and acting as an ambassador for the college.

The Foundation Code requires a regular assessment of the performance of the chair by the governing body, and that the chair ensures that the performance and effectiveness of all governors is assessed on an ongoing basis. See also Section 7 below.

## Activity

### Key qualities of the chair

What do think the key qualities of a chair of governors should be? Do these reflect your college's person specification for a chair, if you have one?



## Viewpoint

### The chair needs to:

- be committed to the college and its ethos;
- be able to devote the time needed to the role (note that the Foundation Code requires that the time needed is defined in the job description);
- be able to lead others as a first among equals, with the authority and personal integrity to elicit respect;
- have the capacity to think strategically;
- be able to challenge and refresh the status quo;
- be able to influence appropriately;
- be decisive with an insistence on getting things done; and
- be financially literate.

## Other governors in leadership roles

The vice chair will carry out the role of chair in the absence of the appointed chair. The post sometimes used in succession planning for the role of the chair.

Governing body committees can be chaired by governors other than the chair and vice chair.

In some colleges individual governors take on a role as champion, for example for equality and diversity, safeguarding, or health and safety. The role of champion is about ensuring that the governing body as a whole fulfils its responsibilities with regard to the function being championed. However, some governing bodies choose not to appoint champions as they believe that appointing champions can lead to other individual members of the governing body disregarding their own responsibilities for the function being fulfilled.

It is good practice, and the Foundation Code implies, that ‘other governors holding offices or undertaking defined roles within the governance structure’ should have role descriptions which include an assessment of the time needed to fulfil the role.

## The principal

The principal is usually, but not always, the chief executive of the college, and will have the duties and responsibilities associated with the role. The minimum criteria for the Instrument and Articles include provision for a chief executive of the institution, and a clerk, and their respective duties. The role of the principal will be complementary to those of the governing body and the clerk. The Foundation Code requires that the respective functions of governance and management, and the roles and responsibilities of the chair, the clerk, the principal and individual governors are clearly defined. If the role of principal and chief executive is split it will be particularly important to ensure that the two are clearly defined.

The chart below outlines the relative responsibilities of the governing body and the principal as outlined in the 2008 Instrument and Articles. These may be updated as the governing body has fewer mandatory responsibilities following April 2012 (see introduction for further information about the impact of the Education Act 2011), but will continue to be current for most colleges.

| Responsibility  | Governing body   | Principal  |
|---|--|--|
| Educational character and mission                           | Determines and reviews periodically  | Proposes, implements   |
|   | Oversees activities  | Determines organisation's academic and other activities  |
| Quality strategy  | Approves   |  |
| Resources, solvency and assets                              | Effective and efficient use of resources, solvency and safeguarding assets | Manages resources within budget  |
| Annual estimates of income and expenditure (budget)         | Approves   | Prepares   |
| Employment of senior post-holders and the clerk             | Employs directly   |  |
| Running the organisation and management/leadership of staff |  | Organisation, direction and management of the institution, leadership of the staff                 |
| Pay and conditions of service for other staff               | Sets framework   | Appoints, assigns, grades, appraises, suspends, dismisses and determines, all within the framework |
| Student discipline  |  | Maintains, suspends and expels   |

The principal reports to the governing body, and the principal's line manager is most likely to be the chair. Performance management and appraisal of the principal are covered in Module 10: Finance and resources.

## The clerk

The Instrument and Articles need to include provision for a clerk, and the clerk's duties. The Foundation Code states that the duties of the clerk must be clearly defined.

The clerk may be full-time or part-time, employed by or contracted to the college, and may have another role in the college. The clerk's role should be seen to be independent, and for this reason the governing body is usually held responsible for all aspects of the clerk's employment, even where the clerk is employed in another role within the college.

The clerk is usually responsible for advising the corporation on the following, as previously set out in the 2008 Instrument and Articles:

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

It will continue to be good practice to retain the five other core responsibilities of the clerk as outlined in the 2008 Instrument of Government (although some governing bodies may wish to relax the rigidity of the seven calendar days in point 5 below, while still ensuring governors have time to read their papers):

1. to receive written notice that a member has been disqualified from continuing to hold the office of a member of the governing body;
2. to receive written notice that the chair or vice chair wishes to resign their position on the governing body;
3. to receive written notice that a member wishes to resign from membership of the governing body;
4. to maintain a register of the financial interests of members and to make this available during normal office hours at the college to any person wishing to inspect it; and
5. to summon meetings of the governing body by sending to members written notice of the meeting and the proposed agenda at least seven calendar days before the meeting.

The actual responsibilities of the clerk are wider than those listed above, and can be similar to those of a company secretary. They vary according to the needs of the individual governing body, but should complement the role and responsibilities of the principal (the chief executive) and the chair in the overall process of governance. They include:

- 1 providing advice and briefings to the governing body and acting as the reference point for enquiries;
- 2 briefing governors (and college managers) on new developments in governance including the financial memorandum and the audit code of practice;
- 3 determining the annual calendar of meetings and cycle of business, summoning meetings, preparing agendas, report and minutes of meetings;
- 4 advising the governing body on issues relating to its membership;
- 5 maintaining records on attendance and quoracy;
- 6 establishing a proper scheme for delegation of matters to a committee or the principal and keeping under review standing orders and terms of reference of the committees;
- 7 helping governors to develop performance indicators to assess their own effectiveness;
- 8 leading on the development of the governors' self-assessment report and action plan;
- 9 supporting the governing body during the inspection and audits of governance;
- 10 issuing letters of appointment for new governors;
- 11 maintaining the register of members' interests;
- 12 facilitating the identification of governor training needs, including the induction of new members;
- 13 monitoring the public interest disclosure procedure, suggesting amendments and, where required by the governing body, acting as lead assessor in reviewing the proposed disclosure;
- 14 acting as administrative support for the appointment, suspension or dismissal of senior post-holders and setting up a selection panel or special committee as appropriate; and

- 15 holding all records of the governing body, and ensuring that the governance section of the college's website is kept up to date. The governance section should include constitutional documents, and minutes and other papers from meetings of the governing body and its committees as decided by the governing body. In particular the following need to be included: arrangements for obtaining the views of staff and learners on matters as required by the Instrument and Articles, and other documents that demonstrate the governing body's accountability to its stakeholders.

The role of the clerk generally covers the activities of the governing body, its committees and any ad hoc group established on a short-term basis to progress specific issues.

The line management arrangements for the posts of principal and clerk are usually similar: typically the principal and the clerk report to the governing body through the chair.

The role of clerk to a further education governing body can be a lonely one. Most clerks benefit from keeping in touch with other clerks by attending network meetings and conferences, as well as keeping in daily contact with a clerks' network, using email to share good practice and discuss issues.

