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**Dated:** 27 March 2020

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# **Code of Conduct for Governors**

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**\* Throughout this code “Corporation” may be substituted by “Governing Body” as appropriate.**

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## **COLLEGE CODE OF CONDUCT FOR GOVERNORS**

**(Made by the Corporation on 27 March 2020)**

### **1. INTRODUCTION**

- 1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Governors, to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the Corporation and Principal as the Chief Executive. This Code therefore is aimed at promoting effective, well informed and accountable college governance, and is not intended to be a definitive or authoritative statement of the law or good practice.
- 1.2 In addition to this Code, Governors are recommended to familiarise themselves with the source documents listed in the Schedule.
- 1.3 If a Governor is in doubt about the provisions of this Code or any of the source documents, the Clerk should be consulted and, if necessary, professional advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Governor of the College and for any act or omission in that capacity rests with the individual Governor.
- 1.4 This Code applies to every committee or working party of the Corporation and to every subsidiary company or joint venture of the College to which Governors may be appointed.
- 1.5 By accepting appointment to the Corporation each Governor agrees to accept and abide by the provisions of this Code.
- 1.6 Each Governor by accepting the provisions of this Code agrees that any breach of the Code by them may lead to the termination of their appointment as a Governor in accordance with clause 9 of the Instrument.

### **2. INTERPRETATION**

- 2.1 For purposes of this Code the following expressions shall have the following meanings:

<b>"Articles"</b>	the Articles of Government of the Corporation
<b>"Code of Good Governance"</b>	the Code of Good Governance for English Colleges issued by the AoC Governors' Council in March 2015, as updated in May 2019.
<b>"College"</b>	this College
<b>"College Mission Statement"</b>	the statement referred to at <b>clause</b> Error! Reference source not found. of this Code or such other mission statement as may be agreed by the Corporation from time to time
<b>"College Values"</b>	the Values set out at <b>clause</b> □□ of this Code or such other values as may be agreed by the Corporation from time to time
<b>"Corporation"</b>	the further education corporation which was established for the purpose of conducting the College
<b>"Governor", "Chair", "Principal" and "Clerk"</b>	"Governor", "Chair", "Principal" and "Clerk" mean respectively a member of the Corporation of the College, the Chair of the Corporation, the Principal/Chief Executive of the College and the Clerk to the Corporation

<b>"DfE"</b>	the Department for Education
<b>"ESFA"</b>	the Education & Skills Funding Agency or any successor body
<b>"Instrument"</b>	the Instrument of Government of the Corporation
<b>"Secretary of State"</b>	the Secretary of State for Education
<b>"Senior Post"</b>	the post of Principal and such other senior posts as the Governors may designate for the purposes of the Articles.

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

- 3.1 The Kirklees College Mission is "**Creating opportunity, changing lives**".
- 3.2 The Values of the College seek to put the student and our community at the heart of the College and maximise student development, while always mindful of the needs of our staff. They are incorporated in the following statements:
- Pursuit of **Excellence** to be the best that we can be as professionals, departmental teams and as a College to stretch our students to fulfil their potential.
  - **Integrity**, transparency, fairness and honesty in our management, behaviours and communications.
  - Active promotion of the principles behind the College **Equality** and Diversity Policy.
  - **Respectful** and supportive behaviour towards each other, our students, the College and our community.
  - Playing our individual part in the provision of a **Caring** environment that is safe, healthy, supportive and student responsive.
  - The College provides value for public money and is **Efficient** in the use of all resources.
  - We promote an environment where **Innovation** and creativity are encouraged.
- 3.3 The College Mission Statement, together with the corporate objectives of the College agreed by the Corporation from time to time, seek to encapsulate the core purposes and aims of the College. Governors, should have due regard to these purposes and aims, as well as to the Values, when conducting the business of the Corporation and considering the activities and proposed activities of the College.
- 3.4 The Corporation recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, other educational institutions and the wider community. In particular, the Corporation is committed to:
- 3.4.1 having close regard to the voice of the learner;
  - 3.4.2 combating any discrimination within the College on the grounds of the characteristics protected by the Equality Act 2010 ("the 2010 Act") and promoting equality in accordance with its duty under the 2010 Act;
  - 3.4.3 upholding the principles set out in the College's Student Charter;
  - 3.4.4 engaging with the community which the College serves in order to understand and meet its needs; and

- 3.4.5 observing its duty under the Education (No.2) Act 1986 to take reasonable steps to ensure freedom of speech<sup>1</sup> for members of the College community and visiting speakers and its duty under the Counter Terrorism and Security Act 2015 to have regard to the need, when exercising its functions, to prevent people from being drawn into terrorism<sup>2</sup>.
- 3.5 The Corporation is also committed to ensuring that it conducts its business in accordance with the highest ethical standards as set out in more detail in this Code.

