



THE HENLEY COLLEGE CORPORATION

COLLEGE CODE OF CONDUCT

FOR CORPORATION MEMBERS

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Made by the Corporation of The Henley College on 3 April 2017.

1. INTRODUCTION

- 1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Corporation Members, to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the 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, Corporation Members are recommended to familiarise themselves with the source documents listed in the Schedule.
- 1.3 If a Corporation Member 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 Corporation Member of the College and for any act or omission in that capacity rests with the individual Corporation Member.
- 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 Corporation Members may be appointed.
- 1.5 By accepting appointment to the Corporation, each Corporation Member agrees to accept the provisions of this Code.
- 1.6 Each Corporation Member 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 Member in accordance with clause 9 of the Corporation's Instrument and Articles of Government.

2. INTERPRETATION

In this Code the following expressions shall have the following meanings:-

- 2.1 **'College'** means this College;
- 2.2 **'College Mission Statement'** means the statement set out at paragraph 3.1 of this Code or such other mission statement as may be agreed by the Corporation from time to time;
- 2.3 **'Corporation'** means the sixth form college corporation which was established for the purpose of conducting the College;
- 2.4 **'Corporation Member, 'Chair', 'Principal' and 'Clerk'** mean respectively the Member of the Corporation of the College, the Chair of the Corporation, the Principal of the College and the Clerk of the Corporation;
- 2.5 **'DfE'** means the Department of Education;
- 2.6 **'ESFA'** means the Education Skills Funding Agency or any successor body;
- 2.7 all other definitions have the same meanings as given in the College's Instrument and Articles of Government; and
- 2.8 words importing one gender import any gender.

3. AIMS AND VALUES

- 3.1 The College's Mission Statement is "Supporting our students to achieve their best by providing the highest quality of academic and vocational teaching and learning. An unrelenting focus on continuous quality improvement. Promoting high expectations, providing excellent pastoral care, welcoming individuality and developing independence."
- 3.2 The College summarises its educational aims in a Statement of College Educational Character.
- 3.3 The College Mission Statement, together with the College Statement of Educational Character and strategic objectives of the College agreed by the Corporation from time to time, seek to encapsulate the core purposes and aims of the College. Corporation Members should have due regard to these purposes

and aims 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;
- 3.5 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 Corporation Members owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its best interests. Each Corporation Member should act honestly, diligently and (subject to the provisions appearing in clause 10 of this Code relating to collective responsibility) independently. The actions of Corporation Members should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.
- 4.2 Decisions taken by Corporation Members at meetings of the Corporation and its committees must not be for any improper purpose or personal motive. Decisions taken must always be for the benefit of the College, its students and staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, Corporation Members must not be bound in their speaking and voting by mandates given to them by other bodies or persons.
- 4.3 Corporation Members must observe the provisions of the College’s Instrument and Articles of Government and in particular the responsibilities given to the Corporation by the College’s Articles of Government. Those responsibilities, including a list of “reserved” responsibilities which are so important that they must not be delegated, are set out in Appendix 4.
- 4.4 Corporation Members 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. Corporation Members must keep those Standing Orders and terms of reference under periodic review.
- 4.5 Corporation Members 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 College’s Articles of Government are set out in Appendix 5. 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 postholders, 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. Corporation Members should work together so that the Corporation and the Principal as Chief Executive perform their respective roles effectively.
- 4.6 Corporation Members should refer to the Clerk for advice relating to the governance functions which are set out in Appendix 5 and have regard to the Clerk’s independent advisory role.

5. **STATUTORY ACCOUNTABILITY**

- 5.1 Corporation Members are collectively responsible for observing the duties set out in the Funding Agreement which the College has entered into with the ESFA as a condition of receiving public funds. A summary of some of the more important requirements of the Funding Agreement is set out in **Appendix 5**.
- 5.2 Although the ESFA is the main provider of funds to the College, Corporation Members should note that they are also responsible for the proper use of income derived from other sources, such as the Higher

Education Funding Council for England (HEFCE) and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit. Where funding is received directly from HEFCE the College will have a memorandum of assurance and accountability with HEFCE which sets out the basis on which funding is provided. Where HEFCE funding is received indirectly via a collaboration with a HEFCE funded institution such funding will be subject to obligations contained in the memorandum of co-operation between the College and that institution.