## Section 2

# Appointments of chair and vice chair, principal and clerk

### Chair and vice chair

It is good practice to set out appointment procedures for the chair and vice chair in the Instrument and Articles, and / or the standing orders. Appointments are made by the governing body, and if there is more than one candidate it may be appropriate to hold a secret ballot. The appointment should be for a fixed term, the length of which is determined by the governing body. Practice varies on the length of the term of office, but a maximum of four years is a useful guide. Succession planning should be carried out methodically, such that there should be no period of vacancy when a standard term of office comes to an end. Some chairs may be re-appointed as governing bodies wish to rely on their experience and track record. Other colleges feel it is best to change chairs on a regular basis in order to ensure a continuously fresh approach to the leadership of the governing body. When there is a new principal it is sometimes felt that keeping the same chair will provide continuity. On the other hand another governor may have a more useful set of skills for undertaking the post of chair when there is a period of change for the college, and to provide a better 'fit' for a relationship with the new principal.

It is good practice to appoint the chair or vice chair from within the governing body, and for their role as chair or vice chair to cease automatically when their term of office as governor comes to an end. Sometimes, succession planning may lead to an individual being appointed as a governor specifically for his or her chairing skills.

Under the 2008 Instrument, the principal and the staff and student members were ineligible for formal appointment, or to act in the absence of, the chair or the vice chair. They could take part in nominating and voting. These provisions remain good practice.

There should be procedures in place for removing the chair or vice chair if they are judged to be unable or unfit to carry out the functions of office.

### The principal

The Instrument and Articles must include provision for a chief executive and for that post holder's duties. It is good practice for the governing body to be directly responsible for the appointment of the principal and / or chief executive, and this responsibility and associated procedures should be included in the Instrument and Articles or other constitutional documents. The procedures are likely to include the appointment of a panel of governors to oversee the selection process, and, for most circumstances, the advertisement of the post nationally. Because of its significance there are unlikely to be circumstances in which it would be appropriate to delegate the actual appointment of the principal.

It is also good practice for the governing body to be responsible for disciplining and dismissing the principal. See also Module 10: Finance and resources .

## The clerk

The Instrument and Articles must include provision for a clerk and for that post holder's duties. The clerk's line of accountability, as its officer, is to the governing body and should be through the chair. The governing body, not the principal, should be responsible for the appointment, dismissal and terms of employment of the clerk. It is usual for the governing body to appoint a selection panel from amongst its members. See also Module 10 Finance and resources.

If your governing body has not developed a framework of its own for appointing the clerk this section provides some ideas to enable the governing body to put one in place for the next time a clerk is appointed. The whole framework should cover recruitment options, the job description, person specification, hours required and other contractual terms, support available, interviewing, and, finally, induction and appraisal during the probationary period.

## Who can be considered for the post?

The clerk should not be a member of the governing body. It may also be inappropriate to consider for the post someone who has recently served on the governing body. Arrangements vary but governing bodies generally have four options:

1. a senior college manager who undertakes the role of clerk on a separate basis from their college duties;
2. a full-time college employee (not a senior manager) who undertakes the role of clerk on a separate basis from their college duties;
3. a full-time or part-time clerk with no other college duties and employed by the college; or
4. an external appointment (such as a local solicitor, a local authority school governing body service or a person contracted to perform clerking services).

The clerk is the governing body's professional advisor and is expected to have a good understanding of, and be able to apply, governance regulations and practice. The appropriate choice for your governing body will be influenced by past and present experience of what works well and your priorities. The governing body may, for example, prefer someone who has a detailed understanding of the FE and skills sector, or someone who is located in the college, providing quick access to information and advice, or someone who is able to help governors identify best practice and strive for excellence.

As mentioned previously another essential consideration is the independence of the clerk. We return to this in Section 6 of this module.

## Job description

The job description should set out clearly and thoroughly the responsibilities of the clerk. An example is given in the next activity.

## Activity

### Deciding the job description

Get hold of your clerk's job description. Compare the content of the job description with the example below.

Work through the responsibilities in the sample and then:

- Put a tick against items similar to those on your list.
- Put a ? beside the points that don't appear on your list but which you think should appear.
- Put a \* against points that you are unclear about.

## Sample job description

### Provision of advice

1. To provide advice to the governing body on

- the operation of its powers
- procedural matters
- the conduct of its business
- matters of governance practice.

In line with

- relevant Acts of Parliament
- the Instrument and Articles of Government
- the financial memorandum
- the audit code of practice
- the standing orders of the governing body
- the terms of reference and standing orders of the committees of the governing body
- the financial regulations and financial procedures of the college (this may be in liaison with the head of finance)
- sector codes of governance
- relevant best practice guides.

2. To provide briefings for the members of the governing body and, in particular, the chair of the governing body and the chairs of the committees.

3. To attend all meetings of the governing body and its committees / working parties.

4. To act as a reference point for all enquiries relating to the governing body.

### Meetings of the governing body, its committees and working parties

1. To determine the dates of meetings and to establish a cycle of business.

2. To summon meetings having regard to the provisions of the Instrument of Government and the approved standing orders.

### Agendas and reports

1. To prepare agendas for meetings and to arrange the distribution of documents to members and other interested parties.

2. To prepare reports on governance and other issues falling within the terms of reference of the clerk.

## **Minutes**

1. To prepare minutes of meetings, to consult the chair (and others) on the accuracy of the draft and to circulate in line with an agreed timetable.
2. To ensure publication of the minutes and other relevant documents on the college's website.

## **Membership of the governing body**

1. To advise the governing body of expected and actual vacancies.
2. To liaise with individuals and bodies on the membership in line with the wishes of a Search Committee and the governing body.
3. To prepare and issue letters of appointment on behalf of the governing body.
4. To monitor the attendance of members having regard to the Instrument of Government and standing orders and to advise the governing body accordingly.

## **Instrument and Articles and standing orders**

1. To draft and keep under review the Instrument and Articles and to suggest to the governing body possible improvement and amendments to meet changed circumstances.
2. To draft and keep under review the standing orders and to suggest to the governing body possible improvement and amendments to meet changed circumstances.

## **Terms of reference of committees**

1. To keep under continuous review the terms of reference of the committees, working parties, etc.
2. To suggest to the governing body possible improvements and amendments to meet changed circumstances.

## **Code of conduct of the governing body**

1. To arrange for regular review of the code of conduct.

## **Register of members' interests**

1. To maintain the register of members' interests and to make this available for review by interested parties.

## **Correspondence, statements, etc**

1. To conduct correspondence on behalf of the governing body.
2. To act as the reference point for all enquiries relating to the work of the governing body, including those requesting information under the Freedom of Information Act.
3. To make statements on behalf of the governing body on issues relating to the governance of the college in accordance with the arrangements specified in the code of conduct and the standing orders.

## **Governing body seal**

1. To be responsible for the proper use of the governing body seal (note that not all colleges have a seal).

## **Public interest disclosure procedure**

1. To monitor the provisions of the public interest disclosure procedure and to suggest to the governing body possible improvements / amendments to meet changed circumstance.
2. To carry out the role of lead assessor for the purposes of the public interest disclosure procedure.

## **Miscellaneous**



1. To identify training needs and participate in the provision of training for members including arranging for members to attend external briefings and training courses.
2. To arrange the induction programme for new members of the governing body.
3. To support the governing body in the annual review of its performance.
4. To make arrangements (through the head of finance) for governors and officers to have appropriate professional indemnity insurance cover.
5. To liaise with internal and external auditors in the performance of their work and reporting to the governing body.
6. To oversee the administration of the scheme of expenses available for governors.
7. To ensure that the governors' intranet, and the governors' area on the college's website are kept up to date.

