

Board Meeting

Date of Meeting	Wednesday 28 May 2014
Paper Title	Consultation on Code of Good Governance for Scotland's Colleges
Agenda Item	13
Paper Number	BM1-J
Responsible Officer	Julia Henderson, Advisor to the Board
Status	Disclosable
Action	For approval

1. Report Purpose

- 1.1** To provide the Board with the draft of the College Code of Governance (appendix 1) and to raise awareness amongst Members of the development and background to this Code.

2. Recommendations

- 2.1** The Board instructs the Advisor to the Board to prepare a response on behalf of the Board.

3. Background

- 3.1** The Post 16 Education (Scotland) Act 2013 introduces the power for Scottish Ministers to impose a condition on the Scottish Funding Council who are in turn to impose the condition on a regional strategic body (i.e. GCRB) in relation to compliance with principles of good governance. The GCRB must then impose that condition when making a payment to any of its assigned colleges. In order to establish sector principles of good governance it was agreed by the Scottish Government and the Scottish Funding Council that a Steering Group be established.
- 3.2** The first stage of consultation took place in December 2013 when stakeholders were invited to provide comments on what should be included in the Code. The second stage of the consultation to develop a Code of Good Governance for Scotland's Colleges was launched at the end of April.
- 3.3** The Code of Good Governance Steering Group, which includes colleagues from across a range of interests including student and staff representation, Scottish Funding Council and Scottish Government, gave careful consideration to all of the comments and suggestions

received in producing the draft Code. The Advisor to the Board is a member of the Steering Group and is one of a group of four who drafted the text of the Code.

3.4 The Steering Group took a very deliberate decision to keep the Code focussed on the principles of good governance and not to include practical guidance on best practice. In so doing, the aim is to achieve a more concise, accessible and unambiguous document that sets out clearly what is required of Colleges. The steering group plans to support the publication of practical guidance material to accompany the Code over the summer.

3.5 The draft Code sets out the principles of good governance across five main areas:

Section A: Leadership and Strategy

Section B: Quality of the Student Experience

Section C: Accountability

Section D: Effectiveness

Section E: Relationships and Collaboration

3.6 The development of the Code is at an advanced stage and a response to the stage 2 consultation is due on 2 June 2014. The questions posed seek to ensure that the principles described in the draft Code are helpful and are understood at a high level. Given the timetable and the close involvement of the Advisor to the Board to date it is recommended that she responds on behalf of the Board taking account of any feedback from the Board.



Code of Good Governance for Scotland's Colleges

Governance and the Code

Corporate governance:

- is the way in which organisations are directed and controlled
- defines the distribution of rights and responsibilities among the different stakeholders and participants in the organisation
- determines the rules and procedures for making decisions on corporate affairs including the process through which the organisation's objectives are set, and;
- provides the means of achieving those objectives and monitoring performance.

The overarching purpose of governance for Scotland's Colleges¹ is:

“to lead the college, set its strategic direction and values and ensure effective management and financial controls to support the student experience within a framework of public accountability and transparency”.

The Code of Good Governance for Scotland's Colleges ('the Code') has been developed, and is owned, by the college sector. Colleges are required to comply with it as condition of grant from either the Scottish Funding Council or their regional strategic body. It establishes standards of good governance practice for all college boards and provides the essential foundations for compliance within the legislative framework set out by the further and higher education acts.

Scotland's Colleges are diverse and this Code is intended to promote the principles of good governance. It is expected that all colleges will comply with these principles. In exceptional circumstances, it is possible that the Code's principles may need to be met by means different to those envisaged in the Code. On these occasions colleges will be required to explain why the principles have not been observed. This allows individual board's scope to adopt the principles of the code while honouring the Code's fundamental principles, taking into account the different legislative frameworks that govern colleges.

Boards must not only follow the letter but also the spirit of the Code to ensure good governance. Boards must think deeply, thoroughly and on a continuing basis about

¹ . *Scotland's colleges refers to colleges either funded by the SFC or by a regional strategic body for the provision of education. Such colleges can be incorporated or non-incorporated.*

their overall tasks and the implications of these for the roles of their individual members. Key to this is the leadership of the Chair, the support given to and by the Principal, and the frankness and openness of mind with which issues are discussed and tackled by all board members.

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Statement of Compliance with Good Governance

Each college should state its adoption of the Code in the corporate governance statement contained in its annual audited financial statements and the Chair, on behalf of the Board, is encouraged to report personally as to how the principles have been applied by the Board. Where a college's practice is not consistent with any particular principle of the Code, it should make this known to the Scottish Funding Council in advance of publishing the information and offer an explanation for that inconsistency in its corporate governance statement. Colleges will be expected to offer a clear rationale for exceptions in the context of their college's operational model and to identify mitigations.

