



**COLLEGE CODE OF CONDUCT**

**FOR CORPORATION MEMBERS \***

**EIGHTH EDITION**

Eighth edition: March 2008  
First published: June 1995

**\* Throughout this code "Corporation Member" or "Members" may be substituted by "Governor" or "Governors" and "Corporation" by "Governing Body" as appropriate.**

man\_002\1522292\11

## CONTENTS

	Page
College Code of Conduct for [Corporation Members*]	3
Schedule - List of source documents	11
Appendix 1 - The Seven Principles of Public Life	13
Appendix 2 - Six Core Principles of Good Governance	14
Appendix 3 - Summary of main responsibilities of Corporation Members under the Articles of Government	16
Appendix 4 - Summary of main responsibilities of the Principal and the Clerk under the Articles of Government	18
Appendix 5 - Summary of main provisions of the Financial Memorandum with the LSC	19
Appendix 6 Summary of the Statutory Powers of the Corporation	24

## **COLLEGE CODE OF CONDUCT FOR CORPORATION MEMBERS \***

Made by the Corporation \* on 18<sup>th</sup> July 1997 and the eighth revision on 3<sup>rd</sup> October 2008

### **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.

### **2. INTERPRETATION**

In this Code: -

- 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 'Council' means the Learning and Skills Council for England or any successor body;
- 2.4 'Corporation \*' means the further education corporation which was established for the purpose of conducting the College;

- 2.5 '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\*;
- 2.6 'DIUS' means the Department for Innovation, Universities and Skills;
- 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 " to provide specialist further and higher programmes in art & design and related areas as a centre for creative excellence".
- 3.2 The College Mission Statement together with the corporate objectives of the College agreed by the Corporation\* from time to time seek to encapsulate the core purposes and aims of the College. 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.
- 3.3 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 combating any discrimination within the College on the grounds of race, ethnic or national origin, religion, belief, age, disability, gender or sexuality and to the principles set out in the DIUS's Charter for Further Education and in the College's own Charter, copies of which are available from the Clerk.
- 3.4 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 paragraph 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 3.
- 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 4. Whereas it is the Corporation\*'s function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior 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 4 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 Financial Memorandum which the College has entered into with the Council as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum is set out in Appendix 5.
- 5.2 Although the Council 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.

- 5.3 As accounting officer for the Council, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the Council 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 the Council, 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

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 18 and 19 of the Further and Higher Education Act 1992. 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 they must not acquire or hold any interest in any property held or used for the purposes of the College or receive any remuneration for their services (save as a member of the College's staff) without the written approval of the Secretary of State for Innovation, Universities and Skills.

9.3 Corporation Members\* are reminded that under the College's Instrument of Government 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\*.

9.4 If an interest of any kind (including an interest of a spouse or partner of a Corporation Member\* or of a close relative of the Corporation Member\* or his or her partner or spouse) 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: -

9.4.1 the interest, financial or otherwise, should be reported to the Clerk;

9.4.2 the nature and extent of the interest should be fully disclosed to the Corporation\* before the matter giving rise to the interest is considered;

9.4.3 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: -

(a) 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

(b) 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.

- 9.5 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.
- 9.6 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 9.4 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. 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 Charter for Further Education, students, employees and other third parties have a right to make a complaint to the Council in respect of the College or of any of its decisions [*, and this right is referred to in the College's relevant complaints and disciplinary procedures. Copies of these procedures can be obtained from the Clerk*]. Corporation Members\* in particular are reminded that under the Council's Procedure for dealing with complaints about Learning Providers (November 2007) the Council must investigate "all allegations of irregularity (unlawful or unethical conduct, financial malpractice, equality and diversity issues and health and safety risks to staff, learners or the public)".