5.3 As accounting officer for the Funding Agency, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the Funding Agency 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 Chief Executive of Skills Funding, 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 sixth form college 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 1** and **2** of this Code, and the recognition that students and other users of the College's services come first, are a requirement of being a Corporation Member, and should underpin all decisions taken by the Corporation.

7. **SKILL, CARE AND DILIGENCE**

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

8. **POWERS**

Corporation Members are responsible for taking decisions which are within the powers given to the Corporation by Parliament under sections 33E and 33F of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011. A summary of those powers is set out in **Appendix 6**. If a Corporation Member 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 Like other persons who owe a fiduciary duty, Corporation Members should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

9.2 Corporation Members are reminded that under the College's Instrument of Government [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 Corporation Member or of a close relative of the Corporation Member 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 Corporation Member'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 Corporation Member 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 meeting; and

9.3.3.2 withdraw from that Corporation or committee meeting where required to do so by a majority of the Members of the Corporation or committee present at the meeting.

9.4 For the purposes of clause 9.4 "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 member a financial interest (such as a contract for the supply of goods or services to the College) the Corporation must observe the requirements of the Charities Act 2011. The Corporation may wish to take legal advice before granting such an interest to a member.

9.6 Corporation Members must not receive gifts, hospitality or benefits of any kind from a third party which might 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 Corporation Members' Interests which will be open for public inspection. Corporation Members must disclose routinely to the Corporation all business interests, financial or otherwise, which they may have, and the Clerk will enter such interests on the Register. Corporation Members must give sufficient details to allow the nature of the interests to be understood by enquirers. Corporation Members should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Corporation Members should have regard to the meaning given to "interest" in paragraphs 9.3 and 9.5 of this Code.

10. **COLLECTIVE RESPONSIBILITY**

10.1 The Corporation operates by Corporation Members taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Corporation, even when it is not unanimous, is a decision taken by the Corporation Members collectively and each individual Corporation Member 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 Corporation Member disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Corporation Member 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 Corporation Member should refer to the power of the Chair or any five Corporation Members under the College's Instrument of Government to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the Corporation Member's views in

advance to the other Corporation Members. Alternatively, as a final resort, the Corporation Member 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, Corporation Members 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 by the Chair.

11.2 There will be occasions when the record of discussions and decisions 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 kept in a confidential folder by the Clerk and will be circulated in confidence to Corporation Members. 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). The Corporation should specify how long such items should be treated as confidential or, if this is not possible, such items should be regularly reviewed to consider whether the confidential status should be removed or whether the public interest in disclosure outweighs that confidential status and the item made available for public inspection. When considering such issues the Corporation Members must also consider the College's publication scheme issued under the Freedom of Information Act 2000.

11.3 However, staff and student Corporation Members have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the College's Instrument of Government.

11.4 It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Corporation Members with a shared corporate responsibility for decisions. Corporation Members 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 Corporation Members 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(s). It is unethical for Corporation Members publicly to criticise, canvass or reveal the views of other Corporation Members 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. Corporation Members are reminded of their specific responsibility under the Articles of Government to make rules specifying the procedures in accordance with which employees may seek redress of any grievances relating to their employment, of the importance of having formal complaints procedures in place to handle issues raised by students, former students and third parties and of the legal requirement to have a whistle blowing procedure in place.

