

## **KIRKLEES COLLEGE CORPORATION**

### **INSTRUMENT OF GOVERNMENT**

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## **1. Interpretation of the terms used**

### **1.1 In this Instrument, the following words and expressions shall have the following meanings:**

the Articles	the Articles of Government
Business Day	a day other than a Sunday or public or bank holiday in England
“Chair” and “Vice-Chair”	Except where the context otherwise requires, the Chair and any Vice-Chair of the Corporation appointed under clause 5
Charity Trustee	has the meaning given at s177 Charities Act 2011
the Clerk	The 'clerk to the body' for the purposes of the Further and Higher Education Act 1992 SCHEDULE 4, who may in practice have a different title such as 'Director of Governance'.
the College	the institution which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992(1)
the Corporation	the further education corporation to which this Instrument applies, being Kirklees College
electronic form	a document that is sent or supplied by any contemporaneous electronic means (including email or fax) or by any other means within an electronic form (for example sending a disk by post). A document that is sent or supplied by electronic form must be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient to read and retain a copy of it
Executive Governor, Staff Governor and Student Governor	have the meanings given to them in clause 2
financial year	from 1 August until 31 July the following year
Instrument	this Instrument of Government
Independent Governors	Governors who are persons independent of the College who, in the Corporation's reasonable opinion, have the necessary skills to ensure that the Corporation carries out its functions and responsibilities effectively

Meeting	includes a meeting at which one or more of the persons attending are present in more than one location and participate by means of telephone, web-conferencing, video-conferencing facilities or similar communications equipment whereby all persons participating in the meeting can communicate with one other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting and, subject to the Instrument and the Articles, shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group where the chair of the meeting then is
necessary skills	skills and experience, other than professional qualifications, specified by the Corporation as appropriate for Governors to have
the Principal	the Principal/CEO of the College, who shall fulfil the role of Accounting Officer under the Conditions of Funding (Grant) agreement which the Corporation has entered into with the principal funding body, and shall include any person acting as Principal
the principal funding body	the Education and Skills Funding Agency
the Secretary of State	the Secretary of State for Education or that Department which has the regulatory oversight of Further Education corporations;
senior post-holder	a member of Staff who is appointed by and is directly accountable to the Corporation and to whom the Corporation has obligations that it does not delegate to the Principal
Staff	all the staff who have a contract of employment with the College
Student	A student enrolled at the College, or a person who meets the requirements set out in clause 2.2
Staff matters	the remuneration, conditions of service, promotion, conduct, performance, suspension, dismissal or retirement of Staff
students' union	any association of students formed to further the educational purposes of the College and the interests of students, as students
a variable category	any category of Governor whose numbers may vary according to clause 2.1

## **2. Composition of the Corporation**

2.1 The Corporation shall consist of:

- (a) up to fifteen Independent Governors
- (b) if the Principal chooses to be a Governor, the Principal (in which case he or she shall be known as the "Executive Governor");
- (c) at least one and not more than two Governors who are members of Staff and who have been nominated and elected by their fellow Staff members in accordance with any rules or bye-laws made under Article 20 ("Staff Governors"); and
- (d) at least one and not more than two Governors who are students at the College and have been nominated and elected in accordance with any rules or bye-laws made under Article 20 ("Student Governors").

2.2 A person who is not for the time being enrolled as a student at the College shall nevertheless be treated for the purposes of clause 2.1(d) as a student during any period of authorised absence from the College for study, travel or for carrying out the duties of any office held by that person in the students' union.

2.3 The Corporation, as the appointing authority, will decide whether a person is eligible for nomination, election and appointment as a Governor.

## **3. Membership numbers**

3.1 The number of Governors from time to time shall not be less than ten nor more than twenty; and

3.2 The number of members of each variable category shall be subject to the limit which applies to that category set out in clause 2.1.

## **4. Appointment of Governors**

4.1 Subject to clause 4.3, the Corporation is the appointing authority in relation to the appointment of Governors.

4.2 If the number of Governors falls below ten, the continuing Governors or a sole continuing Governor may act only for the purpose of filling vacancies.

4.3 Where there are no remaining Governors, the Secretary of State shall be the appointing authority for the purpose of appointing a new Governor.