#### 4. DUTIES

- 4.1 Governors are charity trustees, as the Corporation is an exempt charity<sup>3</sup>. As such, they must comply with trustees' legal responsibilities, as explained in detail in the Charity Commission's guidance document The Essential Trustee<sup>4</sup>. In particular, this entails:
- 4.1.1 ensuring the Corporation is carrying out its purposes for the public benefit;
  - 4.1.2 complying with the Instrument and Articles and the law;
  - 4.1.3 acting in the Corporation's best interests at all times;
  - 4.1.4 managing the Corporation's resources responsibly;
  - 4.1.5 acting with reasonable care and skill; and
  - 4.1.6 ensuring the Corporation is accountable.
- 4.2 The Secretary of State is the Principal Regulator for further education and sixth form college corporations as exempt charities.
- 4.3 Each Governor should act honestly, diligently and (subject to the provisions appearing in **clause 10** of this Code relating to collective responsibility) independently. The actions of Governors should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.
- 4.4 Decisions taken at meetings of the Corporation and its committees, or by written resolution, must not be for any improper purpose or personal motive. Governors must always do whatever they consider will best enable the Corporation to carry out its purposes, both now and for the future. Accordingly, Governors must not be bound in their speaking and voting by mandates given to them by other bodies or persons (including the bodies that elected them).
- 4.5 Acting in a charity's best interests is not about serving:
- 4.5.1 the interests of Governors or staff;
  - 4.5.2 the personal interests of beneficiaries;
  - 4.5.3 the personal interests of supporters, funders or donors; or
  - 4.5.4 the Corporation as an institution in itself, or preserving it for its own sake.
- 4.6 Governors must observe the provisions of the Instrument and Articles, in particular the duty to give immediate notice to the Clerk should they become disqualified from continuing to hold office. They must faithfully discharge the responsibilities given to the Corporation

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

<sup>2</sup> On this point see the statutory guidance issued by the Home Office on compliance with the duty in s.26 of the Counter Terrorism and Security Act 2015: <https://www.gov.uk/government/publications/prevent-duty-guidance>

<sup>3</sup> An exempt charity is an institution established in England and Wales for charitable purposes which is exempt from registration with, and oversight by, the Charity Commission for England and Wales.

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/866947/CC3\\_feb20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866947/CC3_feb20.pdf)

by the Articles. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out in **Appendix 3**.

- 4.7 Governors should comply with the Standing Orders and terms of reference of the Corporation and its committees to ensure that the Corporation conducts itself in an orderly, fair, open and transparent manner. Governors must keep those Standing Orders and terms of reference under periodic review.
- 4.8 Governors should also have regard to the different, but complementary, responsibilities given to the Principal as the College's Chief Executive. The responsibilities given to the Principal by the Articles are set out in **Appendix 4**. Whereas it is the Corporation's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior post holders, it is the Principal's role to implement the Corporation's decisions, and to manage the College's affairs within the budgets and framework fixed by the Corporation. Governors should work together so that the Corporation and the Principal as Chief Executive perform their respective roles effectively.
- 4.9 Governors should refer to the Clerk for advice relating to their duties and the governance functions which are set out in **Appendix 4** and have regard to the Clerk's independent advisory role.

## 5. STATUTORY ACCOUNTABILITY

- 5.1 Governors are collectively responsible for observing the duties set out in the Conditions of Funding (Grant) agreement which the College has entered into with the ESFA as a condition of receiving public funds. A brief summary of the ESFA's Conditions of Funding is set out in **Appendix 0**.
- 5.2 Although the ESFA is the main provider of funds to the College, Governors should note that they are also responsible for the proper use of income derived from other sources, such as the Office for Students (OfS) and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit. Where funding is received directly from the OfS, the College will have funding agreement with the OfS as set out in the OfS's terms and conditions of funding for further education and sixth form colleges, which sets out the basis on which such funding is provided. Where OfS funding is received indirectly via a collaboration with an OfS funded institution such funding will be subject to obligations contained in the memorandum of co-operation between the College and that institution.
- 5.3 As accounting officer for the ESFA, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the ESFA puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Principal, as accounting officer for the College, is also directly responsible and accountable to Parliament, through the Committee of Public Accounts, for the effective stewardship by the College of public funds. The Principal may be required to appear before the Committee of Public Accounts, alongside the ESFA's Chief Executive, to give an account of the use made by the College of such funds. The Corporation is accountable to Parliament for ensuring the financial health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law.