12.2 Under the ESFA's Funding Agreement, students, employers and other third parties have a right to make a complaint to the ESFA in respect of the College or of any of its decisions. Corporation Members in particular are reminded of the ESFA's Procedure for dealing with complaints about Providers of Education and Training (issued by the EFA in October 2015). The Procedure provides that the ESFA will investigate complaints about institutions that fall into the following two areas:

- 12.2.1 the institution has not complied with its own complaints procedure when considering the complaint.
- 12.2.2 the institution has failed to comply with an obligation imposed on it under its funding agreement.
- 12.3 Complaints under this section may include, but are not limited to:
 - 12.3.1 the quality or management of learning provision; and
 - 12.3.2 poor administration.
- 12.4 The ESFA **will not** investigate complaints where another body or legal route of challenge is more appropriate. Examples include:
 - 12.4.1 exam results or curriculum content. Complaints of this nature should be dealt with by the appropriate examination awarding body or by Ofqual;
 - 12.4.2 individual employment issues that are a matter for the employer and the employee, and where employment law provides appropriate remedies;
 - 12.4.3 institutional contractual disputes, including for example, complaints about the terms of sub-contracting agreements between an institution and a sub-contractor;
 - 12.4.4 matters that are already the subject of legal action, proposed legal action, or where legal proceedings are the most appropriate way of resolving the dispute;
 - 12.4.5 matters relating to child protection/safeguarding which will be referred immediately to the relevant local authority;
 - 12.4.6 matters relating to child protection/safeguarding which will be referred immediately to the relevant local authority

13. **ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Corporation is expected so that Corporation Members can perform their functions properly.

14. **GOVERNANCE DEVELOPMENT**

- 14.1 The Corporation shall seek to ensure that all Corporation Members are appointed on merit, in accordance with an open selection procedure carried out by the Corporation's Governance and Search 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 College's Instrument of Government, the need to combat discrimination and to promote equality, and the need to make available a range of necessary skills and experience to ensure that the Corporation carries out its functions under the College's Articles of Government.
- 14.2 Corporation Members must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including regular refresher workshops.
- 14.3 In order to promote more effective governance, Corporation Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing and critical process of self-evaluation.

SCHEDULE

List of Source Documents

1. The College's Instrument of Government;
2. The College's Articles of Government;
3. The Standing Orders and terms of reference of the Corporation and its committees;
4. The Funding Agreement entered into by the College with the ESFA
5. The College's Mission Statement and Statement of College Educational Character;
6. The College's Strategic Plan;
7. The College's policies that extend to Corporation members, 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 conflicts of interest, the College's policy on safeguarding learners; and the College's policy on preventing people from 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:
 - selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty; and
 - leadership.

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

9. The Joint Audit Code of Practice issued by the ESFA
10. The AoC Code of Good Governance
11. The Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services (Good Governance Standard).

(An extract from the Good Governance Standard setting out the six core principles of good governance is set out at Appendix 2);

'Appendices 1 (the Seven Principles of Public Life), 2 (Six Core Principles of Good Governance), 3 (Responsibilities of Corporation Members), 4 (Responsibilities of the Principal and Clerk), 5 (Financial Memorandum) and 6 (Powers of the Corporation) are attached to this Code for reference.

APPENDIX 1

THE NOLAN PRINCIPLES - SEVEN PRINCIPLES OF PUBLIC LIFE

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

SELFLESSNESS

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

INTEGRITY

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

OBJECTIVITY

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

ACCOUNTABILITY

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

OPENNESS

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

HONESTY

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

LEADERSHIP

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

APPENDIX 2

SIX CORE PRINCIPLES OF GOOD GOVERNANCE

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

1. **Good governance means focusing on the organisation's purposes and on outcomes for citizens and service users**
 - 1.1 Being clear about the organisation's purposes and its intended outcomes for citizens and service users;
 - 1.2 Making sure that users receive a high quality service;
 - 1.3 Making sure that taxpayers receive value for money.

2. **Good governance means performing effectively in clearly defined functions and roles**
 - 2.1 Being clear about the functions of the governing body;
 - 2.2 Being clear about the responsibilities of the non-executives and the executive, and making sure that those responsibilities are carried out;
 - 2.3 Being clear about relationships between the governors and the public.