4.4 The appointing authority may decline to appoint a person as a Staff or Student Governor if it is satisfied that:

- (i) the person is ineligible to be a Governor; or
- (ii) the person has been removed from office as a member of a further education corporation in the previous ten years; or

- (iii) the appointment of the person would contravene any rule or bye-law made under Article 20 concerning the number of terms of office which a person may serve, provided that such rules or bye-laws make the same provision for each category of Governor appointed by the appointing authority; or
  - (iv) the person is unfit or unable to discharge the functions of a Governor; or
  - (v) declining the appointment is in the best interest of the Corporation; or
  - (vi) it is necessary to decline the appointment to assist the Corporation to exercise its legal powers or to discharge its legal duties.
- 4.5 For the avoidance of doubt, the Corporation may act notwithstanding any temporary vacancy in the office of Student, Staff or Executive Governor.
- 4.6 Where the office of any Governor becomes vacant, the appointing authority shall as soon as practicable take all necessary steps to appoint a new Governor to fill the vacancy.

## **5. Appointment of Chairs and Vice-Chairs**

- 5.1 The Corporation shall appoint a Chair and may appoint one or more Vice-Chairs from among its membership.
- 5.2 Neither the Executive Governor nor any Staff or Student Governor shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair in their absence.
- 5.3 If both the Chair and the Vice-Chair(s) are absent from any meeting of the Corporation, the Governors present shall choose someone from among themselves to act as Chair for that meeting.
- 5.4 The Chair and Vice-Chair(s) shall hold office for such period as the Corporation decides.
- 5.5 A Chair or Vice-Chair may resign from office at any time by giving notice in writing to the Clerk.
- 5.6 If the Corporation is satisfied that a Chair or Vice Chair is unfit or unable to carry out the functions of office, it may give written notice, removing the Chair or Vice Chair from office and the office shall then be vacant.
- 5.7 At the last meeting before the end of the term of office of a Chair or Vice Chair, or at the earliest possible opportunity following the Chair or Vice Chair's resignation or removal from office, the Corporation shall appoint a replacement for the Chair and may appoint a replacement for the Vice Chair from among its membership.
- 5.8 At the end of their respective terms of office, Chairs and Vice-Chairs shall be eligible for reappointment.
- 5.9 Clause 5.8 is subject to any rule or bye-law made by the Corporation under Article 20 concerning the number of terms of office a person may serve.

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

- 6.1 The Corporation shall appoint a person to serve as its Clerk, but the Principal may not be appointed as Clerk.
- 6.2 In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the Principal may not be appointed as temporary Clerk.
- 6.3 Any reference in this Instrument or in the Articles to the Clerk shall include a temporary Clerk appointed under clause 6.2.
- 6.4 Subject to clause 13, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.
- 6.5 The Clerk may also be a member of Staff.

**7. Persons who are ineligible to be Governors**

- 7.1 No one under the age of 18 years may be a Governor, except as a Student Governor. A Student Governor must have attained the age of 16 years.
- 7.2 The Clerk may not be a Governor.
- 7.3 A person who is a member of Staff may not be, or continue as, a Governor, except as a Staff Governor or an Executive Governor.
- 7.4 Clause 7.3 does not apply to a student who is employed by the Corporation in connection with the student's role as an officer of the students' union.
- 7.5 A person who is ineligible to serve as a Charity Trustee for any reason shall be ineligible to be a Governor.
- 7.6 Where and for as long as the Corporation reasonably considers that there are genuine safeguarding concerns, a person shall be ineligible to be a Governor.
- 7.7 Upon a Governor becoming ineligible to be a Governor, he or she shall immediately give notice of that fact to the Clerk.

**8. The term of office of a Governor**

- 8.1 A Governor shall hold and vacate office in accordance with the terms of his or her appointment but the length of his or her term of office shall not exceed four years.
- 8.2 Governors retiring at the end of their term of office shall be eligible for reappointment, and clause 4 shall apply to the reappointment of a Governor as it does to the appointment of a Governor.
- 8.3 Cause 8.2 is subject to any rule or bye-law made by the Corporation under Article 20 concerning the number of terms of office which a person may serve.

## **9. Termination of Governor appointments**

9.1 A Governor may resign from office at any time by giving notice in writing to the Clerk.

9.2 If at any time the Corporation is satisfied that:

- (a) any Governor is unfit or unable to discharge the functions of a Governor;
- (b) any Governor has been absent from meetings of the Corporation for a period longer than six consecutive months without the permission of the Corporation;
- (c) it is in the best interest of the Corporation that any Governor stand down; or
- (d) it is necessary to assist the Corporation to exercise its legal powers or to discharge its legal duties

the Corporation may by notice in writing either by hard copy or in electronic form to that Governor remove or suspend the Governor from office and, if the Governor is removed, the office shall then be vacant.

9.3 The appointment of any Staff Governor or the Executive Governor, shall automatically terminate upon their ceasing to be a member of Staff and the office shall then be vacant.