## 6. PUBLIC SERVICE VALUES

Although further education corporations are classified as part of the private not for profit sector for government accounting purposes, they remain public bodies in many legal contexts. In particular, public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on the principles set out in **Appendices 0** and Error! Reference source not found. of this Code, and the recognition that students and other users of the College's services come first, are a requirement of being a Governor, and should underpin all decisions taken by the Corporation.

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

A Governor should in all his or her work for the College exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Governors act as agents of the College, for example, when functions are delegated to a committee of the Corporation or to the Chair. Governors should be careful to act within the terms of reference of any committees on which they serve and should take appropriate advice where necessary.

## **8. POWERS**

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

## **9. CONFLICTS OF INTEREST**

9.1 As charity trustees, Governors should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

9.2 Governors are reminded that under the College's Instrument and its policy on Conflicts of Interest and the general law they must disclose to the Corporation any direct or indirect financial interest they have, or may have, in the supply of work to the College or the supply of goods for the purposes of the College, or in any contract or proposed contract concerning the College, or in any other matter relating to the College or any other interest of a type specified by the Corporation in any matter relating to the College, or any duty which is material and which conflicts or may conflict with the interests of the Corporation.

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

- 9.3.1 the interest, financial or otherwise, should be reported to the Clerk;
- 9.3.2 the nature and extent of the interest should be fully disclosed to the Corporation before the matter giving rise to the interest is considered;
- 9.3.3 if the Governor concerned is present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter constituting the interest is to be considered, he or she should:
  - 9.3.3.1 not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum for that part of the meeting; and
  - 9.3.3.2 withdraw from that part of the Corporation or committee meeting where required to do so by a majority of the Governors or committee members present at the meeting.

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

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

- 9.6 Governors must not receive gifts, hospitality or benefits of any kind from a third party which might be in breach of the Bribery Act 2010 and the College's anti-bribery policy and the College's policy on receiving gifts (as detailed in the separate Kirklees College Code of Conduct) or be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.
- 9.7 The Clerk will maintain a Register of Governors' Interests which will be open for public inspection. Governors must disclose routinely to the Corporation all business interests, financial or otherwise, which they or persons associated with them may have, and the Clerk will enter such interests on the Register. Governors must give sufficient details to allow the nature of the interests to be understood by enquirers. Governors should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Governors should have regard to the meaning given to "interest" in **clauses 9.3** and **9.4** of this Code.

## **10. COLLECTIVE RESPONSIBILITY**

- 10.1 The Corporation operates by Governors taking majority decisions in a corporate manner at quorate meetings, including meetings held by telephone or video-conference and by alternative methods such as written resolutions. Therefore, a decision of the Corporation even when it is not unanimous, is a decision taken by the Governors collectively and each individual Governor has a duty to stand by it, whether or not he or she was present at the meeting of the Corporation when the decision was taken.
- 10.2 If a Governor disagrees with a decision taken by the Corporation his or her first duty is to have any disagreement discussed and minuted. If the Governor strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Governor should refer to the power of the Chair or of any five Governors under the College's Instrument of Government to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the Governor's views in advance to the other Governors. Alternatively, as a final resort, the Governor may decide to offer his or her resignation from office, after consulting the Chair.

