

Board Meeting

Date of Meeting	Tuesday 27 October 2015
Paper Title	Glasgow Clyde College: action plan
Agenda Item	13
Paper Number	BM2-M
Responsible Officer	Martin Fairbairn, Interim Chief Officer
Status	Disclosable
Action	For Discussion

1. Report Purpose

- 1.1. Consider the follow-up action required in relation to the recent decision of Scottish Ministers regarding board membership of Glasgow Clyde College.

2. Recommendations

- 2.1. The Board is invited to **note** the approach being taken to address the procedural issues raised by the Scottish Government in relation to Glasgow Clyde College.

3. Background

- 3.1. At the meeting on 13 July 2015 the Board received a letter and enclosures that had been sent to the Board of Management of Glasgow Clyde College from the Scottish Government. Subsequently, the Scottish Government wrote to the Board of Management of Glasgow Clyde College on 9 September 2015, following which there was further correspondence and a meeting between the Cabinet Secretary and members of the Board of Management.
- 3.2. On 8 October 2015 the Scottish Government laid an order in the Scottish Parliament which removed eight members of the Clyde Board of Management and appointed seven new members. A copy of the order is attached as at Annex B to this paper.
- 3.3. Immediately GCRB was advised that the order had been laid, the Board members of GCRB were informed. In subsequent email correspondence, concern has been expressed about how the role of GCRB has been portrayed. Although a responsive statement was drafted, no request for comment was received. Jim O'Donovan has requested that an email from him is included in the papers for this meeting, and a copy is included at Annex A.

4. Role of GCRB

- 4.1. As previously recognised by the Board, given that the decisions on the relevant matters were for Ministers, GCRB's locus was limited. However, looking to the future:

- GCRB's statutory responsibilities for monitoring the 'performance' of the assigned colleges provides a general locus for GCRB's interest.
- Once the Financial Memorandum between GCRB and the assigned colleges becomes live (and the assigned colleges cease to be 'fundable bodies'), GCRB will take on the detailed responsibility for all aspects of governance oversight previously undertaken by the Scottish Funding Council.
- The legislation retains the role for Scottish Ministers to take action where there has been 'mismanagement' by the Board of Management of an assigned college.

5. Glasgow Clyde College action plan

5.1. The Interim Chief Officer has asked Glasgow Clyde College to consider the procedural matters identified as areas of concern by the Scottish Government:

- Preparation for meetings;
- Board minutes;
- Board Secretary;
- Arrangements for participation by student members in board meetings;
- Support for student members of the board;
- Support for the Students' Association;
- Election of office bearers by the Students' Association;
- Compliance with limits on procurement involving non-competitive action;
- Proper procurement for all current contractual arrangements;
- Handling of governance concerns raised by the Principal;
- Proper arrangements for delegation of functions from the Board of Management.

6. Risk Analysis

- 6.1.** There are two key risks arising from this matter: damage to the region's reputation and non-compliance with expected standards of good governance.
- 6.2.** It is suggested that the best mitigation in relation to reputational risk is to focus on opportunities to promote the region's positive achievements. Current examples are the launch on 21 October of the Glasgow STEM strategy and the official opening of the new Riverside Campus of City of Glasgow College. The Interim Chief Officer will work with the assigned colleges to identify and leverage maximum value from similar opportunities.
- 6.3.** The Scottish Funding Council and Scottish Government are establishing a taskgroup to identify ways in which governance in the college sector can be enhanced. GCRB and the

assigned colleges will seek to play an appropriate role in that work and in the implementation of the outcomes.

7. Legal Implications

7.1. Paragraph 4.1 considers GCRB's future locus in such matters.

8. Financial Implications

8.1. There are no direct financial consequences arising from this paper.

9. Regional Outcome Agreement Implications

9.1. There are no direct consequences for the Regional Outcome Agreement arising from this paper.

Email from Jim O'Donovan dated 6 October 2015

Ali

I assume that you are referring to the comments I made on the article in the Herald which reported the statements made by UNISON and GMB in relation to Clyde College (29 September) and, possibly, my responses to comments made by unknown Clyde College and Glasgow FE in general 'experts' like Peter Anniesland and Mary Smythe (Sept 24).

In relation to my comment on 24 Sept, I did identify myself as an elected EIS official and the elected teaching staff representative on GCRB. These facts are a matter of public record so I cannot see any problem with me revealing them.

I made no statement on behalf of GCRB, but did offer to meet with Peter and Mary, who I can only assume are employees of Clyde College, given the amount of inside information they appear to have possess about its workings, did invite. As one of the staff representatives on GCRB I do not see any reason why I should not meet with any Glasgow college employee in that capacity.

In my response to the article of September I did not identify myself as being connected to either the EIS or GCRB. I did make a statement that supported the decision of GCRB that it had been presented with no grounds for intervention in matter of the suspension of the Clyde College Principal. This decision is also a matter of public record and I see no reason why I should not publicly state my support for it. Quite the contrary, since I supported the decision I believe that I have a duty to make my actions publicly known, especially to the constituency that elected me.