9.4 A Student Governor shall cease to hold office:

- (a) at the end of the student's final academic year, or at such other time in the year after ceasing to be a student as the Corporation may decide; or
- (b) if expelled from the College, and the office shall then be vacant.

9.5 Any Student Governor who is suspended from his or her course of study or who leaves his or her course of study for any reason shall immediately give notice of that fact to the Clerk.

9.6 Any person who is a Governor by virtue of being a member of Staff, including any Executive Governor, who is suspended from his or her employment, shall immediately give notice of that fact to the Clerk.

## **9B Remuneration of Trustees**

9B1 A Student Governor may receive payment at the rate set by the Living Wage Foundation from time to time as the 'UK Living Wage for outside London' in consideration of their attendance at meetings of the Corporation. Payment at this rate may also be made for attendance at any committee meetings, events or similar activities at the Chair's discretion. This may include mandatory training and strategy sessions.

9B2 Any amendment of this clause by the Corporation is subject to prior written consent of the Charity Commission.

**10. Governors not to hold interests in matters relating to the College**

10.1 A Governor to whom clause 10.2 applies shall:

- (a) disclose to the Corporation the nature and extent of the interest; and
- (b) if present at a meeting of the Corporation, or of any of its committees, at which such supply, contract or other matter as is mentioned in clause 10.2 is to be considered, not take part in the consideration or vote on any question with respect to it and not be counted in the quorum present at the meeting in relation to a resolution on which that Governor is not entitled to vote; and
- (c) withdraw, if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter as is mentioned in clause 10.2 is to be considered, where required to do so by a majority of the Governors or committee members present at the meeting.

10.2 This clause 10.2 applies to a Governor who:

- (a) Has any financial interest in:
  - (i) the supply of work to the College or any subsidiary of the College, or the supply of goods for the purposes of the College;
  - (ii) any contract or proposed contract concerning the College; or
  - (iii) any other matter relating to the College; or
- (b) has any other interest of a type specified by the Corporation in any matter relating to the College.

10.3 This clause 10 shall not prevent the Governors considering and voting upon proposals for the Corporation to insure them against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

10.4 Where the matter under consideration by the Corporation or any of its committees relates to the pay and conditions of all Staff, or all Staff in a particular class, a Staff Governor:

- (a) need not disclose a financial interest; and
- (b) may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that meeting, provided that in so doing, the Staff Governor acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body; but
- (c) shall withdraw from the meeting if requested if the matter is under negotiation with Staff and the Staff Governor is representing any of the Staff concerned in those negotiations.



- 10.5 The Clerk shall maintain a register of the interests of the Governors which have been disclosed and the register shall be made available during normal office hours at the College to any Governor wishing to inspect it.

## **11. Meetings**

- 11.1 The Corporation shall meet at least once in every term, and shall hold such other meetings as may be necessary.
- 11.2 Subject to clauses 11.3, 11.4 and 12.3, all meetings shall be called by the Clerk who shall, at least seven calendar days before the date of the meeting, send to all Governors written notice of the meeting and a copy of the proposed agenda.
- 11.3 If it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk, the Chair shall, at least seven calendar days before the date of the meeting, send to all Governors a copy of the agenda item concerned, together with any relevant papers.
- 11.4 An additional meeting of the Corporation ("a special meeting") may be called at any time by the Chair or at the request in writing of any five Governors.
- 11.5 Where the Chair, or in the Chair's absence a Vice-Chair, is satisfied that it is in the best interests of the Corporation, a revised agenda, or in the case of a special meeting, the written notice convening the special meeting and a copy of the proposed agenda, may be given within less than seven calendar days.
- 11.6 Every Governor shall act in the best interests of the Corporation and shall not be bound to speak or vote by mandates given by any other body or person.

## **12. Quorum**

- 12.1 Meetings of the Corporation shall be quorate if the number of Governors present is at least 40% of the total number of Governors in office from time to time, not including vacancies, or four Governors, whichever is the higher.
- 12.2 If a quorum is not present for a meeting, or if during a meeting there ceases to be a quorum, the Clerk shall inform the chair at once.
- 12.3 An inquorate meeting shall normally be terminated by the chair of the meeting, although it is possible to continue discussions on an informal basis. It is then open to the chair of the meeting to call a special meeting to undertake the remaining business as soon as it is convenient, or to defer consideration to the next ordinary meeting.

## **13. Proceedings of meetings**

- 13.1 Every question to be decided at a meeting of the Corporation shall be decided by a majority of the votes cast by Governors present and entitled to vote on the question.

