

BECOMING A GOVERNOR AT THE COLLEGE - SETTING THE SCENE

What is governance?

There are many definitions of governance but it is generally accepted that the governance of an organisation is an activity distinct from, but complementary to, the management of that organisation.

Two common definitions of governance that bring out this important distinction are **ensuring that the organisation does the right things, for the right people, in the right way** (governance ensures, management does), and **steering not rowing**. Often the relationship between a college governor and a college manager is described as being like that of a “critical friend” someone who supports and challenges the college management by bringing an informed external perspective to the college.

Governance provides strategic leadership and direction to an organisation. It sets and approves policies and the budget, defines expectations, delegates powers and verifies performance towards meeting its strategic aims and objectives.’ **The Further Education sector**

The college sector consists of FE Colleges and Sixth Form Colleges. Each year, the Association of Colleges (AoC) publishes an annual overview of the sector in terms of facts and figures. AoC regions also produce their own summaries of college activity at regional level.

There are approximately 297 FE Colleges in England, which include specialist Colleges and other specialist institutions. In addition, there are around 1,000 private providers and 200 public providers of further education (the latter mostly local authorities) catering mainly for the 19 to 24 and 25 and above markets. The 2,500 schools with Sixth Forms and 93 Sixth Form Colleges are significant providers of further education for 16 to 18-year-olds. The Henley College is a Sixth Form College.

Colleges’ Relationships with Government

Although colleges are independent bodies and do not form part of the public sector, they are regulated and to a large extent funded by central Government. It follows that Government departments, while not directly responsible for the performance of individual colleges, have a measure of control over them, backed up by reserve powers. The Department for Education (DfE) has oversight of the sector.

Most of the day-to-day contact that Colleges have with the DfE is through their funding agencies, the Education Skills Funding Agency (ESFA), and funds learning for students under the age of 18, including learners in academies and maintained school Sixth Forms as well as in Colleges.

THE NATIONAL FRAMEWORK

Colleges operate within a national framework, which is set by legislation and by Government and its agencies. This section sets out the main elements of that framework that apply to all colleges and which all governors should be aware of.

The Governing Body and its Powers

Every college is under the overall direction of a governing body. In more than 95% of cases, the governing body is a Further Education Corporation or Sixth Form College Corporation established under the Further and Higher Education Act 1992. This Act removed Colleges from local authority control and set them up as freestanding public bodies. A small number ('specialist designated institutions') are independently constituted charities regulated by their own trust deeds.

Corporations are empowered by Section 18 of the Act to provide further and higher education. The Act requires every College to have an Instrument and Articles of Government setting out how it will conduct its business. Schedule 4 to the Act (which was substantially revised by the Education Act 2011 pages 115 and 116) states what the Instrument and Articles must include.

Types of Governor

The members of the governing body are usually referred to as **Governors**, or collectively as **the Board**. It is the Board's job to decide how many members it has and how they are appointed. The only proviso is that the membership must include staff, students and, for Sixth Form Colleges, parents of students.

A governing body therefore normally comprises:

- one or more members of staff
- one or more students
- in Sixth Form Colleges, one or more parents
- the Principal of the College (the Principal does not need to be a member of the governing body but almost always is)
- a number of governors who do not fall into any of the above categories (often called independent governors) within whatever overall and category-specific limits the Board has set

In accordance with the Instrument and Articles, the Board specifies the arrangements for recruiting governors in each of the above categories, determines the term of office for which each appointment will be made. It also sets limits either on the number of times a governor may be reappointed or on the total number of years which any governor may serve.

Charitable Status

Every College has charitable status and so is subject to the requirements of the Charities Act. Further education (FE) corporations and Sixth Form College (SFC) corporations are classified as 'exempt' charities. This means that they are not

regulated by the Charity Commissioners but by a separate regulator - the Department for Education.

Governors are, however, trustees, and are therefore required to:

- apply the property and income of the College only for the purposes of the charity
- act only within their legal powers – not 'ultra vires'
- manage and protect the property of the College
- 'exercise the same degree of care in dealing with the administration of the charity as a prudent business person would in managing their own affairs or those of someone else for whom they are responsible'

Since Colleges are charities, governors are only eligible to serve if they meet the criteria for appointment as charity trustees. They must be fit and be able to discharge the duties of a governor and must not be bankrupts or former prisoners.

Financial and Audit requirements

Many of the obligations placed on Colleges flow from the fact that they receive public funds. The expectations of the principal funding body – the Education and Skills Funding Agency (ESFA) – are set out for Colleges in the funding agreement.

