



# CODE OF CONDUCT FOR GOVERNORS

<b>Author: Clerk</b>			
Board Member Committee - Review/Approval date	Minute Ref	Board - Review/Approval date	Minute Ref
17 June 2020	3.14	2 July 2020	5.14

## **1. INTRODUCTION**

- 1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Governing Body 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 Governing Body and the Chief Executive. This Code is therefore 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 Ultimate responsibility for the appropriateness of conduct as a Governing Body Member of the College and for any act or omission in that capacity rests with the individual Governing Body Member.
- 1.3 This Code applies to every committee or working party of the Governing Body and to any subsidiary company or joint venture of the College to which the Governing Body Members may be appointed.
- 1.4 By accepting appointment to the Governing Body, each Governing Body Member agrees to accept the provisions of this Code.

## **2. DUTIES**

- 2.1 Governing Body 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 Governing Body Member should act honestly, diligently and act independently. The actions of Governing Body Members should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.
- 2.2 Decisions taken by Governing Body Members at meetings of the Governing Body 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, Governing Body Members must not be bound in their speaking and voting by mandates given to them by other bodies or persons.
- 2.3 Governing Body Members must observe the provisions of the College's Instrument and Articles of Government and in particular the responsibilities given to the Governing Body by the College's Articles of Government. Those responsibilities are set out in Appendix 1.
- 2.4 Governing Body Members should comply with Standing Orders to ensure that the Governing Body conducts itself in an orderly, fair, open and transparent manner and must keep those Standing Orders under periodic review.
- 2.5 Governing Body Members should also have regard to the different, but complementary, responsibilities given to the College's Chief Executive. Whereas it is the Governing Body's function to decide strategic policy and overall direction and to monitor the performance of the Chief Executive and other senior post-holders, it is the Chief Executive's role to implement the Governing Body's decisions, and to manage the College's affairs within the budgets and framework fixed by the Governing Body. Governing Body Members should work together so that the Governing Body and the Chief Executive perform their roles effectively.
- 2.6 Governing Body Members should also have regard to the functions for which the Clerk is expressly stated to be responsible under the College's Articles of Government (set out in Appendix 1).

## **3. STATUTORY ACCOUNTABILITY**

- 3.1 Governing Body Members are collectively responsible for observing the duties set out in the Financial Memorandum which the College has entered into with the Educational Skills Funding Agency as a condition of receiving public funds.
- 3.2 Although the Educational Skills Funding Agency 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 Greater London Authority; 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.

- 3.3 As accounting officer for the Agency, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the Agency puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Chief Executive, 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 Chief Executive may be required to appear before the Committee of Public Accounts, alongside the Chief Executive of the Agency, to give an account of the use made by the College of such funds. The Governing Body 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.

#### **4. PUBLIC SERVICE VALUES**

Public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on both the seven principles of Public Life and the Fit and Proper Persons requirements (see Appendix 2), alongside the recognition that students and other users of the College's services come first, are a requirement of being a Governing Body Member, and should underpin all decisions taken by the Governing Body.

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

A Governing Body 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 Governing Body Members act as agents of the College, for example, when functions are delegated to a committee of the Governing Body or to the Chair. Governing Body Members should be careful to act within the terms of reference of any committees on which they serve.

#### **6. POWERS**

Governing Body Members are responsible for taking decisions which are within the powers given to the Governing Body by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992 (amended by Learning & Skills Act 2000). A summary of those powers is set out in Appendix 3. If a Governing Body Member thinks that the Governing Body is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk for advice.

#### **7. CONFLICTS OF INTEREST**

- 7.1 Like other persons who owe a fiduciary duty, Governing Body 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 Governing Body. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.
- 7.2 Governing Body Members are reminded that under the College's Instrument of Government they must not take or hold any interest in any of the College's properties or receive any remuneration for their services (save as a member of the College's staff or for re-imbusement of legitimate expenses in accordance with the College's policy) without the written approval of the Secretary of State.
- 7.3 Governing Body Members are reminded that under the College's Instrument of Government they must disclose to the Governing Body any direct or indirect financial interest they have, or may have, in the supply of work or goods to or 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 duty which is material and which conflicts or may conflict with the interests of the Governing Body.
- 7.4 If an interest is likely or would, if publicly known, be reasonably perceived as being likely to interfere with the exercise of a Governing Body Member's independent judgement, then the interest, financial or otherwise, should:

7.4.1 be reported to the Director of Governance; and

7.4.2 be fully disclosed to the Governing Body before the matter giving rise to the interest is considered.

Governing Body Members may be required to withdraw from that part of the meeting at which the matter giving rise to the interest is considered. They shall not speak on the matter unless invited to do so by the Chair. Under no circumstances will they vote in relation to the matter. Where the Chair declares an interest, the members shall appoint a replacement from among themselves for the duration that the interest applies.

- 7.5 Governing Body 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.
- 7.6 The Clerk will maintain a Register of Governing Body Members' Interests which will be open for public inspection. Governing Body Members must disclose routinely to the Governing Body all business interests, financial or otherwise, which they may have, and the Clerk will enter such interests on the Register. Governing Body Members must give sufficient details to allow the nature of the interests to be understood by enquirers. Governing Body Members should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Governing Body Members should have regard to the meaning given to "interest" in paragraph 7.4 of this Code.