- 13.2 Where, at a meeting of the Corporation, there is an equal division of votes on a question to be decided, the chair of the meeting shall have a second or casting vote.
- 13.3 A Governor may not vote by proxy.
- 13.4 No resolution of the Governors may be rescinded or varied at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.
- 13.5 Except as provided by procedures made pursuant to Article 20, a Governor who is a member of Staff, including an Executive Governor, shall withdraw:
- (a) from that part of any meeting of the Corporation, or any of its committees, at which Staff matters relating solely to that member of the Staff, as distinct from Staff matters relating to all Staff or all Staff in a particular class, are to be considered;
  - (b) from that part of any meeting of the Corporation, or any of its committees, at which that member of Staff's reappointment or the appointment of that member of Staff's successor is to be considered;
  - (c) from that part of any meeting of the Corporation, or any of its committees, at which the matter under consideration concerns the pay or conditions of service of all Staff, or all Staff in a particular class, where the member of Staff is acting as a representative (whether or not on behalf of a recognised trade union) of all Staff or the class of Staff (as the case may be); and
  - (d) if so required by a resolution of the other Governors present, other than Staff Governors, from that part of any meeting of the Corporation or any of its committees, at which Staff matters relating to any member of Staff holding a post senior to that member of Staff are to be considered, except those relating to the pay and conditions of all Staff or all Staff in a particular class.
- 13.6 A Principal who has chosen not to be a Governor shall still be entitled to receive a copy of any written resolution proposed and to attend and speak, or otherwise communicate, at all meetings of the Corporation and any of its committees, except that he or she shall withdraw in any case where he or she would be required to withdraw under clause 13.5.
- 13.7 A Student Governor who is under the age of 18 shall not vote at a meeting of the Corporation, or any of its committees, on any question concerning any proposal:
- (a) for the expenditure of money by the Corporation; or
  - (b) under which the Corporation, or any Governor(s), would enter into any contract, or would incur any debt or liability, whether immediate, contingent or otherwise.
- 13.8 Except as provided by rules made under Article 20 of the Articles relating to appeals and representations by students in disciplinary cases, a Student Governor shall withdraw from that part of any meeting of the Corporation or any of its committees, at which:

- (a) a student's conduct, suspension or expulsion is to be considered; or
  - (b) matters concerning the students' union are to be discussed, where this would create a conflict of interests, for example where the Student Governor holds office in the students' union, or is a student union trustee.
- 13.9 In any case where the Corporation, or any of its committees, is to discuss Staff matters relating to a member of Staff or prospective member of Staff, a Student Governor shall:
  - (a) take no part in the consideration or discussion of that matter and not vote on any question with respect to it; and
  - (b) (b) where required to do so by a majority of the Governors, other than Student Governors, of the Corporation or committee present at the meeting, withdraw from the meeting.
- 13.10 The Clerk
  - (a) shall withdraw from that part of any meeting of the Corporation, or any of its committees, at which the Clerk's remuneration, conditions of service, conduct, suspension, dismissal or retirement in the capacity of Clerk are to be considered; and
  - (b) where the Clerk is a member of Staff, the Clerk shall withdraw in any case where a member of Staff is required to withdraw under clause 13.5.
- 13.11 If the Clerk withdraws from a meeting, or part of a meeting, of the Corporation under clause 13.10 or otherwise, the Corporation shall appoint a person from among its membership to act as Clerk during this absence.
- 13.12 If the Clerk withdraws from a meeting, or part of a meeting, of a committee of the Corporation, the committee shall appoint a person from among its membership to act as Clerk to the committee during this absence.

## **14. Minutes**

- 14.1 Written minutes of every meeting of the Corporation shall be prepared, and, subject to clause 14.2, at every meeting of the Corporation the minutes of the last meeting shall be taken as an agenda item.
- 14.2 Clause 14.1 shall not require the minutes of the last meeting to be taken as an agenda item at a special meeting, but where they are not taken, they shall be taken as an agenda item at the next meeting which is not a special meeting.
- 14.3 Separate minutes shall be taken of those parts of meetings from which Staff Governors, Executive Governors, Student Governors or the Clerk have withdrawn in accordance with clause 13.5, 13.6, 13.8, 13.9 or 13.10 and such persons shall not be entitled to see the minutes of that part of the meeting or any papers relating to it.