Some clerks have responsibilities for other governance related functions within their role as clerk but these should not compromise their independence. The functions might be legal issues, risk management, health and safety, communications, insurance, and so on. Clerks who are full-time or have a larger than usual number of hours allocated to the role might be expected to have responsibilities for these functions.

## Viewpoint

This activity should give you a clearer idea of the general range of responsibilities of the clerk, the actual duties of your own clerk, and responsibilities that might be added to a future job description. If there are aspects of either job description that you do not understand, you need to ask your clerk, or if you are the clerk, ask the chair. Consider how to raise any issues so that the governing body can decide if it wishes to amend the job description. A discussion with the chair could be a good starting point.

There are other factors that the governing body and those applying for the post need to be clear about:

**Hours required** – the workload of the clerk varies throughout the year. It is a series of peaks and troughs, so the number of hours worked has to be flexible.

**Administrative support** – applicants need to know what secretarial, clerical or administrative support is available to them. There is no point appointing a highly trained professional who then spends much of their time typing and photocopying.

**Line management arrangements** – the governing body cannot delegate the appointment, dismissal or accountability of the clerk.

**Notice period** – given the time that it may take to appoint a new clerk, thought needs to be given to the notice period. This might be two to three months depending on local needs.

**Probationary period** – lengths of probationary periods and the arrangements for reviewing the performance of the newly-appointed clerk vary from college to college. Governing bodies need to agree both the length of the probationary period and the arrangements for review prior to advertising a vacant post.

## Person specification

The person specification will help you to prepare the advertisement and the documentation to be sent to potential candidates. It will then help you choose candidates to interview and, eventually the best person to appoint.

The person specification must be realistic. The governing body must be able to justify the characteristics it specifies for the clerk (for example to an employment tribunal), especially those that it deems 'essential' as opposed to 'desirable'. The specification should take into account the college's equal opportunity policy which will be compliant with the Equality Act. See Module 2.

Increasingly, governing bodies are choosing to appoint professionals who have a relevant qualification for the role, or who are prepared to study for one once appointed.

### **Making the appointment**

The governing body should establish the appointment panel, bearing in mind equal opportunities issues such as gender balance. The chair, vice chair and principal may be an appropriate panel. Some governing bodies also appoint an adviser. A clerk from another college, for example, could help the panel to assess a candidate's knowledge of governance. The selection process can include some form of role play or in-tray exercise on governance issues as well as a formal interview.

Once appointed, the new clerk needs an induction programme. This could be similar to arrangements for a new college manager, complemented by elements such as informal meetings with committee chairs so that chair and clerk can discuss how they will work in partnership in formal meetings. Depending on their background it may be helpful for the new clerk to be mentored by another clerk or to attend an external induction for clerks.

Finally the governing body should agree arrangements for monitoring the clerk's performance during the probationary period, in order to identify any areas where support is required – for example it may emerge that a particular training course is useful in the early stages of the job. See Module 2 for more information about this.

## Section 3

### Meetings

#### Agendas

The clerk produces an annual cycle of business for approval by governors during the summer term. This identifies all the standard items that will be covered by the meetings scheduled during the year. Before each meeting the clerk produces the first draft of the agenda. The items will be drawn from the annual cycle of business, minutes of the last meeting and a schedule of outstanding matters maintained by the clerk.

**The draft agenda is likely to include:**

- when and where the meeting is to be held (especially if the governing body does not always meet on the same site);
- the issues to be addressed (a provisional list);
- action to be taken on each item (decision, discussion or noting);
- notice of which items (if any) are confidential; and
- an invitation to members to declare if they have an interest in an item.

See also Section 1 above.

Standing orders may be used to set out a timetable for issuing agendas and supporting reports. It is good practice for the agenda for a governing body meeting to be issued at least seven calendar days before a meeting. Some governing bodies arrange for reports to be circulated further in advance to enable members to prepare for meetings. This should not preclude the subsequent circulation of papers if this is in the interests of the governing body.

## Activity

How helpful are your governing body's agendas?

Work through the questions below. Can you identify possible ways in which the preparation of your governing body's agendas could be improved?

| Question  | Answer | Notes |
|---|--------|-------|
| Is the agenda clear on where and when the meeting is to be held?  |        |       |
| If you need to submit apologies for absence, is the contact number for the clerk clearly stated on the agenda papers? |        |       |
| Are the agenda items listed in logical order?   |        |       |
| Is it clear what action needs to be taken on each item?   |        |       |
| Is there a mechanism or list for reminding governors of outstanding matters from previous meetings?                   |        |       |
| Is a set time allocated to each item so that the big issues can be given the time they need?                          |        |       |
| If a report is to be presented, does the agenda indicate who is to present it?  |        |       |
| Is there an opportunity to raise other items of business?   |        |       |
| Are related items grouped together in a logical way?  |        |       |

## Viewpoint

Getting these sorts of details right at the agenda stage makes a difference to the smooth running of meetings. This activity may provide you with useful suggestions to discuss with your own clerk.

Grouping related items helps to deal with business efficiently. Some governing bodies group agenda items according to themes (e.g. governance, curriculum and standards, finance, audit, personnel and remuneration, development and training of governors and clerk, national and regional initiatives). Another approach is to divide the agenda into items for decision, items for information and noting, and confidential items.

See Section 5 below for issues about transparency and confidentiality, and Section 6 below for how to deal with conflicts of interests.

## Reports

It is good practice for governing bodies to meet at least once in every term. The subject matter of the reports that governors receive at each meeting depends upon where the meeting sits within the annual cycle of business. During the year governors will be asked to approve strategies and plans, to monitor these subsequently, and then to sign off reports on aspects of performance. The nature and content of reports will vary from college to college depending upon context, and also upon the way in which governors decide they can best fulfil their responsibilities. Those following the Carver policy governance model<sup>1</sup> for instance, may receive reports which are more focused: the content derived from the policies, and in accordance with what the 'Board' has determined. The Policy Governance model is an operating system for boards, developed by John Carver in the 1970s, based on a theory of owner accountability which drives certain understanding about the role of the 'Board' and the reasons why and for whom it operates.

The format of some of the reports will be specified by law or regulation. Others should be formatted in the best way possible to help governors discharge their responsibilities. Reports should be written in such a way that the content can be understood by governors who are not experts (although they may receive some training in order to fulfil their role). They should not be too long, and it is good practice to have executive summaries. Exception reporting or illustrations are a useful way of keeping down the length of reports. The report should identify the author and make clear what governors are expected to do with it. Reports that are confidential should be clearly labelled.

## Policies

In addition to the reports outlined above, governors are responsible for approving some college policies. They will approve policies that they have responsibility for in law, such as some policies for health and safety, equality and diversity, safeguarding, and employment. They will also approve policies that are considered central to the ethos and character of the college. Again, those following the Carver policy governance model will identify fewer policies for which the governing body is responsible. 'When is a policy not a policy?' is a question that often exercises colleges and there is no definitive answer, not least because of the variety of content of policies. A general rule is that 'policies' should not be detailed procedures. In addition there should be a cycle for reviewing the policies that are approved by governors.