## **8. COLLECTIVE RESPONSIBILITY**

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

## **9. CONFIDENTIALITY**

- 9.1 Because of the Governing Body's public accountability, Governing Body Members should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Governing Body. Accordingly, agendas, minutes and other papers relating to meetings of the Governing Body are normally available for public inspection when they have been approved for publication by the Chair.
- 9.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example, when the Governing Body considers sensitive issues or named individuals and for other reasons. Such excluded items, will be kept in a confidential folder by the Clerk, and will be circulated in confidence to Governing Body Members. However, staff and student Governing Body 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.
- 9.3 It is important that the Governing Body and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Governing Body Members with a shared corporate responsibility for decisions. Governing Body Members should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Governing Body are satisfied should be dealt with on a confidential basis.
- 9.4 Governing Body Members should not make statements to the press or media or at any public meeting relating to the proceedings of the Governing Body or its committee without first having obtained the approval of the Chair or, in his or her absence, the Vice Chair(s). It is unethical for Governing Body

Members publicly to criticise, canvass or reveal the views of the other Governing Body Members which have been expressed at meetings of the Governing Body or its committees.

## **10. ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Governing Body is expected so that Governing Body Members can perform their functions properly. Attendance targets are set out in the Governing Body Standing Orders.

## **11. GOVERNANCE DEVELOPMENT**

11.1 Governing Body Members must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes.

11.2 In order to promote more effective governance, Governing Body Members will carry out an annual review of the performance by the Governing Body of its duties and responsibilities, as part of a continuing and critical process of self-evaluation.

11.3 The Governing Body shall seek to ensure that all Governing Body Members are appointed on merit, in accordance with an open selection procedure carried out by the Governing Body's Board Membership Committee, and are drawn widely from the community which the College serves, having regard to provisions relating to the membership of the Governing Body in the College's Instrument of Government and the need for continuity, balance and a range of appropriate skills and interests.

## **12. REVIEW CYCLE**

The review cycle for this code is bi-annually.

## **APPENDIX 1**

### **EXTRACT FROM ADA COLLEGE ARTICLES OF GOVERNMENT**

#### **Responsibilities of the Corporation [Governing Body], the CEO 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 institution and for 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 institution and the oversight of its activities;
  - (c) approving the quality strategy of the institution;

- (d) the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
  - (e) approving annual estimates of income and expenditure;
  - (f) the appointment (through an open and transparent process), grading, suspension, dismissal and determination of the pay and conditions of service of the Chief Executive, 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;
  - (g) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the Senior Leadership Team;
  - (h) setting a framework for the pay and conditions of service of all other staff; and
  - (i) reviewing the appetite for risk of the institution including reviewing and approving the risk register of the institution from time to time.
3. (2) Subject to the responsibilities of the Corporation, the Chief Executive shall be the Chief Executive and Principal of the institution, and shall be responsible for the following functions:
- (a) making proposals to the Corporation about the educational character and mission of the institution, and implementing the decisions of the Corporation;
  - (b) the determination of the institution's academic and other activities including all curriculum matters;
  - (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 institution 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, where the Clerk is also a member of staff;
  - (f) representing the interests of the institution externally; and
  - (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.
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.

## **APPENDIX 2**

### **7 PRINCIPLES OF PUBLIC LIFE**

The Principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office are namely:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

### **DECLARATION OF FIT AND PROPER PERSON STATUS**

In accordance with both the Governors' charity trustee status and the conditions of registration with the Office for Students (OfS) the Higher Education regulator, there is a requirement for Governors to declare that they meet the requirements of a Fit and Proper Person.

The OfS defines a fit and proper person as follows:

- is of good character;
- has the qualifications, competence, skills and experience that are necessary for their role;
- is able by reason of their health, after reasonable adjustments are made, to properly perform the tasks of the office or position for which they are appointed ; and
- has not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in their employment or in the conduct of any entity with which they are or have been associated.

The following are indicators that a person may not be a fit and proper person:

- disqualification from acting as a company director, or from acting as a charity trustee, as set out in the Company Directors Disqualification Act 1986 or the Charities Act 2011;
- conviction of a criminal offence anywhere in the world subject of any adverse finding in civil proceedings, where relevant, including, but not limited to bankruptcy or equivalent proceedings (in the last three years);
- subject of any adverse findings in any disciplinary proceedings by any regulatory authorities or professional bodies;
- involvement in any abuse of the tax systems;
- involvement with any entity that has been refused registration to carry out a trade or has had that registration terminated;
- involvement in a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;
- dismissal from a position of trust or similar; and
- involvement with a higher education provider that has had its registration refused or revoked by the OfS or has had similar action taken against it by another regulator (this includes, but is not limited to, serving on a board/governing body, having voting rights, being a significant shareholder/owner, serving in a senior position, etc.).

### **APPENDIX 3**

The Further and Higher Education Act 1992, Section 18, as amended by section 142(i) of the Learning and Skills Act 2000, sets out a further education corporation's principal powers.

These are:

- to provide further, higher and secondary education and to participate in the provision of secondary education at a school
- to supply goods or services in connection with the provision of education Section 19 as amended by Schedule 9 (para 22) of the Learning and Skills Act 2000, sets out the further education corporation's supplementary powers.

These include:

- conducting an educational institution
- providing facilities such as accommodation and recreational facilities for staff and

students

- acquiring and disposing of property
- entering into contracts e.g. employment of staff
- borrowing money and granting security (subject to LSC approval)
- investing money
- subscribing or otherwise acquiring shares or securities in a company.