## **15. Written Resolutions**

- 15.1 A resolution in writing agreed by 51% of those Governors who would have been entitled to vote upon it had it been proposed at a meeting (not including vacancies) shall be effective provided that:
- (a) a copy of the proposed resolution has been sent to every eligible Governor or, in the case of a resolution to be considered by a committee, to every eligible member of that committee;
  - (b) the Chair (or in the Chair's absence, a Vice Chair) or, in the case of a resolution to be considered by a committee, the committee chair (or in the committee chair's absence, a committee vice chair), is satisfied that it is reasonable in the circumstances to make use of the written resolution procedure;
  - (c) no fewer than 51% of the Governors or members (not including vacancies) have signified agreement to the resolution; and
  - (d) it is contained in a document or documents authenticated by the Clerk which has or have been received by the Corporation within the period of 28 calendar days beginning with the circulation date
- 15.2 A resolution in writing may comprise several copies to which one or more individuals have signified their agreement.
- 15.3 A written resolution will lapse if it is not passed before the end of the period of 28 days beginning with the circulation date.
- 15.4 For the purposes of this clause 15, "circulation date" is the day on which copies of the written resolution are sent or submitted to Governors or members, or, if copies are sent or submitted on different days, the first of those days.

## **16. Chair's Actions**

- 16.1 It will be necessary from time to time for the Chair, or a Vice Chair in his/her absence, to act on behalf of the Corporation between meetings. The circumstances under which the Chair or a Vice Chair may act will include:
- (a) routine action which would not have merited an agenda item and discussion at a Corporation meeting, for example routine documents;
  - (b) responding to approaches by external organisations; and
  - (c) agreeing to detailed aspects of implementation of matters already agreed by the Corporation.
- 16.2 The Chair, or a Vice Chair in his/her absence, may take action on matters which he/she judges are too urgent to await a meeting. Such action should only be taken in circumstances where the Chair, or a Vice Chair in his/her absence is satisfied that delaying a decision would disadvantage the College and the decision is not outwith the scope of decision-making which the Corporation would reasonably expect to be undertaken by Chair's Actions.

16.3 The Corporation accepts corporate responsibility for those actions taken by the Chair or a Vice Chair outside of a meeting and within the terms of this clause 16 and any rule or bye-law made under Article 20 concerning Chair's actions.

16.4 The Clerk must make a full record of all Chair's actions and report them to the next meeting of the Corporation, where they will be proposed for ratification. If the Clerk has not been directly involved in a Chair's action then the Chair (or a Vice Chair) must ensure that the Clerk is given a full account of the Chair's action.

## **17. Public access to meetings**

17.1 The Corporation shall decide any question as to whether a person should be allowed to attend any of its meetings where that person is not a Governor, the Clerk or the Principal and in making its decision, it shall give consideration to clause 18.2.

## **18. Publication of minutes, written resolutions and papers**

18.1 Subject to clause 18.2, the Corporation shall ensure that a copy of:

- (a) a print of any written resolution passed under clause 15;
- (b) the agenda for every meeting of the Corporation;
- (c) the draft minutes of every such meeting, if they have been approved by the Chair of the meeting;
- (d) the approved minutes of every such meeting; and
- (e) any report, document or other paper considered at any such meeting

shall as soon as possible be made available during normal office hours at the College to any person wishing to inspect them.

18.2 There shall be excluded from any item made available for inspection any material relating to:

- (a) a named member of Staff or prospective member of Staff;
- (b) a named student at, or candidate for admission to, the College;
- (c) the Clerk; or
- (d) any matter which, by reason of its nature, the Corporation is satisfied should be dealt with on a confidential basis.

18.3 Subject to clause 18.2, the Corporation shall ensure that a copy of the draft or approved minutes of every meeting of the Corporation and a print of any written resolution passed under clause 15 shall be placed on the College's website, and shall, despite any rules the Corporation may make regarding the archiving of such material, remain on its website for a minimum period of 12 months.

18.4 Where material is excluded from inspection under clause 18.2(d), the Corporation shall make such material available for inspection where it is satisfied that the

reason for dealing with the matter on a confidential basis no longer applies, or where it considers that the public interest in disclosure outweighs that reason.

**19. Copies of the Instrument of Government**

- 19.1 A copy of this Instrument shall be given free of charge to every Governor and at a charge not exceeding the cost of copying or free of charge, to any other person who requests a copy and shall be available for inspection at the College upon request, during normal office hours, to every member of Staff and every student.

**20. Change of name of the Corporation**

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

**21. Application of the Seal**

- 21.1 The application of the Seal of the Corporation shall be authenticated by the signature of the Corporation chair and any other Governor (as determined by the Clerk). If the Corporation chair is absent, unavailable or has an interest relating to the document to be sealed, any other Governor (as determined by the Clerk) may authenticate in place of the Corporation chair.
- 21.2 An entry of the sealing of every order, deed, or other document to which the Seal of the Corporation has been affixed must be registered in a book maintained for that purpose and reported to the next available ordinary meeting of the Corporation.