Principles

Section A: Leadership and Strategy

- Conduct in Public Life
- Vision, Mission and Strategy
- Corporate Social Responsibility

Section B: Quality of the Student Experience

- Learner Engagement
- Relevant and high quality learning
- Quality Monitoring and oversight

Section C: Accountability

- Accountability and Delegation
- Risk Management and Audit
- Financial and Institutional Sustainability
- Employee Relations

Section D: Effectiveness

- The board chair
- Board members
- Principal and Chief Executive
- Board Secretary
- Board member appointment, induction and training
- Board evaluation

Section E: Relationships and Collaboration

- Partnership working
- Openness and Transparency
- Staff and Students

Section A: Leadership and Strategy

Conduct in Public Life

- A.1 Every college must be headed by an effective board that is collectively responsible for setting, demonstrating and upholding the values and ethos of the organisation.
- A.2 The nine key principles underpinning public life in Scotland, which incorporate the seven Nolan principles, must be the basis for board decisions and behaviour.

Vision, Mission and Strategy

- A.3 The board is responsible for determining the college's mission, strategic direction, educational character, values and ethos. Board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission, for the benefit of learners and the community it serves.
- A.4 The board must develop and articulate a clear vision for the college. This should be a formally agreed statement of the organisation's purpose and desired outcomes which should be used as the basis for the organisation's overall strategy and planning processes.
- A.5 The board is responsible for formulating strategy by identifying strategic priorities and providing direction within a structured planning framework. The board provides overall strategic leadership and takes all final decisions on strategic matters affecting the college.
- A.6 The board must monitor performance against strategy including identification of appropriate Key Performance Indicators to monitor achievement of the college's vision and mission and ensure that these have due regard to the interests of stakeholders.
- A.7 The board is responsible for the development of outcome agreements, in partnership with their regional strategic body as appropriate, which meet the needs of the region and make best use of available funding, consistent with national strategy and agreed with SFC. The board must engage as partners with all stakeholders in the development and agreement of outcome agreements and monitor performance in achieving the agreed outcomes.

Corporate Social Responsibility

- A.8 The board must demonstrate high levels of corporate social responsibility by ensuring the college behaves ethically and contributes to economic development while improving the quality of life of its workforce as well as of the local community and society at large.
- A.9 The board must exercise its functions with a view to improving economic and social wellbeing in the locality of the college. It should have regard to social and economic needs and social inclusion issues.
- A.10 The board must provide leadership in equality and diversity. The board must ensure it fulfils its statutory obligations and duties in respect of equalities legislation.
- A.11 The board must seek to reflect the make-up of its community through offering maximum opportunity of membership to a range of potential members and removing potential barriers to membership, in partnership with its regional strategic body, as appropriate.
- A.12 The board must appoint one of the independent non-executive members to be the senior independent director to provide a sounding board for the chair and to serve as an intermediary for the other board members and the board secretary when necessary. The senior independent director should also be available where contact through the normal channels of chairman, principal or other board members has failed to resolve an issue or for which such contact is inappropriate.

Section B: Quality of the Student Experience

Learner Engagement

- B.1 The board must have close regard to the voice of its learners and the quality of the student experience should be central to all board decisions.
- B.2 The board must lead by example in relation to openness, by ensuring that there is meaningful on going engagement and dialogue with students, the students' association and as appropriate staff and trades unions in relation to the quality of the student experience. Consultation is essential where significant changes are being proposed.

Relevant and high quality learning

- B.3 The board must seek to secure coherent provision for students, having regard to other provision in the college's locality. The board must be aware of external local, national and international bodies and their impact on the quality of the student experience, including community planning partners, skills

development and enterprise agencies and employer bodies. The board must seek to foster good relationships and ensure that the college works in partnership with external bodies to enhance the student experience, including employability. The board should seek to improve participation.

Quality Monitoring and Oversight

- B.4 The board must ensure appropriate mechanisms are in place for the effective oversight of the quality of the learning experience and work with other bodies as appropriate to oversee and monitor this. The board must ensure that the college works in partnership with sector quality agencies and other appropriate bodies to support and promote quality enhancement and high quality services for learners.
- B.5 The board must expect to see student surveys and monitor action plans that could impact on the quality of the student experience.