3. **Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**
 - 3.1 Putting organisational values into practice;
 - 3.2 Individual governors behaving in ways that uphold and exemplify effective governance.

4. **Good Governance means taking informed, transparent decisions and managing risk**
 - 4.1 Being rigorous and transparent about how decisions are taken;
 - 4.2 Having and using good quality information, advice and support;
 - 4.3 Making sure that an effective risk management systems is in operation.

5. **Good governance means developing the capacity and capability of the governing body to be effective**
 - 5.1 Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;
 - 5.2 Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group;
 - 5.3 Striking a balance, in the membership of the governing body, between continuity and renewal.

6. **Good governance means engaging stakeholders and making accountability real**
 - 6.1 Understanding formal and informal accountability relationships;
 - 6.2 Taking an active and planned approach to dialogue with accountability to the public;
 - 6.3 Taking an active and planned approach to responsibility to staff;
 - 6.4 Engaging effectively with institutional stakeholders.

APPENDIX 3

Summary of Main Responsibilities of Corporation Members under the Articles of Government

[Note that this summary is for convenience set out as a consolidated list bringing together a number of provisions from different Articles.]

1. Under the College's Articles of Government the Corporation shall be responsible:
 - 1.1 for the determination and periodic review of the educational character and mission of the institution and for oversight of its activities;
 - 1.2 for approving the quality strategy of the institution;
 - 1.3 for the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
 - 1.4 for approving annual estimates of income and expenditure;
 - 1.5 for 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;
 - 1.6 for setting a framework for the pay and conditions of service of all other staff; and
 - 1.7 for setting the policy by which the tuition and other fees payable to the College are determined (subject to any terms and conditions attached to grants, loans or other payments paid or made by the ESFA).

"Senior Post" means the post of Principal, Deputy Principal and such other senior posts if any as the Corporation Members may designate for the purposes of the Articles.

Responsibilities which must not be delegated

2. The Articles of Government prohibit the Corporation from delegating the following:-
 - 2.1 the determination of the educational character and mission of the institution;
 - 2.2 the approval of the annual estimates of income and expenditure;
 - 2.3 the responsibility for ensuring the solvency of the institution and the Corporation and the safeguarding of their assets;
 - 2.4 the appointment of the Principal or holder of a senior post;
 - 2.5 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 as member of staff);
 - 2.6 the modifying or revoking of the Articles of Government;
 - 2.7 the consideration of the case for dismissal, of the Principal, the Clerk or the holder of a senior post unless such function is delegated to a committee of members of the Corporation; and
 - 2.8 the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post unless such power is delegated to a committee of members of the Corporation.
3. The Corporation may, from time to time, resolve to add other functions which must not be delegated to this list of "reserved" responsibilities.

APPENDIX 4

SUMMARY OF MAIN RESPONSIBILITIES OF THE PRINCIPAL UNDER THE ARTICLES OF GOVERNMENT

Under the College's Articles of Government the Principal shall be the Chief Executive of the College and shall be responsible for:

1. making proposals to the Corporation about the educational character and mission of the institution, and for implementing the decisions of the Corporation;
2. the determination, of the institution's academic activities and the determination of its other activities;
3. 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;
4. the organisation, direction and management of the institution and leadership of the staff;
5. 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; and
6. maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds and expelling students for academic reasons.