## **11. OPENNESS AND CONFIDENTIALITY**

- 11.1 Because of the Corporation's public accountability and the importance of conducting its business openly and transparently, Governors should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved for publication.
- 11.2 There will be occasions when the minutes and other papers will not be made available for public inspection; for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be circulated in confidence to Governors save for those who have a conflicting interest in the particular sensitive matter. Some confidential items are likely to be of a sensitive nature for a certain period of time only (for example information relating to a proposed commercial transaction or collaboration with another institution). Where possible, the Corporation should specify how long such items should be treated as confidential. Where a request is made for disclosure of an item deemed confidential, or in the case of confidential minutes, periodically, a review should be carried out to consider whether it is and should still be considered confidential and, if so, whether the public interest in disclosure outweighs that confidential status, in which case the item should be made available for public inspection. Governors must also consider the personal data that is contained within the excluded items in accordance with the Corporation's obligations under the General Data Protection Regulation 2016 and the Data Protection Act 2018 ("Data Protection Laws") and whether or not disclosure of that personal data would be in breach of the Data Protection Laws or the rights and freedoms of the individual(s) in question. When considering such issues, Governors must also consider the College's publication scheme issued under the Freedom of Information Act 2000 and Environmental Information Regulations 2004. Nothing in this section overrides the College's obligation to disclose in response to a request received under these

information law regimes (unless an appropriate exemption applies in each case). Refer to any College policy on Access to Information, if appropriate.

- 11.3 However, staff and student Governors have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the Instrument.
- 11.4 It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Governors with a shared corporate responsibility for decisions. Governors should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.
- 11.5 Governors should not make statements to the press or media or at any public meeting relating to the proceedings of the Corporation or its committees without first having obtained the approval of the Chair or, in his or her absence, the Vice Chair. It is unethical for Governors publicly to criticise, canvass or reveal the views of other Governors which have been expressed at meetings of the Corporation or its committees.

## **12. COMPLAINTS**

- 12.1 In order to ensure that the affairs of the College are conducted in an open and transparent manner and that the College is accountable for its use of public funds but also to its employees, its students and the community it serves, it is important for there to be appropriate complaints procedures in place and for these to be well publicised. Governors are reminded of their specific responsibility under the Articles to make rules specifying the procedures in accordance with which employees may seek redress of any grievances relating to their employment, of the importance of having formal complaints procedures in place to handle issues raised by students, former students and third parties and of the legal requirement to have a whistle blowing procedure in place.
- 12.2 Under the ESFA's Conditions of Funding (Grant) agreement with colleges (Part 3, clause 15.3.4), students, employers and other third parties have a right to make a complaint to the Secretary of State in respect of the College or of any of its decisions, and this right is referred to in the College's relevant complaints and disciplinary procedures. Copies of these procedures can be obtained from the Clerk. Governors in particular are reminded that under the ESFA's Complaints about post 16 education and training provision funded by ESFA (November 2018)<sup>5</sup> the ESFA can investigate complaints in relation to:
  - 12.2.1 the quality, management or experience of education and training;
  - 12.2.2 undue delay or non-compliance with published complaints procedures;
  - 12.2.3 poor administration;
  - 12.2.4 the quality of assessments for example, how an assessment or an end point assessment has been done (excluding outcomes);
  - 12.2.5 equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter, for example through the court, tribunals or other organisations);
  - 12.2.6 Advanced Learner Loans;
  - 12.2.7 apprenticeship providers from employers; and
  - 12.2.8 from employers, parents or other third parties on behalf of apprentice(s).
- 12.3 The ESFA will not investigate complaints about:

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<sup>5</sup> <https://www.gov.uk/government/publications/complaints-about-post-16-education-and-training-provision-funded-by-esfa/complaints-about-post-16-education-and-training-provision-funded-by-esfa#what-esfa-can-investigate>

- 12.3.1 issues that are more than 12 months old (except for exceptional cases related to advanced learner loans);
  - 12.3.2 examination results, grades, marks, assessment outcomes or curriculum content;
  - 12.3.3 individual employment issues;
  - 12.3.4 governor or other voluntary work issues;
  - 12.3.5 contractual or commercial disputes or arrangements;
  - 12.3.6 disputes between an employer and a provider in relation to the apprenticeship levy;
  - 12.3.7 matters which are the subject of legal action or matters that are better investigated by the police;
  - 12.3.8 the cancellation or reimbursement of advanced learner loans (which should be referred to the student loan company);
  - 12.3.9 claims for compensation, a refund of fees or costs incurred when a learner has to transfer to another provider;
  - 12.3.10 issues classified as serial; or
  - 12.3.11 allegations of fraud, financial irregularity, whistleblowing and allegations of incentives and inducements; and
  - 12.3.12 safeguarding concerns<sup>6</sup>.
- 12.4 Complaints made by learners following HE courses in FE colleges are directed to the Office of the Independent Adjudicator for HE.