This document requires the governing body to:

- appoint an accounting officer (normally the Principal) who is answerable to Parliament for the use of public funds
- appoint an Audit Committee
- demonstrate value for money
- have an effective risk management policy
- properly manage and develop its property and ensure that its premises are properly equipped
- inform the funding body of any risks to the College's solvency or viability or of any instances of fraud or irregularity

The funding agreement also empowers the relevant funding body to specify the form in which each College will prepare its financial statements. It also requires Colleges to comply with Joint Audit Code of Practice (JACOP).

The most important requirements of the JACOP for governors are:

- to ensure that the terms of reference and duties of the Audit Committee meet certain minimum requirements
- to publish annually an evaluation of the College's corporate governance arrangements
- to maintain an adequate system of internal control, ensure compliance with statutory and regulatory requirements and have policies and procedures in place to deal with suspected cases of fraud or other irregularity

Code of Governance

In 2015, the AoC published The English Colleges' Code of Good Governance, which the College has adopted. The Code sets out standards of good governance practice that are specific to the College sector.

Inspection and Regulation

As well as being regulated by the Department for Education (DfE), Colleges, as providers of education, are subject to inspection by the Office for Standards in Education (Ofsted), an independent inspectorate which is funded by and reports directly to Parliament.

Ofsted inspects all Colleges on a cyclical basis. The frequency of inspection depends on the grade awarded at the last inspection but all Colleges are subject to an annual risk assessment. Most Colleges can expect an inspection every two to three years.

Under its current Common Inspection Framework for Further Education and Skills, Ofsted can award a College one of four grades:

- 1 Outstanding
- 2 Good
- 3 Requires improvement
- 4 Inadequate

Ofsted's judgement of the overall effectiveness of a College is based on inspectors' judgements of:

- outcomes for students
- the quality of teaching, learning and assessment
- the effectiveness of leadership and management

The College's last Ofsted inspection was in May 2016 and was rated as "Good".

Funding bodies also undertake regular audits to satisfy themselves that funds have been properly applied.

THE LOCAL FRAMEWORK

Within the national framework that applies to all colleges, each individual college establishes its own systems and structures to deliver effective governance. This section lists the documents relating to governance and definitions of roles and responsibilities for this College.

Instrument and Articles of Government

The Articles of Government define the roles and responsibilities of the governing body, its committees, the Principal and the Clerk and make provision for audit and staffing matters. It is the key document that sets out how an individual College is to be governed.

Prior to 2011, the Instrument and Articles were the same for all Colleges, but the Education Act 2011 gave Colleges the power to vary their Instruments and Articles provided that certain key features are included. Broadly, a College's Instrument of Government lays down the number of governors Colleges must have in each category (staff, students and so on), by what means and for how long governors are to be appointed, and how meetings should be called and conducted.

The Role of the Principal

Every College's Instrument and Articles must include a requirement for the governing body to appoint a Chief Executive, who is normally the Principal of the College, and a Clerk, and to make their respective responsibilities and those of the governing body clear. These responsibilities are not specified in law, although the funding agreement does state an expectation that the Principal will be the accounting officer for the College.

Most Colleges' Articles continue to define the role as set out in the pre-2011 Articles of Government. These made the Principal responsible for making proposals in relation to the College's educational character and mission, organising, directing and managing the College and dealing with staff matters within an overall framework set by the Board.

Other Senior Members of staff

In many Colleges, a small number of senior members of staff are appointed by, and are directly accountable to, the governing body. These staff are known as 'senior post-holders'. Because it appoints and directly manages senior post-holders, the governing body has obligations to these individuals as their employer that it cannot delegate to the Principal. In this respect, the position of a senior post-holder in relation to the governing body is analogous to that of the Clerk (who in some Colleges is classified as a senior post-holder). At this College there are currently two: the Principal and Deputy Principal.

The Role of the Clerk

Like the Principal and the other senior post-holder, the Clerk is appointed by and is accountable to the governing body. The role and responsibilities of the Clerk, like

those of the Principal are, these days, a matter for the governing body to determine. The Clerk is still generally expected to act as the governing body's principal adviser on governance matters. Along with the Chair, the Foundation Code of Governance assigns a leadership role in the development of effective governance to the Clerk. It is important for governors to know what they can expect of the Clerk and the ways in which s/he should be able to help them.

Code of Conduct

The English Colleges' Code of Good Governance requires the governing body to establish, and requires governors to follow, a Code of Conduct that has regard to the accepted standards of behaviour in public life. They should follow the seven 'Nolan Principles' of leadership:

1. selflessness
2. integrity
3. objectivity
4. accountability
5. openness
6. honesty
7. leadership

Issues such as the collective responsibility of the governing body, the way in which potential conflicts of interest are managed and the approach to be taken to confidential information should all be covered in the Code of Conduct.