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<sup>1</sup> Carver Policy Governance model: see the Further reading section below for titles of selected books.

## Activity

Look at an agenda for your governing body.

1. Can you identify and divide all the reports into the following four categories?
  - a. strategies/plans or policies for approval;
  - b. progress reports for monitoring (including those directly from the principal and committees);
  - c. performance reports for signing off; and
  - d. reports that are necessary to inform future strategies or plans.
2. If there are any policies for approval do you think that the governing body should be signing them off or do you think it would be more appropriate for them to be approved lower down the organisation?

## Viewpoint

Someone else might answer these questions differently to you. A discussion of these questions with the clerk or another governor should increase your understanding of the issues even if you still agree to disagree.

## Preparation and distribution of papers

There should be rules about the publication of papers in advance of meetings, and under the Foundation Code it is the chair who should ensure (through the clerk) that the governing body receives appropriate, timely and high quality information.

An effective clerk plays a key role at all stages in preparing and distributing reports to support agenda items:

- preparing an annual cycle of governing body business for the information of both governors and college managers which also sets a timetable to ensure that reports are ready in time to circulate an agreed number of days in advance of the meeting, allowing governors sufficient time to read and digest the information provided;
- clarifying who is to author the report (the principal can delegate responsibility for college management papers);
- providing advice to authors (e.g. on house style, wording of recommendations);
- agreeing with the principal the protocol for approving college reports before they are circulated; and
- arranging for the copying, collating and circulating of documents.

Tabling papers or reports at meetings should be avoided as it means that governors do not have adequate time to consider them, although there are inevitably some occasions when it is appropriate for a governing body to receive a late paper, especially if it avoids the need for another meeting.

Where the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the clerk are to be considered, the chair, and not the clerk, should send members of the governing body a copy of the agenda item together with any relevant papers, an agreed number of days in advance of the meeting.

## Attendance at meetings

The 2008 Instrument of Government included detailed procedures about attendance and quoracy. The quorum for governing body meetings was 40 per cent. This was 40 per cent of the determined number of places on the governing body, including vacancies. The objective was to ensure that decisions were taken by the governing body as a whole, and not just a few active governors. If fewer than 40 per cent were present then the meeting could not be held, and if the number fell below 40 per cent during the meeting then the meeting had to be terminated at once. In either case the chair had to call a special meeting as soon as it was convenient. A governor was 'in attendance' if linked to the meeting by video, but not if the governor was connected by telephone only.

These procedures have been outlined above because they are still considered to be good practice and could be included in the Instrument and Articles or standing orders. However governing bodies may wish to introduce further procedures alongside these in order to introduce some flexibility.

There could be variations in the percentages for quoracy, depending on the nature of the business to be transacted. Governors in attendance could include those linked by telephone. Written resolutions could also be introduced for certain types of business so that governors do not have to be in attendance. For the avoidance of doubt, it could be made clear that governors present could continue an informal meeting after a meeting becomes inquorate, and record proceedings so these can be ratified at a future quorate meeting. See also Module 3: The main statutory framework.

## Behaviour at meetings

This is covered by Module 4: Working relationships. It is worth pointing out however that the chair should ensure that all members are able to express opinions, that the meeting keeps to the point and that time is well-managed. Where possible a consensus should be reached on each issue.

Detailed proceedings of meetings should be covered in the Instrument and Articles or the standing orders. These include how decisions are made, and provisions for withdrawal of the principal, staff and student governors, and the clerk, when certain matters relating to the principal, the clerk, and individual staff and students are discussed.

See also Section 6 below about conflicts of interest.

Officers presenting papers should be able to assume that they have been read in advance by those present at the meeting, and therefore limit their presentation to the key points. This allows more time for questions by governors and discussion of the issues.

## Minutes

Minutes constitute a formal record of proceedings and should contain enough information to stand alone as a summary of business without the need to refer to other documents. They are a means of informing all stakeholders about issues addressed by the governing body and may be called upon as a formal record in a court or tribunal.

## Activity

Compare the following checklist of good practice with the minutes produced at your college. Use the checklist to review possibilities for improvement.

## Checklist

The minutes include:

- date of meeting, when it began and when it ended;
- who was there (the list should distinguish between governors, the clerk and others in attendance);
- who arrived late or early;
- apologies for absence;
- declarations of interest;
- discussions are summarised into the main factors considered and the decisions reached (the amount of discussion summarised is likely to vary from one governing body to another);
- discussion on very important or controversial issues are recorded in more detail;
- dissent from a majority decision is recorded where appropriate;
- decisions are clearly noted at the end of each item to aid future reference;
- the minutes make it clear who is to take the action agreed and by when; and
- the minutes are usually confirmed as a correct record at the next meeting without the need for amendments.

The clerk prepares draft minutes which are then forwarded to the chair to clear for publication. They may also be circulated to other people such as the principal or senior college managers. Any of these may suggest improvements to clarify meaning but no-one can suggest changes which alter the meaning of the minutes unless the chair and clerk agree that the draft is incorrect.

If the clerk is unhappy with a suggested change, this is discussed with the chair. If this does not resolve the issue, it must be raised at the meeting when the minutes are presented for approval. For example, if the clerk advises the meeting that a particular approach is contrary to the Instrument of Government or standing orders, the minutes should say so. If there is a request to delete this from the draft, the clerk has a duty to make this known to the governing body when the minutes are considered.

The chair clears the draft minutes which are then in the public domain and may be circulated, preferably labelled as 'approved draft' or 'unconfirmed' minutes. It is good practice for the minutes to be circulated on the college's website, either at the draft stage or after they have been confirmed and signed at the following meeting. See Section 5 below.

The minutes may be circulated straight away or held until the dispatch of the agenda for the next meeting. Practice should be consistent and depends on resources available. With increasing use of ICT it should be possible to circulate a copy of the minutes to those who attended while they can still recall what happened at the meeting.

It is good practice that at every meeting of the governing body the minutes of the last meeting shall be taken as an agenda item, except where the meeting is a special meeting, in which case they shall be taken as an agenda item at the next meeting of the governing body. The governing body is asked to confirm their accuracy. Amendments may be accepted and the minutes are then signed and dated by the chair. Anyone who has received the draft minutes should be informed of the amendments. Separate appendices to the minutes and separate confidential minutes are also signed and dated.

Although minutes can be amended, decisions taken at previous meetings cannot be changed without the decision being an agenda item at a subsequent meeting.



## Section 4

### Committees and working groups

Committees and working groups help to progress the work of the governing body. Figure 1 lists the range of committees and other groups in place across the sector. Apart from the legal requirement of an Audit Committee, it is up to the individual governing bodies to decide what arrangements are most appropriate to meet local needs.