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

As charity trustees, Governors must ensure that they devote enough time, thought and energy to their role, in particular to preparing for, attending and actively participating in all Corporation meetings. A high level of attendance is expected, so that Governors are well briefed and can perform their functions properly. The Corporation has set itself a Key Performance Indicator of 80% attendance at Corporation and committee meetings.

### **14. GOVERNANCE DEVELOPMENT**

- 14.1 The Corporation shall seek to ensure that all Governors are appointed on merit, in accordance with an open selection procedure carried out by the Corporation's Search & Governance Committee, and are drawn widely from the community which the College serves so as to be representative of that community. The Corporation should have regard to the provisions relating to the membership of the Corporation in the Instrument, the need to combat discrimination and to promote equality, and the need to make available a range of necessary skills and experience to ensure that the Corporation carries out its functions under the Articles.
- 14.2 Governors must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including all mandatory training and regular refresher workshops.
- 14.3 In order to promote more effective governance, Governors will carry out an annual review of the performance by the Corporation of its duties and responsibilities, including a review of their own performance as part of a continuing and critical process of self-evaluation.

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<sup>6</sup> These will be passed onto the appropriate team within ESFA who will contact the college. ESFA may also contact other organisations, e.g. Ofsted and local authorities

## SCHEDULE 1

### List of source documents

1. the Instrument;
2. the Articles;
3. the Standing Orders and terms of reference of the Corporation and its committees;
4. the Conditions of Funding (Grant) agreement entered into by the College with the ESFA;
5. the College's Mission Statement and corporate objectives;
6. the College's Strategic Plan;
7. the College's policies that extend to Governors, including the College's policies on equal opportunities and freedom of speech, the anti-bribery policy as required by the Bribery Act 2010, the College's policy on receiving gifts, the College's policy on conflicts of interest, the College's policy on safeguarding learners and the College's policy on preventing people being drawn into terrorism;
8. the principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely<sup>7</sup>:
  - 8.1 selflessness;
  - 8.2 integrity;
  - 8.3 objectivity;
  - 8.4 accountability;
  - 8.5 openness;
  - 8.6 honesty; and
  - 8.7 leadership.

An extract from the report of the Nolan Committee setting out these Principles in more detail is set out at **Appendix 1**;

9. the Post 16 Audit Code of Practice issued by the ESFA<sup>8</sup>;
10. the Code of Good Governance for English Colleges issued by the AoC Governors' Council in March 2015, most recently updated in September 2021<sup>9</sup>;
11. the Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services (Good Governance Standard);
12. An extract from the Good Governance Standard setting out the six core principles of good governance is set out at **Appendix 2**;
13. **Appendices 1** (the Seven Principles of Public Life), **2** (Six Core Principles of Good Governance), **3** (Responsibilities of Governors), **4** (Responsibilities of the Principal and Clerk), **5** (Summary of the ESFA's Conditions of Funding) and **6** (Powers of the Corporation) are attached to this Code for reference.

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<sup>8</sup> [Post-16 audit code of practice: 2020 to 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/Post-16%20audit%20code%20of%20practice%20-%202020%20-%202021.pdf)

<sup>9</sup> <https://www.aoc.co.uk/sites/default/files/AoC%20Code%20of%20Good%20Governance%20-%20Reviewed%2009.21.pdf>

**As a Governor I AGREE TO OBSERVE THIS CODE OF CONDUCT TO THE BEST OF MY ABILITIES.**

.....

Signature

.....

Name of Governor

Dated:

## **APPENDIX 1**

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

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

#### **SELFLESSNESS**

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

#### **INTEGRITY**

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

#### **OBJECTIVITY**

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

#### **ACCOUNTABILITY**

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

#### **OPENNESS**

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

#### **HONESTY**

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

#### **LEADERSHIP**

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

## **APPENDIX 2**

### **Six Core Principles of Good Governance**

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

- 1. Good governance means focusing on the organisation's purposes and on outcomes for citizens and service users**
  - 1.1 Being clear about the organisation's purposes and its intended outcomes for citizens and service users;
  - 1.2 Making sure that users receive a high quality service;
  - 1.3 Making sure that taxpayers receive value for money.
- 2. Good governance means performing effectively in clearly defined functions and roles**
  - 2.1 Being clear about the functions of the governing body;
  - 2.2 Being clear about the responsibilities of the non-executives and the executive, and making sure that those responsibilities are carried out;
  - 2.3 Being clear about relationships between the governors and the public.
- 3. Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**
  - 3.1 Putting organisational values into practice;
  - 3.2 Individual governors behaving in ways that uphold and exemplify effective governance.
- 4. Good Governance means taking informed, transparent decisions and managing risk**
  - 4.1 Being rigorous and transparent about how decisions are taken;
  - 4.2 Having and using good quality information, advice and support;
  - 4.3 Making sure that an effective risk management system is in operation.
- 5. Good governance means developing the capacity and capability of the governing body to be effective**
  - 5.1 Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;
  - 5.2 Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group;
  - 5.3 Striking a balance, in the membership of the governing body, between continuity and renewal.
- 6. Good governance means engaging stakeholders and making accountability real**
  - 6.1 Understanding formal and informal accountability relationships;
  - 6.2 Taking an active and planned approach to dialogue with accountability to the public;
  - 6.3 Taking an active and planned approach to responsibility to staff;
  - 6.4 Engaging effectively with institutional stakeholders.

## **APPENDIX 3**

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

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

Under the Articles the Corporation shall be responsible for:

- (a) the determination and periodic review of the educational character and mission of the College and for oversight of its activities\*\*;
- (b) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the College and the oversight of its activities;
- (c) approving the quality strategy of the College;
- (d) the effective and efficient use of resources, the solvency of the College and the Corporation and for safeguarding their assets\*\*;
- (e) approving annual estimates of income and expenditure\*\*;
- (f) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk, including, where the Clerk is, or is to be appointed as, a member of staff, the Clerk's appointment, grading, suspension, dismissal and determination of pay in the capacity as a member of staff\*\*;
- (g) approving a framework for the pay and conditions of service of all other staff; and
- (h) The modification or revocation of the Instrument or Articles.

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

## **APPENDIX 4**

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

Under the Articles, the Principal shall be the Chief Executive of the College and responsible for:

- (a) making proposals to the Corporation about the educational character and mission of the College, and for implementing the decisions of the Corporation;
- (b) the determination, of the College's academic and other activities;
- (c) preparing annual estimates of income and expenditure, for consideration and approval by the Corporation and the management of budget and resources within the estimates approved by the Corporation;
- (d) the organisation, direction and management of the College and leadership of the staff;
- (e) the appointment, assignment, grading, appraisal, suspension, dismissal, and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk, where the Clerk is also a member of the staff;
- (f) maintaining student discipline and, within the rules and procedures provided for within the Articles, suspending or expelling students on disciplinary grounds and expelling students for academic reasons; and
- (g) ensuring that all activities are carried out in such a way as to positively promote equality of opportunity which encourages diversity and inclusion.

### **Summary of main responsibilities of the Clerk under the Articles**

Under the Articles, the Clerk shall be responsible for advising the Corporation with regard to:

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

## **APPENDIX 5**

### **Summary of the ESFA's Conditions of Funding**

1. The ESFA's Conditions of Funding, including the Conditions of Funding (Grant) (Colleges) agreement (the "Agreement"), record the agreement between the Secretary of State, acting through the ESFA, and the college, concerning the amount of funding that will be paid to the college by the ESFA. They reflect the obligations and responsibilities of the ESFA for monitoring the use of funds allocated to colleges and ensure that colleges have proper lines of financial accountability to the funding body.
2. The Agreement is formed of a main terms and conditions body and schedules.
3. All Governors should review and be familiar with the entirety of the Agreement, along with any other ESFA agreements that apply to the College.
4. There follows a commentary on the main provisions of the Agreement.

#### **Responsibilities of the Corporation and the accounting officer**

Schedule 9 of the Agreement sets out the key issues for Governors to take account of, including the need to appoint an accounting officer (expected to be the Principal) with an appropriate separation of duties between executive and non-executive roles and responsibilities. There must be an accounting officer in place at all the times and the ESFA must be informed of the accounting officer's name and position and who will discharge their various responsibilities if they are absent from the College for an extended period.

The accounting officer takes personal responsibility, which is not delegable, to ensure compliance with the Agreement. The accounting officer may be required to appear before the Public Accounts Committee on matters relating to the Corporation's use of funds. In particular, the Corporation is responsible for ensuring that College funds are used only in accordance with the Corporation's powers as set out in the Further and Higher Education Act 1992 and its statutory duties and other obligations.

The accounting officer must advise the Corporation if at any time in his/her opinion any action under consideration by the Corporation is incompatible with the Agreement. If the Corporation resolves to continue with such action, the accounting officer must inform the ESFA in writing.