Summary of main responsibilities of the Clerk under the Articles of Government

Under the College's Articles of Government 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 MAIN PROVISIONS OF THE CONDITIONS OF FUNDING AGREEMENT WITH THE ESFA

Format of the Agreement

- (a) The lead funding body for sixth form colleges is the ESFA. All sixth form college corporations will therefore have a Conditions of Funding Agreement with the ESFA. This ensures that colleges have proper lines of accountability to the relevant funding body.
- (b) The form of the documentation varies because of the different legal basis on which the ESFA fund provision. The ESFA provides funding under the Education Act 2002. Such funding is not limited to provision by grant – in aid, so the appropriate document is a Conditions of Funding Agreement which is contractual in nature.
- (c) Colleges will need to familiarise themselves with the detailed content of the Conditions of Funding Agreement and Financial Memorandum in the versions applicable to their type of college. The ESFA Conditions of Funding Agreement for sixth form colleges is in two parts, Part One is in effect the Financial Memorandum and contains provisions which are appropriate only to providers, such as sixth form college corporations, which are entitled to receive funding by way of grant under statute. Part Two contains provisions which are appropriate to all providers, including private sector providers which receive funding under contract rather than grant. The Agreement came into force on 1 August 2015. The Agreement states that sixth form colleges receiving funding under the Agreement agree also to the ESFA's Funding Guidance, the Joint Audit Code of Practice and 12 other sets of government rules and regulations relevant to funding listed in the Background section of the Agreement. The terms and conditions of funding will be updated annually. There follows an outline of the main provisions with some commentary.

Part One

Responsibilities of the Governing Body

These include:

- using its funds only in accordance with its statutory powers and duties;
- ensuring the SFC's solvency and informing the ESFA of any transaction that could jeopardise this;
- appointment of an accounting officer, normally the Principal, and informing the ESFA of the name of any person appointed to discharge the accounting officer responsibilities in any absence of the permanent office holder;
- informing the ESFA in writing as soon as possible of the vacating and filling of the posts of Chair, Principal and Clerk;
- ensuring the SFC operates in accordance with its status as an exempt charity.

Responsibilities of the Accounting Officer

These are:

- to take personal responsibility for compliance with the ESFA's conditions of funding: this cannot be delegated;
- to advise the Governing Body if any action or policy under consideration is incompatible with the Conditions of Funding, and to inform the Chief Executive of the ESFA in writing as soon as reasonably practicable if they have evidence that the Governing Body is acting in breach of the Conditions.

(d) Allocation of Funds

- (e) ESFA will determine the amount of funds it will pay the SFC in accordance with the activities outlined in Part Two of the Agreement and in line with government policy. It will normally give four months' notice of the amount before the start of the academic year.

(f) Payment of Funds

- (g) The ESFA will normally make payments of recurrent funding to the SFC in monthly instalments. Payment of capital funding will be in accordance with the terms agreed.
- (h) SFCs are expected to manage their estates to ensure the best possible learning and teaching environment and in accordance with health and safety law and good estate management practice. It is no longer necessary for SFCs to obtain ESFA consent to disposals and major borrowing arrangements but advance notice of any such transactions should be given to ESFA in order to comply with the requirement to provide information and, for example, to ensure that the Exchequer Interest in buildings acquired or developed with public funds is protected.

Non-compliance by SFC

- (i) In the event of non-compliance by the SFC with ESFA conditions of funding ESFA may deduct the value of those funds from future funding. In the case of a breach of conditions, as defined by Clause 16 of the Agreement, ESFA may require immediate repayment of funding in whole or part.

Contingent Liabilities

- (j) SFCs, being charities, can only give guarantees and indemnities “in the normal course of business”. This may be relevant e.g. where a college company is being used.

College Companies

- (k) The Governing Body is free to participate in companies within the limits of its statutory powers but must ensure that appropriate arrangements are in place for the company’s governance and management and must inform ESFA if participation in the company poses a risk to the solvency of the SFC.

Financial Reporting

- (l) The SFC must provide copies of its audited financial statements, in the form required by ESFA, to ESFA and to members of the public who request them. The SFC must inform ESFA as soon as practicable if there is a risk to its solvency and viability. ESFA may require the SFC to carry out actions prescribed by ESFA such as a strategic options review and/or a financial recovery plan.