Section C: Accountability

Accountability and Delegation

- C.1 The board is accountable to its students and to other stakeholders, including the public, employers and its local community for the provision of appropriate, high quality education that enhances social and economic well-being.
- C.2 The college must maintain and publically disclose a current register of interests for all board members. All board members should declare any conflicts of interest and withdraw from meetings as appropriate or when requested to do so.
- C.3 The board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely, and that appropriate and effective systems of financial and operational control, risk assessment and management, are established, monitored and continuously improved.
- C.4 Boards may delegate responsibilities to committees for the effective conduct of board business. The required committees are Audit, Remuneration and Nominations/Appointments.
- C.5 Delegation of responsibilities from, and reservations to, the board and its committees must be clarified through a scheme of delegation including the functions delegated by the board to the chair, committees, the principal and state which matters are reserved.
- C.6 Boards must consider and have in place procedures to ensure effective working relationships and constructive dialogue amongst the board as a whole and ensure there is effective reporting and two way communication between committees and the board.

Risk Management and Audit

- C.7 The board is responsible for the management of risk and opportunity. It must set the risk appetite of the college and ensure there is an appropriate balance between risk and opportunity and that this is communicated via the principal to the executive team.
- C.8 The board must maintain sound risk management and internal control systems. It must ensure there is a formal on-going process for identifying evaluating and managing the college's significant risks and review the effectiveness of risk management and internal control systems.
- C.9 The Audit Committee must support the board and the principal by reviewing the comprehensiveness, reliability and integrity of assurances: the college's governance, risk management and internal control framework.
- C.10 The scope of the Audit Committee's work must be defined in its terms of reference and encompass all of the assurance needs of the board and the principal. The Audit Committee must have particular engagement with internal and external audit and financial reporting issues.
- C.11 The membership of the Audit Committees must consist of non-executive board members who must be independent and objective. The chair of the board must not be a member of the Audit Committee. The role of the executive is to attend meetings at the invitation of the committee chair and to provide information either for the whole duration of a meeting or for particular agenda items.
- C.12 The Audit Committee terms of reference must provide for the committee to sit privately without any non-members present for all or part of a meeting if they so decide. The Audit Committee members should meet with the internal and external auditors without the executive team present at least annually.
- C.13 At least one member of the Audit Committee should have recent relevant financial or audit experience.

Financial and Institutional Sustainability

- C.14 The board is responsible for ensuring the financial and institutional sustainability of the college. College boards are accountable to the Scottish Funding Council or their Regional Strategic Body for the funding they receive from it. The board must ensure compliance with the SFC/Regional Strategic Body Financial Memorandum and if appropriate aspects of the Scottish Public Finance Manual.
- C.15 Boards have a responsibility to promote economic and social well-being in their college localities and to ensure that funds are used as economically, efficiently and effectively as possible.

- C.16 For colleges that are charitable organisations, board members are also charity trustees. Boards must be aware of their responsibilities under charity legislation and ensure compliance with relevant provisions.

Employee Relations

- C.17 The board must ensure that the college meets its moral and legal obligations to its staff. Day to day staff management is delegated to the principal.
- C.18 The board is responsible for employment policies and must ensure appropriate consultation with staff and recognised trades unions. The board should see staff surveys and monitor any resulting action plans.
- C.19 The board must ensure compliance with all statutory information and consultation of employee's regulations. The board must seek to ensure effective dialogue between trades unions and management and should promote positive employee relations.
- C.20 Boards must ensure that regional colleges fulfil their statutory duty to consult and collaborate with trades unions and students associations through appropriate mechanisms.

Section D: Effectiveness

The Board Chair

- D.1 The chair is responsible for leadership of the board and ensuring its effectiveness in all aspects of its role. The chair is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, particularly strategic issues. The chair must promote a culture of openness and debate by facilitating the effective contribution of all board members and ensuring constructive relations between board members.

Board members

- D.2 The whole board is collectively responsible and accountable for all board decisions. Board members must make decisions in the interest of the college as a whole rather than selectively or in the interests or as a representative of a particular constituency.
- D.3 Staff and student board members are full board members and bring essential and unique, skills, knowledge and experience to the board. Staff and student board members must not be excluded from board business unless there is a clear conflict of interest, in common with all board members.
- D.4 The board must ensure that the respective functions of governance and management, and the roles and responsibilities of the chair, the principal, the board secretary and individual board members, are clearly defined.

Principal and Chief Executive

- D.5 The board must appoint the principal as chief executive of the college, securing approval from the regional strategic body if necessary and must put in place suitable arrangements for monitoring their performance.
- D.6 The board must ensure there is an open and transparent recruitment process for appointment of the principal and obtain approval for the appointment and their terms and conditions, where required. Students and staff members should have an opportunity to contribute to the recruitment process.
- D.7 The board delegates to the principal, as chief executive, authority for the academic, corporate, financial, estate and human resource management of the college, and should ensure the establishment of such management functions as should be undertaken by and under the authority of the principal.
- D.8 The board must ensure a clear process is in place to set and agree Key Performance Indicators for the principal. This process should seek the views of student and staff members. The chair, on behalf of the board, should monitor and review the principal's performance at least annually against the agreed KPIs.
- D.9 There must be a formal procedure in place for setting the remuneration of the principal by a designated committee of non-executive members. The board may wish to supplement this by taking evidence from a range of sources. In particular, staff and students could have a role in gathering and submitting evidence to the relevant committee.
- D.10 The principal has an important role in supporting effective governance. The principal shares responsibility with the chair and the board, supported by the board secretary, for enabling good governance through supporting effective communication and interaction between the board and the rest of the college including staff and students.
- D.11 The chair and the principal have a shared responsibility to provide leadership for the organisation as a whole. The principal is the operational interface between the board and the college.
- D.12 The board must provide a constructive challenge to the principal and hold the principal and the executive team to account.