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

#### **Allocation of funds**

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

#### **Financial reporting**

In the College Accounts Direction and the Post 16 Audit Code of Practice, the ESFA specifies the information to be contained in the Corporation's annual financial statements. Audited financial statements are to be provided to the ESFA by 31 December, within five months of the Corporation's year end. The Corporation must have an effective policy on risk management. The Corporation must notify the ESFA in writing if at any time there is a risk to the college's solvency and viability.

## **Audit**

The Corporation must appoint an audit committee and arrange to provide internal and financial statements audit, including regularity audit, in accordance with the Post 16 Audit Code of Practice.

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

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

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

## **Provision of data on learners and staff and of information**

A college must supply learner data in accordance with ESFA requirements.

The ESFA reserves the right to request information from the Corporation in order to exercise its responsibilities. The Corporation must inform the ESFA in writing, as soon is reasonably practicable, of the vacating or filling of the positions of Chair of the Corporation, Principal and Clerk. The ESFA has the right to share information provided by the College, for example with Parliamentary bodies.

## **Conditions of funding**

The detailed requirements in relation to each learning programme are set out in the ESFA Funding Rules. The amounts payable for their delivery are set out in Schedule 2 to the Conditions of Funding (Grant) (Colleges). The ESFA reserves the right to impose additional conditions where it considers it necessary to secure the delivery of education and training of a reasonable quality or to require the Corporation to address concerns about its financial viability.

## **Sub-contracted provision**

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

## **Repayment of funds**

In the case of a breach of the conditions of funding the ESFA reserves the right to require repayment of all or part of the funds.

## **Raising Standards, Feedback and Complaints**

The College must deliver the funded provision to an acceptable standard of quality and comply with the rules published by the ESFA. There is a set procedure for dealing with inadequate provision which may lead to issue of a Notice of Concern or ultimately a Notice of Withdrawal of Funding. The College must inform the ESFA if it is sanctioned by an awarding body. It must also notify the ESFA of the date of the feedback meeting following an inspection by Ofsted and allow the ESFA's nominated representative to attend the meeting. The College must confirm to the ESFA in writing the outcome of the inspection within 5 Working Days of receiving the feedback from Ofsted. If a Notice of Concern is issued, a college's ability to start new learners on a programme may be suspended.

The ESFA has published a strategy on early intervention, which sets out the triggers for early intervention and how the ESFA will work with colleges to put in place actions that support and assist

such colleges to return to sound financial resilience and, where required, improve quality. This could include referral for a Further Education Commissioner-led Diagnostic assessment. A college will be in scope for a diagnostic assessment if:

- it has an Ofsted ‘Requires Improvement’ rating and/or Ofsted ‘Requires Improvement’ or Inadequate rating for apprenticeships;
- it is in early intervention;
- it has requested a diagnostic assessment because of a change of principal; or
- there is evidence showing or predicting an ongoing and/or sharp decline in finance or quality

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

### **Additional matters**

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

### **Interpretation**

Nothing in the Agreement shall require the Corporation to act in a manner which would cause the Corporation to cease to be a charity.

## **APPENDIX 6**

### **Summary of the Statutory Powers of the Corporation**

#### **PRINCIPAL POWERS**

Under section 18(1) of the Further and Higher Education Act 1992 a further education corporation may:

- (a) provide further and higher education;
- (b) provide secondary education suitable to the requirements of persons who have attained the age of 14 years, or provide secondary education or participate in the provision of secondary education at a school (subject to consultation with the appropriate local education authority); and
- (c) supply goods or services in connection with their provision of education.

#### **SUPPLEMENTARY POWERS**

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

- (a) to acquire and dispose of land and other property;
- (b) to enter into contracts, including in particular:
  - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the Corporation's principal powers; and
  - (ii) contracts with respect to the carrying on by the Corporation of any such activities;
- (c) to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation;
- (d) to borrow such sums as the Corporation thinks fit for the purposes of carrying on any activities it has power to carry on or to meet any liability transferred to it under sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage, charge or other security in respect of any land or other property of the Corporation;
- (e) to invest any sums not immediately required for the purposes of carrying on any activities the Corporation has power to carry on;
- (f) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes;
- (g) to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes and
- (h) to provide advice or assistance to any other person where it appears to the Corporation to be appropriate for them to do so for the purpose of or in connection with the provision of education by the other person

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