Audit

- (m) The Governing Body must appoint an audit committee (see commentary on article 6) and arrange financial statements and regularity audit in accordance with the Joint Audit Code of Practice. The SFC must investigate and report to ESFA all significant cases of fraud or suspected fraud or irregularity.

Payments to employees on termination of employment

- (n) The Governing Body must demonstrate that such payments are regular and secure value for money and not made, e.g. where disciplinary action would have been more appropriate. Settlements should be brought to the attention of the financial statements’ auditors.

Provision of information

- (o) ESFA reserves its right to request information from SFC in order to exercise its responsibilities.

Part Two

- (p) Part Two of the Agreement contains a range of detailed provisions, e.g. requirements that the SFC undertake to meet obligations under the Data Protection and Freedom of Information Acts and to ensure equality of opportunity. The 2015-16 Agreement contains new or extended obligations to promote fundamental British values and to comply with and keep appropriate records regarding health and safety and safeguarding laws (including the Prevent duty under the Counter-Terrorism and Security Act 2015). In addition, there are additional standard clauses of a type common to business contracts. Legal advice on the

detail of these provisions should be obtained where a particular issue arises but the following points are of general interest:

The SFC is solely responsible to ESFA not only for its own acts but also those of related parties such as sub-contractors.

The SFC is not permitted to wire (transfer) funding between learning programmes except by revising the Agreement.

Where the SFC fails to meet the minimum standards of quality or financial health as set by DfE, Ofsted etc the SFC may be required to meet additional requirements and/or suspend or cap enrolment of students and/or the ESFA may recommend to Ministers that the SFC be subject to intervention. If Ofsted finds provision to be unsatisfactory ESFA may terminate the Agreement. The 2015-16 Agreement gives the ESFA an early intervention power: if from the information available to ESFA about an SFC's financial position it considers there to be a significant risk that the SFC may become financially unviable and/or financially inadequate within a three year period it will invite the SFC to respond; in the absence of an adequate response the ESFA may take action, including asking the SFC to undertake a financial or structural review and give proper consideration to implementing the findings. Such requirements may form additional obligations under the Agreement, breach of which may trigger the ESFA's powers including ultimately the power to terminate the Agreement.

Payment of funding is on a lagged basis save in exceptional circumstances and may be recovered from the SFC where it is found on audit to have been made in error.

The SFC is deemed to agree to publication of the Agreement, including the financial schedules.

On termination of the Agreement the SFC shall do its utmost to minimise disruption to learners and to assist in the implementation of any contingency plan proposed by the ESFA.

Should a dispute between the SFC and the ESFA arise this will be referred in the first instance to the ESFA Territorial Team, then to mediation and if still not resolved to arbitration under the Arbitration Act 1996.

APPENDIX 6
SUMMARY OF THE STATUTORY POWERS OF THE CORPORATION

(These powers are taken from the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009.)

The Corporation's "principal" powers are as detailed below:

7. PRINCIPAL POWERS

7. Under section 33E of the Further and Higher Education Act 1992 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 a sixth form college corporation may:
- 7.1 provide further and higher education;
 - 7.2 provide secondary education suitable to the requirements of persons who have attained the age of 14 years, or provide secondary education or participate in the provision of secondary education at a school (subject to the consultation with the appropriate local education authority); and
 - 7.3 supply goods or services in connection with their provision of education.

The Corporation's "supplementary" powers are as detailed below:

8. SUPPLEMENTARY POWERS

8. Under section 33F of the 1992 Act as amended 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 33E of the Act, including in particular the following:
- 8.1 the power to acquire and dispose of land and other property;
 - 8.2 the power to enter into contracts, including in particular:
 - 8.2.1 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
 - 8.2.2 contracts with respect to the carrying on by the Corporation of any such activities;
 - 8.3 the power to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation.
 - 8.4 the power 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;
 - 8.5 power to invest any sums not immediately required for the purposes of carrying on any activities the Corporation has power to carry on;
 - 8.6 power to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes;
 - 8.7 power 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
 - 8.8 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.
9. 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.