**22. Means of Communication to be used**

- 22.1 Any notice or other document to be given to or by any person pursuant to this Instrument:
- (a) must be in writing; and
  - (b) may be given in electronic form.
- 22.2 The College may give any notice or other document(s), including a written resolution, to a Governor either:
- (a) personally; or
  - (b) by sending it by post in a prepaid envelope addressed to the Governor at his or her address; or
  - (c) by leaving it at the address of the Governor; or
  - (d) by giving it in electronic form to the Governor's address; or
  - (e) by placing the notice on a website and providing the Governor with a notification in writing or in electronic form of the presence of the notice on the website. Where the notice is the notification of a meeting, it must state

that it concerns a notice of a Corporation meeting and must specify the place date and time of the meeting.

22.3 This table sets out:

- (a) delivery methods for sending any notice or other documents to a Governor; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to clause 22.4:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand	On signature of a delivery receipt or at the time the notice is left at the individual's address.
Pre-paid first class post or other next working day delivery service	9.00 am on the next Business Day following the day of posting.
Fax	At the time of transmission.
Email	Immediately after sending.
Website	On deemed receipt of the notification sent in accordance with clause 22.2.
Document exchange (DX)	9.00 am on the next Business Day after being put into the DX.

22.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.5 A Governor present in person at any meeting of the College shall be deemed to have received notice of the meeting and of the purposes for which it was called.

22.6 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

22.7 Proof that an electronic form of notice was given shall be conclusive where the College can demonstrate that it was properly addressed and sent.

22.8 Governors must agree in writing to receive documents and notices from the College by electronic means and must keep the College informed of any change to their contact details.

22.9 Only such documents and notices as are specified by the College may be sent to the College in electronic form to the address specified by the College for that purpose and such documents or notices sent to the College are sufficiently authenticated if the identity of the sender is confirmed in the way the College has specified.



## **KIRKLEES COLLEGE CORPORATION**

### **ARTICLES OF GOVERNMENT**

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## **1. Interpretation of the terms used**

- 1.1. In these Articles the terms and expressions used shall have the same meanings as in the Instrument.

## **2. Conduct of the College**

- 2.1. The College shall be conducted in accordance with the provisions of the Instrument, the Articles, any rules, bye-laws, policies and procedures made under the Articles; and all legislation applying to the College and its governance.

## **3. Responsibilities of the Corporation, the Principal and the Clerk**

- 3.1. The Corporation shall be responsible for the following functions:
- (a) the determination and periodic review of the educational character and mission of the College and the 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) the effective and efficient use of resources, the solvency of the College and the Corporation and safeguarding their assets;
  - (d) approving annual estimates of income and expenditure;
  - (e) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the senior post holders 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 of a member of Staff; and
  - (f) approving a framework for the pay and conditions of service of all other Staff.
- 3.2. Subject to the responsibilities of the Corporation, the Principal shall be the Chief Executive of the College, and shall be responsible for the following functions:
- (a) making proposals to the Corporation about the educational character and mission of the College and implementing 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 senior post holders or the Clerk where the Clerk is also a member of Staff;

- (f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons; 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.

3.3. The Clerk shall be responsible for the following functions:

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

#### **4. The establishment of committees and delegation of functions generally**

4.1. The Corporation may establish committees for any purpose or function, other than those assigned in the Articles to the Principal or the Clerk and may delegate powers to:

- (a) such committees;
- (b) the Chair, or in the Chair's absence, a Vice-Chair;
- (c) the Principal.

4.2. The number of members of a committee and the terms on which they are to hold and to vacate office, shall be decided by the Corporation.

4.3. The Corporation may also establish committees under collaboration arrangements made with other further education colleges or maintained schools (or with both), and such joint committees shall be subject to any regulations made under section 166 of the Education and Inspections Act 2006 governing such arrangements.

#### **5. The Appointments Committee**

5.1. The Corporation shall establish a committee to include in its remit the requirement to advise on the appointment and re-appointment of Governors (other than as an Executive, Staff or Student Governor).

#### **6. The Audit Committee**

6.1. The Corporation shall establish a committee, to be known as the "Audit Committee", to advise on matters relating to the Corporation's audit arrangements and systems of internal control.

- 6.2. The Audit Committee shall consist of at least four persons, a majority of whom must be Governors. In appointing members, the Corporation must maintain the Committee's independence and objectivity. While Staff Governor members are permitted, the Corporation shall periodically consider and determine whether such members meet good practice standards of independence and objectivity.
- 6.3. The Audit Committee shall operate in accordance with any requirements of the principal funding body.