### 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 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 Financial Memorandum entered into by the College with the Council;
5. the College's Mission Statement and corporate objectives;
6. the College's Strategic Plan;
7. the strategic plan of the College's local Council;
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 Audit Code of Practice issued by the Council;
10. the Combined Code on Corporate Governance published by the Financial Services Authority;
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;

12. 'The College Governor' issued by the Council as an advisory document or its equivalent; and

13. The Governor Training Materials' (2002) issued by the Council as advisory documents or their equivalent.

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 of the Council) and 6 (Powers of the Corporation\*) are attached to this Code for reference.

## **APPENDIX 1**

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

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

#### **SELFLESSNESS**

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

#### **INTEGRITY**

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

#### **OBJECTIVITY**

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

#### **ACCOUNTABILITY**

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

#### **OPENNESS**

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

#### **HONESTY**

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

#### **LEADERSHIP**

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

## APPENDIX 2

### Six Core Principles of Good Governance

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

1. **Good governance means focusing on the organisation's purposes and on outcomes for citizens and service users**
  - 1.1 Being clear about the organisation's purposes and its intended outcomes for citizens and service users;
  - 1.2 Making sure that users receive a high quality service;
  - 1.3 Making sure that taxpayers receive value for money.
2. **Good governance means performing effectively in clearly defined functions and roles**
  - 2.1 Being clear about the functions of the governing body;
  - 2.2 Being clear about the responsibilities of the non-executives and the executive, and making sure that those responsibilities are carried out;
  - 2.3 Being clear about relationships between the governors and the public.
3. **Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**
  - 3.1 Putting organisational values into practice;
  - 3.2 Individual governors behaving in ways that uphold and exemplify effective governance.
4. **Good Governance means taking informed, transparent decisions and managing risk**
  - 4.1 Being rigorous and transparent about how decisions are taken;
  - 4.2 Having and using good quality information, advice and support;
  - 4.3 Making sure that an effective risk management 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

Under the College's Articles of Government the Corporation \* shall be responsible:

- (a) for the determination and periodic review of the educational character and mission of the institution and for oversight of its activities;
- (b) for approving the quality strategy of the institution;
- (c) for the effective and efficient use of resources, the solvency of the institution and the Corporation \* and for safeguarding their assets;
- (d) for approving annual estimates of income and expenditure;
- (e) 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;
- (f) for setting a framework for the pay and conditions of service of all other staff; and
- (g) 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 Council).

"Senior Post" means the post of Principal and such other senior posts as the [*Corporation Members\**] may designate for the purposes of the Articles.

### Responsibilities which must not be delegated

The Articles of Government prohibit the Corporation \* from delegating the following: -

- (a) the determination of the educational character and mission of the institution;
- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the institution and the Corporation \* and the safeguarding of their assets;
- (d) the appointment of the Principal or holder of a senior post;

- (e) the appointment of the Clerk (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity as member of staff);
- (f) the modifying or revoking of the Articles of Government;
- (g) 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
- (h) 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\*.

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:

- (a) making proposals to the Corporation\* about the educational character and mission of the institution, and for implementing the decisions of the Corporation\*;
- (b) the determination, of the institution's academic activities and the determination of its other activities;
- (c) preparing annual estimates of income and expenditure, for consideration and approval by the Corporation\*, and the management of budget and resources within the estimates approved by the Corporation\*;
- (d) the organisation, direction and management of the 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, other than the holders of senior posts or the Clerk, where the Clerk is also a member of the staff; and
- (f) 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 Financial Memorandum of the Council**

The Department for Innovation, Universities and Skills (DIUS) requires the Council to enter into an agreement set out in a financial memorandum with the College for the purpose of regulating its relationship in financial and related matters and setting out the terms and conditions on which public funds will be paid by the Council to the College.

A revised financial memorandum was published by the Council in December 2006 and became effective from 1 August 2006, and this sets out the framework of relationships and responsibilities between Colleges and the Council. It replaces FEFC Circular 99/48.

The memorandum is divided into two parts. Part 1 contains the general terms and conditions under which the Council funds colleges. A summary of the main provisions of Part 1 appears below. Part 2 consists of any specific conditions which might apply to the College and is the subject of individual annual notification.