**Figure 1: Examples of governing body committees**

| Must have | Most likely to have   | May have   |
|-----------|---|--|
| Audit     | Search<br>Special<br>Staff disciplinary (appeals)<br>Standards (quality)<br>Remuneration (includes appraisal of principal and clerk)<br>Resources or Finance and General Purposes Committee | Estates<br>Governance (sometimes overlaps with search)<br>Curriculum (sometimes overlaps with standards)<br>Equal opportunities<br>Student affairs<br>Planning or strategic planning |

Some governing bodies have considered or moved to the corporate policy governance model proposed by John Carver (see Module 6: Strategy and educational character). This is a model favoured by some but not all colleges. One key element of this model is to streamline by adopting the statutory minimum number of committees. Those who use the corporate policy governance model claim that it is particularly effective for governing bodies working with failing colleges, and, at the other end of the spectrum, for governing bodies already deemed excellent who want to continue to improve. Analyses by Ofsted and others of colleges with high-performing governing bodies have shown that their performance is not linked directly to their committee structure. Excellent governing bodies have a range of different committee structures.

In addition to committees, governing bodies may set up time-limited working groups to work on particular issues such as the production of a strategic plan or a merger.

The remit and membership of the Audit Committee is subject to the Sector Audit Code of Practice. The terms of reference of committees and working groups must be agreed by the governing body, and committees and working groups need to be supported by the clerk who must make sure that their role is complementary to that of the governing body and does not duplicate it.

Governor members of committees and working groups are appointed by the governing body. Sometimes it is useful to co-opt an external member (i.e. someone who is not a member of the

governing body) to a committee in order to provide additional expertise or an independent viewpoint. Co-opted members can be appointed either by the governing body or by the committee itself depending on the arrangements put in place by individual governing bodies through their standing orders and committee terms of reference. Likewise each governing body decides if committee chairs should be appointed by the governing body or by the committee itself.

## Activity

Identify ways in which the clerk can support the work of committees and working groups.

## Viewpoint

The checklist below outlines some of the ways in which the clerk can support the work of committees and working groups.

The clerk's role is to:

- plan and publicise the annual cycle of business in advance of the year;
- prepare a timetable of meetings to accommodate the commitments of governors serving on more than one committee;
- ensure committees and other groups keep to terms of reference approved by the governing body so that:
  - decisions are taken where allowed and not unnecessarily referred to the governing body; and
  - recommendations are forwarded to the governing body when necessary;
- ensure that committees and other groups do not exceed the responsibilities delegated to them by the governing body and co-ordinate work with other committees where required (for example, the personnel committee may propose a new policy with financial implications that need to be reviewed by the finance committee before a decision can be made);
- work closely with the principal and other senior managers on the forward planning and co-ordinating of committee work; and
- prepare minutes of committees and working group meetings promptly for presentation to the next meeting of the governing body, to ensure good communication and co-ordination of issues.

## Deputy and temporary clerks

In order to ensure continuous support for its needs the governing body should consider what would happen if the clerk was taken ill or was otherwise not available. Some governing bodies decide to appoint a member of staff as a designated deputy clerk. Others may require that the contract for appointment of an external clerk makes provision for a substitute if the clerk is unavailable.

Using a deputy or temporary clerk to support committees is a valuable way of enhancing their development, and may also provide necessary independent support for the committee where the appointed clerk is also a senior manager with an officer role for that committee.

## Section 5

### Openness, communications, publications, the college website and intranet

A college can be said to be a public resource and a community asset. One of the functions of the governing body is to ensure that the college acts in the best interests of the community and other stakeholders in the college. It is important that this can be seen to be happening and that the work of the governing body is transparent. This is juxtaposed against the occasional need for some business to remain confidential in order to protect named individuals and the business needs of the organisation. The approach to be used is that a document should be available for public scrutiny unless there is a justifiable reason for it not to be. The principles and practices in this section are also emphasised in the Foundation Code. The Instrument needs to include the requirement for the governing body to publish arrangements for obtaining the views of staff and learners on the compulsory matters for which the governing body is responsible.

It is good practice for all papers from a governing body meeting to be available as soon as possible, during office hours at the organisation, to any person wishing to inspect them. See paragraphs below on confidentiality for exceptions to this general rule.

Recent advances in technology have enabled governance to be much more transparent, using the intranet to communicate with governors, staff and students; and the college's website to communicate with external stakeholders. The clerk should work with the college's web manager and ICT team to ensure they are used to best effect. The use of the intranet as an electronic alternative to providing paper reports for governors in the ordinary course of their business is sometimes known as 'e-governance'. e-governance is becoming more commonplace. It saves time, improves communications, and ensures that an up-to-date set of documents is available in one place.

It is generally good practice for committee and working party documents to be published in the same way as governing body documents. In addition a list of members and reference documents such as the Instrument and Articles, standing orders, committee terms of reference and the governors' code of conduct should also be on the college's website. These will help people outside the college to understand how the governance of the college works.

#### Activity

Access the governance section of your college's website and see what documents are available for the public to view. If you were not a governor and wanted to find out how the college was governed, would these documents be sufficient to give you an understanding of it?

#### Viewpoint

Openness and accountability to stakeholders are general principles of public life (see also the Nolan Principles and Good Governance Standard for Public Services in the **First Report on Standards in Public Life**). You will often find additional documents in the governance section of the college's website, such as the annual accounts and strategic plans; these give stakeholders a better idea about past performance and future plans.

## Confidentiality

It is good practice for all papers received by the governing body to be made available for public inspection unless an item concerns:

- a named person employed at or proposed for employment at the institution;
- a named student at, or candidate for admission to the institution;
- the clerk to the governing body; or
- any matter which, by reason of its nature, the governing body is satisfied should be dealt with on a confidential basis.

The latter may include:

- information provided in confidence by a third party who has not authorised its disclosure;
- financial or other information relating to procurement decisions, including information relating to the college's negotiating position, during the course of those negotiations;
- information relating to the financial position of the college where the governing body is satisfied in good faith that the disclosure might harm the college or its competitive position;
- legal advice received from, or instructions given by, the college's legal advisers;
- information planned for publication in advance of that publication; or
- matters not otherwise covered above but considered to be commercially sensitive.

The rules for deciding on whether an item is confidential or not should be set out clearly in the standing orders, and should result in a consistent approach to decision making. The decision to label a paper as confidential is made during the preparation of the agenda by the principal on the advice of the clerk. This is in accordance with the principal's role as set out in the Freedom of Information Act 201. See also Module 3: The main statutory framework which also covers the Data Protection Act.

An example of an item that might be deemed confidential could be a plan to sell surplus land, where the anticipated value and arrangements for disposal could be commercially sensitive. On the other hand an item relating to a member of staff or student might not be sensitive and therefore should not automatically be regarded as confidential – it is also necessary to exercise common sense. The standing orders should be phrased in such a way that some discretion can be exercised to facilitate the publication of papers where possible, in accordance with the principle of openness.

On an annual basis it is good practice for the governing body to review all material that has been deemed confidential, and to release material for inspection in the public domain when the reason for confidentiality no longer applies, or when it considers that the public interest in disclosure outweighs that reason. As a general rule a recommendation for an item to remain confidential may be taken when the information concerns a named person (living or dead), or someone who could be identified from the information contained in the document. Procedures for review of information should be included in the standing orders.