## **7. Composition of committees**

- 7.1. Any committee established by the Corporation may include persons who are not members of the Corporation but a person who is not an Independent Governor or the Executive Governor shall not participate in the consideration or determination of:
- (a) the case for dismissal; or
  - (b) an appeal in connection with the dismissal of the Principal, the Clerk or any other senior post holder.

## **8. Access to committees by non-members and publication of minutes**

- 8.1. The Corporation shall ensure that:
- (a) a written statement of its policy regarding attendance at committee meetings by persons who are not committee members; and
  - (b) the minutes of committee meetings, if they have been approved by the chair of the meeting, are published on the College's website and made available for inspection at the College by any person, during normal office hours.

## **9. Delegable and non-delegable functions**

- 9.1. The Corporation shall not delegate the following functions:
- (a) the determination of the educational character and mission of the College;
  - (b) the approval and monitoring of the annual estimates of income and expenditure;
  - (c) the responsibility for ensuring the solvency of the College and the Corporation and for safeguarding their assets;
  - (d) the appointment of the Principal or the holder of any other senior post;
  - (e) the appointment of the Clerk (including, where the Clerk is, or is to be, appointed as a member of Staff the Clerk's appointment in the capacity of a member of Staff); and
  - (f) the modification or revocation of the Instrument or Articles.

9.2. The Corporation shall establish a committee to include in its remit the consideration and/or determination of:

- (a) the case for dismissal; or
- (b) an appeal in connection with the dismissal of the Principal, the Clerk or any other senior post holder. The Corporation shall make rules specifying the way in which the committee having such functions shall be established and conducted.

9.3. The Principal may delegate functions to any senior post holder, other than:

- (a) overall responsibility for the operational management of the College, in particular, the management of the budget and resources; and
- (b) any functions that have been designated 'non-delegable' by the Corporation.

## **10. Appointment and promotion of Staff**

10.1. The Corporation shall establish a committee to include in its remit the oversight of the senior post holder recruitment process, including authority, where there is a vacancy or expected vacancy in a senior post holder role, to: :

- (a) put in place an appropriate recruitment process; and
- (b) establish a selection panel, which shall consist of:
  - for the Principal at least five Governors, including the Chair or the Vice-Chair or both
  - for another senior post holder at least four Governors, including the Principal

and in each case, at least one suitably experienced person who is independent from the Corporation (the 'Independent Person').

10.2. The members of the selection panel shall interview any applicant(s); and, where they consider it appropriate to do so, recommend to the Corporation for appointment an applicant they have interviewed.

10.3. If the Corporation approves the recommendation of the selection panel, that person shall be appointed.

10.4. If the members of the selection panel are unable to agree on a person to recommend to the Corporation, or if the Corporation does not approve their recommendation, the Corporation may make an appointment itself of another person from amongst those interviewed who the selection panel agreed was appointable, or it may require the selection panel to repeat the steps specified in clause 10.2, with or without first re-advertising the vacancy.

10.5. Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of Staff -

- (a) may be required to act as Principal or in the place of any other senior post holder; and
  - (b) if so required, shall have all the duties and responsibilities of the Principal or such other senior post holder during the period of the vacancy or temporary absence.
- 10.6. This Article 10 shall not apply at the end of a fixed term contract where the intention is to renew a senior post holder's fixed term contract, or appoint a senior post-holder who has been engaged on a fixed term contract to the equivalent role on a permanent basis. In such cases the Corporation may simply approve the appointment or reappointment.
- 10.7. The Principal shall have responsibility for selecting for appointment all members of Staff other than:
  - (a) senior post-holders; and
  - (b) where the Clerk is also to be appointed as a member of Staff, the Clerk in the role of a member of Staff.

## **11. Rules relating to the conduct of Staff**

- 11.1. After consultation with the Staff, the Corporation shall make rules relating to their conduct.

## **12. Academic Freedom**

- 12.1. In making any rules under Article 11, the Corporation shall have due regard to the need to ensure that academic Staff at the College have the freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the College.

## **13. Grievance, suspension and disciplinary procedures**

- 13.1. After consultation with Staff, the Corporation shall make rules setting out:
  - (a) grievance procedures for all Staff;
  - (b) procedures for the suspension of all Staff; and
  - (c) disciplinary and dismissal procedures for
    - (i) senior post-holders, and
    - (ii) Staff other than senior post-holders

and such procedures shall be subject to the provisions of Articles 3.1(e), 3.2(e), 9.1(d), 9.1(e), 9.2 and 14.