Important points to note in relation to Part 1 are as follows: -

#### **Preamble**

The revised financial memorandum stresses that in future the Council and colleges need to work in partnership and to have a relationship based on trust. The financial memorandum sets out the conditions upon which funding is provided by the Council to colleges under a grant-in-aid relationship as opposed to one of contract. Funding is assumed to be continuous, requiring deliberate action to end it. The form of the financial memorandum is largely dictated by Treasury requirements and the Council's own financial memorandum with the DIUS. It reflects the LSC's responsibilities for public accountability over the funds it provides to colleges, however, the Council's expectation is that colleges will take full control of their financial affairs.

#### **Colleges' expectations of the Council**

The financial memorandum confirms that the Council will act reasonably on the basis of the evidence available and on its objective analysis of that evidence. It will be open and transparent with colleges and other stakeholders and (even though this would not necessarily be required by the general principles of public law) it will give reasons for all its decisions.

#### **Legislation**

In the financial memorandum the Council sets out the terms and conditions on which it pays funds to the college, in accordance with the Learning and Skills Act 2000. However, the memorandum also recognises that nothing in it will require the College to act in a manner which would cause it to lose its charitable status or which would be inconsistent

with its instrument and articles of government. Note that from 2008 the Council will become the "principal regulator" responsible for monitoring colleges' compliance with charity law, under the Charities Act 2006.

### **Responsibilities of the Council**

The Council's chief executive, as accounting officer under the Council's financial memorandum with the DIUS, is accountable to Parliament for ensuring that the uses to which the Council puts its funds comply with the conditions attached to them. The accounting officer must be satisfied that the College has appropriate arrangements for sound governance, financial management, securing value for money and accounting, and that the College's use of public funds is consistent with the purposes for which the funds have been given.

### **Responsibilities of the College**

The revised financial memorandum does not repeat the College's wide responsibilities under statute and the instrument and articles. However, Corporations\* are reminded that they are responsible for ensuring that the College's funds are used only in accordance with its powers under the Learning and Skills Act 2000, the financial memorandum and any other conditions that the Council may from time to time impose. The Corporation\* must ensure it uses its discretion reasonably and takes into account any relevant guidance on accountability or propriety issued from time to time by the Council, the National Audit Office or Parliament. The Corporation\* must require the Principal to take personal responsibility to ensure that there is compliance with the financial memorandum and the terms and conditions referred to above. The Principal as accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College's use of public funds and College funds. The Principal is responsible for advising the Corporation\* if at any time he / she considers that any action or policy under consideration by the Corporation\* is incompatible with the terms of the financial memorandum. Where the Corporation\* determines to proceed despite the Principal's advice, the Principal should consider the Corporation's\* reasons and if he / she still considers that the action proposed is in breach of the financial memorandum, the Principal should inform the Council's accounting officer in writing of the position.

The Clerk also should intervene when he / she considers that the Corporation\* is acting inappropriately or beyond its powers, in which case the Clerk may need to seek external advice.

### **Allocation of funds**

The Council will notify the College in writing of the allocation of recurrent funds as soon as possible in advance of the academic year to which they relate, ideally at least four months in advance. The Council will seek to maximise the College's discretion to use the Council's funds in achieving the Council's objectives as agreed with the College. On

occasion the Council may allocate funds to the College for a specific purpose, in which the case the College must apply such funds only for that purpose.

The College must not apply public funds to provision for which it has already received other funding and it must not use the Council's funding to make claims for any European source of funding, in each case without obtaining the Council's written consent.

### **Payment of funds**

The Council will make payments to the College monthly in accordance with a funding profile for the year. The Council may be prepared to make exceptional ad hoc payments to the College.

### **Capital Transactions**

The College should manage its property having regard to the guidance issued by the Council. The College will normally be required to apply the proceeds of asset sales to investment in land and buildings and it must seek independent professional advice before disposing of these. The College must obtain the Council's consent to capital transactions where the total cost or proceeds exceed £1.5 million or 5 per cent of the College's annual revenue, whichever is the lesser. The College must seek to secure the best obtainable value for money on disposal of property to a third party. Where such building may have been acquired with public funds the Council may require the College to surrender some or all of the proceeds.