Standing Orders

These are the rules by which the governing body manages its business. They amplify the requirements of the Instrument of Government concerning the calling and conduct of meetings, and provide details of how the business of the governing body is to be conducted.

Risk Management Arrangements

Every College is required under the terms of its funding agreement to have effective risk management arrangements in place. There should be a document available to all governors that describes these arrangements and explains how key strategic risks are identified and managed.

Financial Regulations

To help control financial risks, colleges put in place financial regulations. These set out how the college will comply with its legal obligations in relation to financial management and ensure probity, propriety and value for money in the use of public funds. Top-level financial regulations usually supplemented by more detailed financial procedures issued by the College's management are the responsibility of the governing body, and should be regularly reviewed.

Committee Terms of Reference and Scheme of Delegation

Every College is required under the terms of its financial memorandum or funding agreement to have an audit committee.

The English Colleges' Code of Good Governance also expects bodies to establish a Governance & Search committee and a Remuneration committee wherein the governing board delegates the recruitment and consideration of candidates for Board appointment and the remuneration of the Principal, Clerk and, if relevant, other senior post-holders to committees.

The terms of reference and membership of these committees and of any other committees that the governing body may have established should be made available to all governors

OTHER LEGAL OBLIGATIONS

As the employer, the governing body will be required to produce evidence of establishing, operating and reviewing its oversight and systems in relation to the following legislation:

Safeguarding

There is no single piece of legislation that covers the safeguarding of children and vulnerable adults in the UK, but rather a plethora of laws and guidance that are continually being amended, updated and revoked. A child or young person is an individual up to their 18th birthday. A vulnerable adult is a person aged 18 or over 'who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation' (Law Commission Report 1997).

All organisations that work with children and vulnerable adults have a responsibility to safeguard and promote their welfare. The College ensures it has in place safeguarding and safer recruitment policies and practices, including enhanced Disclosure and Barring Service Checks (DBS) – formerly Criminal Records Bureau (CRB) checks – for specific roles.

Data Protection

Currently the Data Protection Act 1998 (DPA) soon to be replaced by the General Data Protection Regulation (GDPR) on 25 May 2018 aims to balance the right of individuals to privacy and the need for institutions to process personal information for their legitimate business purposes. The purpose of the Act is to protect the rights and privacy of individuals and to ensure that the information (data) that is held about them is processed only with their knowledge and consent.

The DPA only applies to personal data (i.e. information which relates to a living individual who can be identified from that information). Consent for processing is only required for 'sensitive personal data', that is, information about an individual's racial

or ethnic origin, political opinion, religion, beliefs, sexual life, alleged criminal activity, and court proceedings.

The DPA covers all records and information held by a College, whether this is digital or print, current or archived.

The Act gives individuals certain rights regarding the personal information held about them and places certain obligations, in the form of eight principles, on those who process the personal information. Under Section (1) of the Act, 'processing' refers to anything that is done with the data. The people who determine the purpose and manner in which the information is processed are referred to as data controllers (such as a College), and those whose data are subject to process are known as data subjects (such as learners, staff and alumni).

Part of the requirements of the DPA relates to the processing of personal data, which is how data is obtained, held and stored. It also covers processes operating within the organisation related to disclosure, retrieval, storage and use of data and its destruction. In fact it applies to any activity relating to personal data.

There is a wide range of personal data kept by Colleges, mainly about staff and learners. In addition to factual information, this includes expressions of opinion, and photographic images captured on CCTV and collected via security cards. The DPA has been amended by the Freedom of information Act 2000 to enhance the rights of individuals to see more of their personal information. It now covers 'any other personal data' held by a public authority, information referred to as 'unstructured' personal data.

Health and Safety

Health and safety is not just about preventing slips, trips and falls. It is also about supporting personal well-being and maximising physical and mental health.

Only those people employed directly on a contract of employment with the governing body are its actual employees, but it has legal responsibilities for all other types of workers.

Colleges are required by law to manage health and safety at work effectively by ensuring that they:

- provide a written health and safety policy
- assess risks to employees, students, partners and others affected by their operations
- arrange for the effective planning, organisation, control, monitoring and review of preventive and protective measures
- ensure they have access to competent health and safety advice
- consult employees about their risks at work and current preventive and protective measures

Failure to comply may lead to serious consequences for a College, for relevant individuals and the organisation's reputation – punishment could include fines, imprisonment and disqualification.

Whilst governing bodies will delegate many health tasks to others, such as professional health and safety employees or consultants, they have the ultimate responsibility for health and safety matters in a College.

Equality and Diversity

Governors and the Clerk have a significant role in creating and maintaining an inclusive organisation where everyone can work, learn and reach their full potential.

The difference between equality and diversity

Although the terms are linked, they have a different emphasis.