Board Secretary

- D.13 All board members must have access to services of board secretary who has an important governance role in advising the board and individual board members and supporting good governance. The board secretary should advise the board and executive team on governance, the role of the board and board matters.

- D.14 The board secretary must directly support the chair in ensuring the board receives appropriate, timely and high quality information in a form that allows it to monitor and scrutinise the college's activities and to challenge performance when required. The board secretary must support the chair in ensuring compliance with all relevant legislative and governance requirements.
- D.15 The board secretary is responsible to the chair and the board. The board secretary must be independent of the college executive in relation to the board secretary role and report directly to the chair. The processes and procedures for appointment and removal of the board secretary should be a decision of the board as a whole.

Board Member Appointment, Induction and Training

- D.16 Regional college boards must ensure that there is a formal and open procedure in place for recruiting and selecting new non- executive board members. Boards must have regard to all relevant Ministerial Guidance on board appointments.
- D.17 The board is responsible for ensuring appropriate arrangements are in place for the conduct of student elections and elections of staff members to the board.
- D.18 The chair must ensure that new board members receive a formal induction on joining the board, tailored in accordance with their individual needs. The board secretary should support the chair in the provision of relevant induction for new board members.
- D.19 All board members must undertake appropriate training and development in respect of their governance role. The board secretary should support the chair in the provision of relevant training and development opportunities for board members, which should be tailored to meet board members skills and needs. The board secretary must keep records of the development activity of board members, including the chair.

Board Evaluation

- D.20 Extension of the term of office of board appointments requires evidence and the Board must ensure appropriate mechanisms are in place to support this.
- D.21 The board must keep its effectiveness under annual review and have in place a robust self-evaluation process. There should be externally facilitated evaluation of its effectiveness every three to five years.
- D.22 The board must agree a process for evaluating the effectiveness of the board chair and the committee chairs. The evaluation of the board chair should normally be led by the vice-chair or senior independent director.

- D.23 The performance of regional college chairs will also be evaluated by the Scottish Government, as regional colleges chairs are appointed by the Scottish Ministers and are personally accountable to them.

Section E: Relationships and Collaboration

Partnership working

- E.1 Colleges and regional strategic bodies must work in partnership to secure the coherent provision of a high quality of fundable further and higher education in their localities.
- E.2 Colleges and regional strategic bodies must ensure effective regional planning, consultation and collaboration following the principles of effective collaborative working: partnership; mutual respect and trust; and working towards commonly agreed outcomes.
- E.3 Boards must ensure effective partnership working with local and national bodies including businesses, public and third sector organisations to develop commonly agreed priorities following the principles of effective collaborative working.
- E.4 The board must encourage and support effective partnership working and collaboration within and across regions to address local needs and meet national priorities and specialisms.

Openness and Transparency

- E.5 The work of the board and its committees should be communicated appropriately to internal and external stakeholders to support effective and transparent governance.
- E.6 The board, via the board secretary, must ensure the board agenda, minutes, policies and appropriate reports are published within appropriate time frames, ensuring and monitoring compliance with freedom of information legislation.

Staff and Students

- E.7 The board must encourage a strong, autonomous and independent students' association and should ensure that the students' association is adequately resourced.
- E.8 The board must ensure that the students' association operates in a fair and democratic manner and fulfils its responsibilities. The students' association must have a written constitution, which should be subject to the approval and review by the board at intervals of not more than five years.
- E.9 The board and the students' association must establish clear guidelines on relationships and effective communication.

- E.10 The board must promote good employee relations and ensure mechanisms are in place for on-going meaningful engagement with staff. The board should have in place appropriate mechanisms to support effective engagement with all staff, with the principal delegated to operationalise the outcome of board decisions, values and ethos to all staff.
- E.11 The principal must set an example to the college's employees and the board should require the principal to communicate throughout the college the board's expectations on the college's culture, values and behaviours.
- E.12 The principal, on behalf of the board, must ensure that appropriate governance standards are cascaded through the organisation. The board should ensure that it is aware of the employees' and trades unions' views on relevant issues.

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