## Activity

Look at your college's two most recent governing body confidential papers (if there are any). Read also any standing orders on confidentiality. Can you see the justification for keeping papers confidential?

## Viewpoint

Remember that the general principle is that all governing body papers should be open to public scrutiny unless there are good reasons for them to remain confidential.

See also Module 3: The main statutory framework, which covers The Data Protection Act and the Freedom of Information Act.

## Section 6

# Independence, whistleblowing and resolving difficulties

### Conflicts of interest

Governors need to demonstrate that their decisions are taken objectively, fairly, and in the best interests of the college. Their actions must be such that a reasonable person has no cause to doubt that they are acting openly and honestly.

All colleges should have procedures to ensure that governors' interests are transparent in meetings, and that conflicts of interest do not influence decisions. There should be rules on when governors need to disclose interests, when they need to withdraw, and when they cannot vote. Distinctions may be made between financial and other interests, and there may be specific provisions for staff and student governors and the clerk.

The clerk should maintain a register of interests disclosed by members, and should monitor the procedure for keeping this up to date. The register should be available during office hours for anyone wishing to inspect it.

It is helpful if it is explicit in the procedures that every governor should act in the best interests of the governing body and should not be bound to speak or vote by mandates given by any other body or person. Staff and student governors in particular have to pay attention to this.

If in doubt, it is good practice to disclose an interest on the register, and also to declare it at meetings.

See also Module 3: The main statutory framework.

### Resolving difficulties

Governance ensures that there are checks and balances in the running of the college. The interdependent roles of the governing body, principal and clerk are covered in Section 1 above. The roles complement each other, but sometimes there can be disagreements.

The clerk is responsible for advising the governing body on proper procedures and, if necessary, intervening when it appears that the governing body is acting inappropriately or beyond its powers.

The clerk has a responsibility to act as a whistleblower if it appears that there are irregularities in the way the governing body carries out its powers and duties, or in the way that it follows rules and procedures. The clerk's whistleblowing role may link to that of the Audit Committee, which has a responsibility to report suspicions of fraud or irregularity to the full governing body – see Module 11: The Audit Committee.

### Activity

#### Options for resolving difficulties

The advice of the clerk is generally respected and accepted, but what if an occasion arose when the advice of the clerk was overruled and the clerk or some governors were concerned that the proper conduct of the governing body could be put at risk? What would you do if this situation arose in your governing body?

## Viewpoint

Ideally every governing body should put in place a system for resolving these sorts of difficulties. This should include guidance on what a concerned governor should do in this situation.

## Suggested framework for resolving difficulties

**Stage 1** Acknowledge the need for a protocol to resolve the difficulties between the clerk and the governing body or chair, if these arise.

**Stage 2** Agree the formal steps that the clerk should take if the difficulty cannot be resolved informally. For example the clerk could:

- put in writing reasons for concern and send these to the chair and the principal;
- inform the chair of the Audit Committee if the issue comes under the terms of reference of the committee;
- report the concern to the relevant committee or the governing body and ask that this be recorded in the publicly available minutes; or
- consult the auditors.

The clerk may need to obtain legal advice if the disagreement is about the legality of an action. The governing body may need to provide a budget allocation for this.

**Stage 3** Agree steps to pursue the matter externally, but only as a last resort. For example the governing body could agree that the clerk has authorisation to make a formal approach to the funding body in cases where the disagreement is over the legality of an action or the governing body exceeding its powers. The clerk should inform the chair if this step is taken.

The financial memorandum between colleges and their funding bodies sets out the conditions for funding for colleges. Part A applies to all colleges. Part B is college specific. Part A states that it may be necessary for the clerk to intervene if the clerk considers that the governing body is acting inappropriately or beyond its powers, in which case the clerk may need to seek external advice. College governing bodies are advised to agree procedures they would expect the clerk and governing body to follow if there are difficulties in this area. The funding body would not consider that an action carried out within such procedures would provide grounds for disciplinary action or suspension of the clerk.

Similarly the principal, responsible for compliance with the financial memorandum, should write to the funding body if he or she, having exhausted internal procedures, still feels that the governing body's actions are incompatible with the financial memorandum, or that the governing body has failed to act in accordance with the terms and conditions of the financial memorandum.

A governing body which acts within the Instrument and Articles of Government and follows good governance practice is unlikely to come into conflict with its clerk or its principal, but it is good practice to have a procedure for this in place, just in case.

## Whistleblowing

Your college will have a public interest disclosure, or whistleblowing, policy and procedure approved by the governing body in accordance with the **Public Interest Disclosure Act 1998**. This is to deal with a situation when a member of staff or other person wishes to disclose that there is a person or persons within the organisation who are not acting in the public interest. The most common allegation is fraud.

The policy and procedure enables the whistleblower to maintain anonymity and commits them to following internal procedures before approaching anyone outside the organisation about the issue. The clerk, because of the independence of his or her position, will often be an assessor or lead assessor for a disclosure under this procedure. The governing body is independent of the management of the college, and the Audit Committee or a named governor will most likely be the last point of appeal within the college in the procedure. This is to enable the issue to be seen to be reviewed objectively by the whistleblower and to try to resolve it internally. Resolving the issue internally will help to preserve the anonymity of the whistleblower and will safeguard the reputation of the college as a whole, but the college is obliged to involve the police if there is suspected criminal activity.

Module 2: Values and ethical framework has more about setting policy for whistleblowing.

### **Complaints against the governing body**

Another area for potential conflict, this time between the governing body and the principal, could be the financial memorandum. The financial memorandum between colleges and their funding bodies sets out the conditions for funding for colleges. Under the financial memorandum the governing body is required to appoint an 'accounting officer', who is usually the principal. The accounting officer is responsible for the college's compliance with the financial memorandum and all other terms and conditions of funding. The accounting officer needs to advise the governing body in writing if any matter under consideration is incompatible with the financial memorandum. The accounting officer should write and inform the chief executive of the funding body, if he or she, having exhausted internal procedures, still feels that the governing body's actions are incompatible with the financial memorandum or that the governing body has failed to act in accordance with the terms and conditions of the financial memorandum.

A governing body which acts within the Instrument and Articles of Government and follows good governance practice is unlikely to come into conflict with its clerk or its principal – but it is good practice to have a procedure in place to deal with the situation, just in case.



## Section 7

# Governance self-assessment, inspection and development

### Governance, self-assessment and inspection

The governance of a college may have been judged to be ‘excellent’ in the past, but standards can slip. It is also true that definitions of excellence change over time and certainly the context in which the college operates changes.

Governors lead a learning organisation, and are used to setting an example to everyone else in the college by taking the annual process of self-assessment seriously, and then committing to a self-assessment improvement plan to ensure continuous self-improvement. A summary of the outcome of their self-assessment exercise will eventually be incorporated into the college’s self-assessment reports, the format of which is dictated by Ofsted and other agencies. Ofsted currently looks at governance as part of the category ‘Leadership and Management’. See also Module 9: Quality and standards.