- 13.2. Any rules made under Article 13.1(b) shall include provision that where a person has been suspended without pay, any appeal against such suspension shall be heard and action taken in a timely manner.
- 13.3. Any rules made under Article 13.1(c)(i) shall include provision that where the Corporation considers that it may be appropriate to dismiss a person, a preliminary investigation shall be conducted to examine and determine the case for dismissal.

#### **14. Suspension and Dismissal of the Clerk**

- 14.1. Where the Clerk is also a member of Staff at the College, the Clerk is to be treated as a senior post holder for the purposes of Article 13.1(c).
- 14.2. Where the Clerk is suspended or dismissed from his/her employment, that suspension or dismissal shall not affect the position of the Clerk in the separate role of Clerk to the Corporation.

#### **15. Students**

- 15.1. Any students' union shall conduct and manage its own affairs and funds in accordance with a constitution approved by the Corporation and no amendment to, or rescission of, that constitution, in part or in whole, shall be valid unless approved by the Corporation.
- 15.2. The students' union shall present audited accounts annually to the Corporation.
- 15.3. After consultation with representatives of the students, the Principal shall make rules concerning the conduct of students, including procedures for their suspension and expulsion (including expulsion for an unsatisfactory standard of work or other academic reason).

#### **16. Financial matters**

- 16.1. The Corporation shall set the policy by which the tuition and other fees payable to it are determined, subject to any terms and conditions attached to grants, loans or other payments paid or made by the principal funding body.

#### **17. Co-operation with the Principal Funding Body's Auditor**

- 17.1. The Corporation shall co-operate with any person who has been authorised by the principal funding body to audit any returns of numbers of students or claims for financial assistance and shall give any such person unrestricted access to documents or records held by the Corporation, including computer records.

#### **18. Internal audit**

- 18.1. The Corporation shall, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other control to ensure that they contribute to the proper, economic, efficient and effective use of the Corporation's resources.

- 18.2. The Corporation may arrange for the examination and evaluation mentioned in Article 18.1 to be carried out on its behalf by internal auditors.
- 18.3. The Corporation shall not appoint persons as internal auditors to carry out the activities referred to in Article 18.1 if those persons are already appointed as external auditors under Article 19.

## **19. Accounts and audit of accounts**

- 19.1. The Corporation shall:
- (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare a statement of accounts for each financial year of the Corporation.
- 19.2. The statement shall:
- (a) give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year; and
  - (b) comply with any directions given by the principal funding body as to the information to be contained in it, the manner in which the information is to be presented, the methods and principles according to which it is to be prepared and the time and manner of publication.
- 19.3. The accounts and the statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.
- 19.4. The Corporation shall not appoint persons as external auditors in respect of any financial year if those persons are already appointed as internal auditors under Article 18.
- 19.5. Auditors shall be appointed and audit work conducted in accordance with any requirements of the principal funding body.

## **20. Rules and Bye-Laws**

- 20.1. The Corporation shall have the power to make rules and bye-laws relating to the government and conduct of the College and such rules and bye-laws shall be subject to the provisions of the Instrument and these Articles.

## **21. Copies of Instrument and Articles and rules and bye-laws**

- 21.1. A copy of the Instrument, these Articles, and of any rules, bye-laws, policies and procedures shall be given free of charge to every Governor and at a charge not exceeding the cost of copying or free of charge, to any other person who requests a copy and shall be available for inspection at the College upon request, during normal office hours, to every member of Staff and every student.

## **22. Modification or replacement of the Instrument and Articles**

- 22.1. Subject to Articles 22.2 and 22.3, the Corporation may by resolution modify or replace its Instrument and/or Articles.
- 22.2. The Corporation shall not make changes to the Instrument or Articles that would result in the Corporation ceasing to be a charity.
- 22.3. Any amendment of clause 9B of the Instrument is subject to prior written consent of the Charity Commission.

## **23. Dissolution of the Corporation**

- 23.1. The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.
- 23.2. The Corporation shall ensure that a copy of the draft resolution to dissolve the Corporation on a specified date shall be published at least one month before the proposed date of such resolution.
- 23.3. If the Corporation is dissolved:
  - (a) the last financial year shall end on the date of dissolution and
  - (b) the Corporation may decide that what would otherwise be the last two financial years, shall be a single financial year for the purpose of this article.

*Instrument and Articles approved by the Corporation on: 15 May 2023*

## **Amendment History**

Corrections to paragraph numbering	Director of Governance & Compliance	31 January 2024
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