Equality is about creating a fairer society where everyone can participate and have the opportunity to fulfil their potential – to live as equal citizens in society free from discrimination and harassment.

Diversity is about respecting, valuing and celebrating aspects that make us unique as individuals – recognising that we contribute to our society because of these aspects not in spite of them.

COLLEGE ARRANGEMENTS

In addition to statutory documents, the College has a portfolio of internal information that it shares with new governors explaining how the governance processes work. The Clerk of the Board is the best person from whom to obtain this and other introductory information.

Information a new governor can expect to be given by the College at the start of their time as a governor (not exhaustive)

Accessing information

You will be informed how, as a governor, you will access papers for each meeting you attend.

College Calendar

The College will hold many events during the year, which new governors may wish to attend to build links with students and staff and become more involved with the life of the College. The Clerk will notify you of forthcoming events.

College Map

A map showing the layout of the College can be very useful, especially where new governors are unfamiliar with the site or if the facilities are at more than one location.

Committee List

The governing body has a number of committees. New governors will be given a list of these committees showing the membership and chair of each.

Contact Details

New governors will also be given the contact details of other governors – their postal addresses, emails and phone numbers.

Consent to Share Data

New governors are likely to be asked to consent to share data with other governors, such as email, postal address and contact numbers. This may be incorporated into 'eligibility to be a governor' above.

Dates of Governor Meetings

New governors will be informed of the dates of governor meetings. These are likely to be set well in advance but may be subject to amendment if a change in circumstances dictate. All governors will where possible be informed in good time of any changes of date, time or location.

Declaration of Interests

New governors will be asked to declare any interests that may potentially conflict with their role as governor and with the interests of the College. This is commonly asked at the start of meetings and a statutory annual return is required, the timing of which coincides with the beginning of the academic year.

Disclosure and Barring Service Check

The College has taken the decision to continue to conduct these checks.

Expenses Claims

New governors will be informed about the expenses they can claim and how a claim for expenses should be made.

Governor Links

It is possible that some governors may be linked to a particular curriculum area or statutory requirement such as health and safety or safeguarding. New governors will be informed of any colleagues who have such a role.

Skills Audit

To ensure that there is a balance of skills on the Board, new governors will be asked to complete a form annually asking them to describe relevant skills and experience. This information will help the Governance & Search committee recruit future governors and address any gaps in the existing Board.

Terms of Reference

Each committee and the governing body will have its Terms of Reference (ToR) that minimally state its membership, quorum, responsibilities and delegated powers. New governors will have access to a copy of the ToR for the Board and any committee which they are a member of.

Tour of the College

New governors will be given a tour of the College at a time to be arranged. This will give an overview of the facilities available to students and staff and also provide practical information, such as where meetings will be held, how to get in during the evening, where the canteen facilities and wash rooms are and so forth.

Training Plan

Induction training for new governors and development training for all governors will be arranged through the academic year. This may be arranged as part of a formal programme or be delivered on an ad hoc basis.

ABOUT THE COLLEGE

Internal information which the College may share with new governors (not exhaustive or compulsory)

Annual Report and Accounts

This report produced annually each autumn gives an overview of how the College has worked and met its objectives, describes the work of the governing body and provides financial information for the previous year (August to July). This is reviewed and agreed by the corporation, and is signed by the Principal, Chair of the Corporation and the external auditors.

Budget Reports

Governors who are members of the Finance & Resources committee, and possibly other governors, will be given regular financial reports. The draft annual budgets will be presented to the Finance & Resources committee to be scrutinised and recommended to the governing body for agreement.

Quality Improvement Plan

The College produces a one-year plan of objectives, taken from its strategic action plan, with associated costs and timescales. This may also say who is responsible for each action.

Curriculum and Qualification Framework

Details of the courses offered by the College and which qualifications its students can obtain are available in the prospectus or from the website.

History & Future of the College

The College has written an overview its development, including intentions for its further development.

Management Structure

Governors will be informed of the College's management structure, especially as many senior post-holders or other managers may be invited to attend meetings.

Ofsted Report

The College has a copy of its latest Ofsted report.

Prospectus

The course prospectus exists in either or both paper and electronic versions. In addition to listing the courses and qualifications offered, it describes the College's facilities and various extra-curricular activities and is a key document for presenting the College to potential students and stakeholders.

Self-assessment Report

This is an annual report, written by the College, providing a self-assessment of areas linked to the delivery of the curriculum. Governors must read and be aware of information contained within it. This report may be looked at by Ofsted prior to an inspection.

Strategic Plan

The format will vary but this is the long-term plan which the management will have agreed. It is regularly updated and feeds into the business plan. Governors need to be familiar with this plan to be able to fulfil their role in monitoring its development and implementation and to ask questions of the management team.