In all self-assessment exercises, statements about strengths and weaknesses should be supported by measurable criteria. The following are three examples of self-assessment descriptors and the evidence that backs them up.

**‘Governors have a good record of setting and meeting targets’ Evidence:**

Strategic plans, quality plans and budgets (specific plans with dates are referenced) show the targets that have been set. These are stretching but realistic, and subsequent reports and governing body minutes (specific reports and minutes with dates are referenced) show that they have been achieved.

**‘Governors challenge managers well’ Evidence:**

Minutes of meetings (examples are given, and referenced to appropriate minutes).

**‘Governors have allowed the financial position of the college to deteriorate’ Evidence:**

The governing body has oversight of a major building project. Governing body minutes (dates given) show the college has allowed the costs of the building project to overrun. As a consequence the college is short of current funds and is having difficulty paying its bills. It needs to borrow short-term funds at high rates. This has also caused the funding body to reduce the financial health grade awarded to the college.

Ofsted and the funding bodies may expect colleges to complete standard self-assessment reports and guidance is produced showing how colleges should grade themselves. The self-assessment reports are used by Ofsted and the funding bodies to help them decide which colleges should be inspected and audited in a particular period. The accuracy of the assessment descriptors and grades are validated during periodic inspection visits and audits. Individual college inspection reports are published, but funding body audits are not. From time to time, Ofsted also produces reviews of the outcomes of inspection cycles, including the major strengths and weaknesses recorded for governing bodies. Some valuable benchmarking can be gained by comparing the governing body’s performance with published college inspection reports and with the consolidated national picture.

Governors’ self-assessment should include the key criteria imposed by outside bodies as this is how they will be judged externally. However governors may also wish to include their own criteria, relevant to their own context.

How do you measure the quality of governance? Are we measuring the performance of governance or governors? Self-assessment measures how well governors go about fulfilling their responsibilities. This is in terms of the processes they adopt – governance – and how they perform within those processes – governors. More importantly, it also measures the outcome of their actions in terms of the college's success.

An example of an individual college's context might be a recent merger. The governing body will be particularly interested in asking the question, 'Has the merger been well governed?'. This scenario may result in the following self-descriptors and evidence:

**'The new governing body has effectively built itself into a team'**

**Evidence:** All governors have taken part in team-building and development activities (reference to the governors' training plan and record of governor attendance at training).

**Evidence:** All governors contribute to debate and decision-making at governing body meetings (reference to specific minutes that show this).

This descriptor is about the process of governance and how governors perform within it.

**'The timetable for full integration of the merged college is being met'**

**Evidence:** The majority of reports that governors now receive show information from across the whole college in a consistent format, reflecting the fact that the same systems are being used across the college (reference to some specific reports).

This descriptor is about leadership processes, including governance.

**'The exam results for the college have not yet converged at the high standard achieved by the stronger college pre-merger, and are behind target'** **Evidence:** Exam results for the whole college, and shown by campus, compared with expected results for the period as shown in plans (reference to specific plans and reports).

This descriptor is about the 'outcome' of leadership, including governance, for the college.

The clerk supports the self-assessment process, but that does not mean that governors should feel they can devolve responsibility for it to the clerk. Self-assessment is most effective when governors take an active part in it. They will then take ownership of the conclusions and be committed to fulfilling the self-assessment action plan.

Many college governing bodies include an annual self-assessment activity at governing body away days, when it is easier to allocate sufficient time for such an exercise.

## Activity

Obtain a copy of the governing body's most recent self-assessment report. What criteria does the governing body use to assess itself?

Note the descriptors for the following:

- the quality of the process of governance;
- how well governors carry out the process of governance;
- the quality of the college and student success;
- the financial health of the college;
- governors' fulfilment of their responsibilities for equality and diversity;
- governors' fulfilment of their responsibilities for safeguarding; and
- anything else.

Ask the clerk, or the officer responsible for quality and standards in your college, which of the criteria in the report are standard criteria used by outside bodies.

## Viewpoint

Governors' self-assessment reports are likely to include statements about most if not all of the above. Equality and diversity and safeguarding are important statutory responsibilities which often feature in governance self-assessment reports. Note the division of performance criteria between governance and governors on the one hand, and the outcomes of the college, to which governance makes a major contribution.

## Development

Governors' annual self-assessment should lead to an annual governance self-assessment improvement plan. Principles for producing this are given below.

### Principles for producing the self-assessment improvement plan

- The plan will have a time frame of a year or more.
- It will focus on a few key actions to improve governance in line with the governors' current priorities.
- It should be realistic and achievable.
- Improvements should be sustainable and are therefore likely to involve practical improvements to processes.
- Actions are likely to be linked to the governors' annual training and development plan in order to improve the skills of current governors in governing the college, and may also involve the recruitment of governors with new skills.
- Progress against the plan should be reviewed at least annually, when the next self-assessment report is produced.

It should be noted that the Foundation Code requires that the performance of the Chair and any other governors undertaking defined roles within the governing body should be assessed as part of the overall assessment of the governing body's performance.

## Section 8

### Support for the performance of the clerk

This section looks at appraisal and training and development for the clerk.

#### Appraisal

Appraisal is a process which allows individuals and those with whom they work to review their performance, their strengths and weaknesses, and areas for improvement, training and development needs, and targets to aim for in the future. Because of the pace of change in the FE and skills sector and the need continually to improve the governance process, an annual appraisal of the clerk's performance is recommended.

#### Activity

**How does your governing body ensure that the performance of the clerk is appraised?**

Work through the questions below. If you are not sure of the answers, find out from the clerk or chair.

- Has your governing body arranged for the appraisal of the clerk?
- Who carries out the appraisal?
- How often does it take place?
- Is a formal record of the appraisal agreed and kept by the appraiser and the clerk?
- Does the appraisal include the setting of targets for the next year, or longer?
- Is the governing body told when the appraisal takes place and about the outcome?
- Is there a mechanism for a mid-year review of progress?

#### Viewpoint

There is no single model of good practice for governing bodies – different colleges have different needs. However the list below summarises some useful principles.

#### Principles for appraisal of the clerk

The governing body should have responsibility for ensuring the appraisal of the clerk and the principal takes place, and may have a similar responsibility for some of the other senior managers. The principles are similar for both. See also Module 10: Finance and resources for more on the appraisal of senior post-holders including the principal.

The clerk should be appraised at least once a year. The governing body should decide the most appropriate time of the year. An appraisal late in the summer term or early autumn allows the clerk and appraiser to reflect on the previous academic year and to prepare the work programme for the following twelve months.

- Appraisal should be conducted by members of the governing body. These may include the principal, but the appraisal should not be conducted by the principal alone.
- It is good practice to make a formal record of an appraisal interview. This should be signed by

all parties as a correct record and used to help monitor progress.

- Appraisal is an ideal opportunity to discuss the work programme for the clerk for the following twelve months, and, if appropriate, beyond.
- The governing body should be told that appraisal has taken place and informed of the outcome. Governors should decide whether the personal targets agreed with the appraiser are to be made public or kept confidential.

## Training and development

Annual appraisal should identify the general training and development needs of the clerk. A training budget will enable the clerk to address these and seek training on other important issues that arise during the year. The value to the governing body in keeping up to date and developing good practice repays this investment.