### **Borrowing**

The College must seek the Council's prior written consent for any borrowing by itself or its subsidiaries, save that the council gives consent for unsecured borrowing of up to 5 per cent of the College's total annual income and for secured borrowing up to a cumulative maximum of 5 per cent of the College's total annual income in order to finance construction, refurbishment or purchase of land and buildings which are offered as security.

### **Contingent liabilities**

The College must not give any guarantees or indemnities other than in the normal course of business.

### **College companies**

The College must seek the consent of the Council to participate in companies providing education funded wholly or partly by the Council.

## **Financial reporting**

The College must keep proper accounting records and prepare financial statements in accordance with the Council's requirements. Copies of the College's audited financial statements must be supplied to the Council and be made available to members of the public on request.

The College must have an effective risk management policy, including appropriate insurance arrangements, having regard to LSC guidance.

The College must notify the Council in writing if at any time there is a significant deterioration in its financial position. The Council may require the College to put in place a suitable recovery plan.

## **Audit**

The Corporation\* must appoint an audit committee and arrange for internal and financial statements audit in accordance with the Council's Audit Code of Practice. The Council may from time to time carry out audits at the College and its subcontractors, as may the National Audit Office. The College must retain all records necessary to verify the provision delivered by it or its sub-contractors for six years after the end of the funding period. The College must investigate and report to the Council all significant cases of internal and external fraud or suspected fraud or irregularity.

## **Procurement and contracting**

The College must comply with all relevant UK and European regulations.

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

Payments made to employees on the termination of their employment should normally only be for the purposes of meeting contractual requirements, exceptions must be justified by explicit and quantified reference to value for money. The College must avoid spending public funds on settlements where disciplinary action would have been more appropriate. The College must take professional advice and the terms of any final agreement should be agreed by the Corporation\*. The cost of settlements must be declared in the College's financial statements.

## **Provision of information**

The College must provide the Council with the information it needs in order to meet its responsibilities and European funding requirements. In requesting information the Council will act reasonably and consider information previously supplied by the College to the Council or others with whom the Council can share information. The Council will have regard to the cost and timescale of provision of the information and, where appropriate, its confidentiality. However, if the College does not provide information to the Council appropriately it may carry out investigations or use reasonable estimates to

exercise its functions. The College must notify the Council's chief executive in writing of the vacating or filling of the positions of Chair of the Corporation\*, Principal and Clerk.

### **Repayment**

If the Council overpays the College as a result of its use of estimates, the Council reserves the right to recover any overpaid funding. If the College does not comply with any conditions attached by the Council to the payment of funds the Council reserves the right, in exceptional circumstances, to require the College to repay all or part of those funds.

## **APPENDIX 6**

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

#### **PRINCIPAL POWERS**

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

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

These powers are known as the Corporation's "principal powers".

#### **SUPPLEMENTARY POWERS**

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

- (a) the power to acquire and dispose of land and other property;
- (b) the power to enter into contracts, including in particular:
  - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the Corporation's principal powers; and
  - (ii) contracts with respect to the carrying on by the Corporation of any such activities;
- (c) the power to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation provided that the LSC consents;
- (d) 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. This power may not be exercised without the consent of the Council, which may give its consent for a particular borrowing or for borrowing of a particular class;

- (d) power to invest any sums not immediately required for the purposes of carrying on any activities the Corporation has power to carry on;
- (e) 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; and
- (f) 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.

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.

The powers conferred by section 19 of the 1992 Act are known as "supplementary powers".

**© Eversheds, 2008 – All rights reserved. This publication may not be reproduced in whole or in part in any material form (including photocopying or storing it in any medium by electronic means) without the prior written consent of Eversheds, save that further education colleges or other education establishments which are fully paid subscribers to governance@eversheds are hereby licensed to copy the whole or extracts from this publication for internal use only.**