## Activity

- What are your clerk's training and development needs?
- Do you know what courses, seminars or briefings the clerk has attended in the last year?
- Do you know if there is a specific budget for the clerk's training and development?
- Do you know if the clerk belongs to a professional association that provides support or training?

## Viewpoint

The governing body is the clerk's employer. As a member of the governing body you should satisfy yourself that the training and development needs of the clerk are being met. A number of organisations provide professional qualifications, courses, seminars and briefings which may benefit your clerk. These will include the Learning and Skills Improvement Service (LSIS) and the Association of Colleges (AoC).

Remember that governance is a dynamic process. The clerk needs to keep up to date with new developments to assist the governing body in responding to changing circumstances.

## Module review

This module has looked at how you carry out your responsibilities as a governor in practical terms. The effective practice of governance will go a long way towards ensuring that the college achieves the best outcomes for all its stakeholders. If you have worked through the whole module you should be confident that you can:

- outline the complementary roles of the chair, the principal and the clerk;
- explain how to appoint key players to their governance positions according to statutory requirements and best practice;
- describe how to ensure the smooth running of meetings, what business should be transacted and how it should be presented;
- be aware of how committees and working groups are structured to complement the work of the governing body;
- understand the statutory basis for openness in communications and recognise good practice;
- appreciate a range of issues and practice around independence and resolving difficulties;
- appreciate the need for high-quality governance, how to assess it and the need to develop it, and the requirements of inspectors and auditors; and
- know how the performance of the clerk should be reviewed and supported on an annual basis to ensure effective and efficient governance.

If you are not sure that you have achieved a particular goal, look back at the contents list in the introduction to the module. You may find it useful to reread the relevant section.

### Summary of key learning points

In this module you have looked at an overview of the effective process of governance. The key players in this are the chair, the principal and the clerk. However, all governors have a responsibility, and a contribution to make, in ensuring that governance is effective in achieving its purpose. The process of governance is not an end in itself, but if it is effective it contributes towards the success of the college, and if it is not effective it will eventually have an adverse impact on outcomes.

The way in which the governing body goes about its business is prescribed in the Instrument and Articles which govern all colleges. Processes are further developed, for example, in the governing body's own standing orders, committee terms of reference, and appointments procedures. Processes also take account of general law, for instance the Freedom of information Act, equality and diversity legislation and employment law. Processes are also based on good governance principles and guidance, such as the Nolan Principles.

Appointment processes for the chair, the principal and the clerk are very important. They are developed by each college in order to ensure that the right individuals are appointed in order to carry out roles which have been carefully reviewed and defined by the governing body.

Governors carry out their formal business in meetings. Agenda preparation, document writing, conduct at meetings, and minute writing to record meetings all support the execution of formal business. As such these processes should be compliant and also enable the smooth execution of business.

All governing bodies have Audit Committees. To varying degrees governing bodies delegate some of their business to other committees and ad hoc groups. The clerk plays a central role in co-ordinating the business of the governing body with its sub-committees and ad hoc groups.

Governance is a dynamic process in a changing context. Governing bodies carry out regular self-assessment exercises. They then approve and carry out self-assessment improvement plans to ensure that governance improves continuously. Self-assessment considers governance processes, how well the processes are being applied, and the outcomes of governance. The last point is the most important. Ofsted reviews governance as part of the inspection of leadership and management. Other external bodies that can review governance include the college's funding body.

The governing body serves all the stakeholders of the college. As such its business must be open and transparent. Information and communications technology is used to facilitate the governing body's business, and to publicise important documents. Sometimes it is necessary to designate documents as confidential in order, for example, to protect personal information or commercial interest.

Decision-making must be seen to be objective and in the interests of the college as a whole. There are processes in place for a register of interests, and the declarations of interests and avoidance of conflicts of interest at meetings.

There are checks and balances in governance. Sometimes there are difficulties or differences of opinion to resolve. Procedures should be put in place to resolve these before they occur.

Appraisal and development of the clerk is important as the clerk is the governing body's professional adviser and leads on the process of governance.

## Where next?

You have now completed work on Module 5: The process of effective governance. If there are areas in which you need more guidance or information, they may be covered in other modules. Turn to 'Check your current knowledge and skills' in *'Using the materials'*. This self-assessment questionnaire will help you to decide which modules or sections may help to fill these gaps. Tick the useful sections for further study.

If you cannot find the information you need within these materials, turn to 'Action planner' in *'Using the materials'*. Note down what further information, support or guidance you would like. The 'Action planner' gives advice on who may be able to help, and how.

## Putting it into actions

We hope that working through this module has raised useful questions, increased your awareness of issues and given you ideas for practical action that you would like to follow up. The 'Action planner' in *'Using the materials'* contains a section where you can note down any questions or action points that you want to follow up within your own college.

## Further reading

LSIS has various guidance documents, policy papers, governance-related resources and relevant training courses and conferences, including

- Governance brief guides to be found in the 'Library' <http://www.excellencegateway.org.uk/node/18195>
- A Review of Governance and Strategic Leadership in English Further Education, LSIS, 2010 to be found in the 'Library' <http://www.excellencegateway.org.uk/node/18195>
- the [Good Governance Practice Guide](#).



These are available via the Excellence Gateway special section for governors:

**[www.fegovernance.org](http://www.fegovernance.org)**

See the Association of Colleges website at **[www.aoc.co.uk](http://www.aoc.co.uk)** for latest developments on FE governance, **[the Governance Library](#)** and relevant training courses and conferences.

**New challenges new chances. Further education and skills system reform plan: building a world class skills system**, BIS, December 2011.

Chapter 6, Strategic Governance for a dynamic FE Sector is particularly interesting on new organisational and business models and new partnerships. On page 38, the statement about removing regulations refers to the new powers the Education Act 2011 will allow.

**A dynamic nucleus: Colleges at the heart of local communities**, The Interim Report of the Independent Commission on Colleges in their Communities, NIACE, 2011. Baroness Sharp reports on the role of college leaders and governors in the community to support self-assessment.

**First Report on Standards in Public Life**, Committee on Standards in Public Life, 1995. This report includes the Nolan Principles.

**Good Governance Standard for Public Services**, Independent Commission on Good Governance in Public Services, 2004.

**English College's Foundation Code of Governance**, Association of Colleges, 2011.

Governors' Code of Conduct (own college)

**Financial memorandum with the college's funding body**

Part A is a document which applies to all colleges, Part B is college-specific.

It is useful to look at the Leadership and Management sections of **Ofsted reports on FE colleges** and also their analyses of FE colleges' inspection cycles.

Read about John Carver's policy governance model in publications including:

- Boards That Make A Difference: A New Design for Leadership in Non-profit and Public Organizations, John Carver, 1997
- Getting Started with Policy Governance – Bringing Purpose, Integrity and Efficiency to your Board: by Caroline Oliver with foreword by John Carver. Published Jossey-Bass, 2009

**Education Act 2011**

**Equality Act 2010**

**Public Interest Disclosure Act 1998**



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