I understand your concerns that statements by individual board members might be interpreted by, or deliberately misinterpreted, as being representative of the board as a whole. Any suggestion that I was representing the regional board collectively, such as that raised by that other unknown expert on Glasgow FE, Derek Johnson, could only be arrived at through deliberate misconstruction.

Having said the above, I remain disappointed at the failure of the GCRB to defend the Clyde Board and itself against the barrage of abuse both bodies have been subjected to since February.

I would appreciate it if you would include this statement with the papers for the next full meeting of the GCRB for information. I would like the other Board members to be aware of my feelings on these matters.

Meantime, any further comment I make on FE matters which might be misrepresented will include a statement that makes it explicit that I am not speaking on behalf of GCRB collectively.

Regards

Jim

 SCOTTISH STATUTORY INSTRUMENTS

2015 No. 348**EDUCATION**
**The Glasgow Clyde College (Removal and Appointment of
Board Members) (Scotland) Order 2015**

<i>Made</i>	- - - -	<i>8th October 2015</i>
<i>Laid before the Scottish Parliament</i>		<i>8th October 2015</i>
<i>Coming into force at 9.15 a.m. on</i>		<i>8th October 2015</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 24 (2) of the Further and Higher Education (Scotland) Act 1992(a) and all other powers enabling them to do so.

In accordance with section 24(1)(a)(ii) and (v) of the Further and Higher Education (Scotland) Act 1992, it appears to them that the Board of Management of Glasgow Clyde College have committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005(b), and have mismanaged the affairs of that Board.

In accordance with section 24(3) of the Further and Higher Education (Scotland) Act 1992, they have consulted the Scottish Further and Higher Education Funding Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Glasgow Clyde College (Removal and Appointment of Board Members) (Scotland) Order 2015 and comes into force at 9.15 a.m. on 8th October 2015.

(2) In this Order, “the Glasgow Clyde Board” means the Board of Management of Glasgow Clyde College(c) established as a body corporate by section 11(2) of the Further and Higher Education (Scotland) Act 1992.

Removal of members from the Glasgow Clyde Board

2. The following members are removed from the Glasgow Clyde Board—

George Chalmers

Jim Hamilton

Les Jacobs

(a) 1992 c.37. Section 24 was substituted by section 7 of the Post-16 Education (Scotland) Act 2013 (asp 12) (“the 2013 Act”).

(b) 2005 asp 6. Section 12 was amended by section 9(1) of the 2013 Act

(c) Glasgow Clyde College is prescribed by S.I. 1992/1597. The name of Glasgow Clyde College was changed from “Cardonald College” on 1st August 2013 in accordance with section 3(4) of the Further and Higher Education (Scotland) Act 1992. Section 3(4) of that Act was amended by section 30 of the Further and Higher Education (Scotland) Act 2005.

Peter Laverie
Richard Leggett
Aileen Ponton
Elaine Proudfoot
Gordon Reid.

Appointment of members to the Glasgow Clyde Board

3.—(1) Alex Linkston is appointed as the chairing member of the Glasgow Clyde Board.

(2) The following persons are appointed as members of the Glasgow Clyde Board—

Sandra Heidinger
Gordon McGuinness
Alex Muirhead
David Newall
Gill Troup
Michael Yuille.

Period of office of members

4. The members appointed under article 3 of this Order are to hold office until 30th September 2016.

St Andrew's House,
Edinburgh
8th October 2015

ANGELA CONSTANCE
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order removes George Chalmers from the Board of Management of Glasgow Clyde College (“the Glasgow Clyde Board”). He was, until the coming into force of this Order, the chairing member of the Glasgow Clyde Board, having been appointed under paragraph 3A(2)(a) of Schedule 2 to the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”), which was inserted by section 6(1) of the Post-16 Education (Scotland) Act 2013 (“the 2013 Act”).

Article 2 of this Order also removes Jim Hamilton, Les Jacobs, Richard Leggett, Aileen Ponton, Elaine Proudfoot and Gordon Reid as members of the Glasgow Clyde Board. These members were appointed prior to the amendments made by the 2013 Act to the 1992 Act coming into force in relation to the Glasgow Clyde Board but, under transitional arrangements made under section 6(2) of the 2013 Act, they are treated as having been appointed under paragraph 3A(2)(f) of Schedule 2 to the 1992 Act. Article 2 also removes Peter Laverie as a member of the Glasgow Clyde Board, who was appointed a member by virtue of paragraph 3A(2)(c) of Schedule 2 to the 1992 Act.

Article 3 of this Order appoints Alex Linkston as the chairing member of the Glasgow Clyde Board. Article 3 also appoints Sandra Heidinger, Gordon McGuinness, Alex Muirhead, David Newall, Gill Troup and Michael Yuille as members of the Glasgow Clyde Board in place of those members who were treated as having been appointed under paragraph 3A(2)(f) of Schedule 2 to the 1992 Act and who are removed by Article 2 of this Order.

Those appointed members will hold office under letters of appointment authorised by this Order and article 4 provides that the members appointed under this Order hold office until 30th September 2016.

The Scottish Ministers have exercised this power of removal and appointment because it appears to them that the Glasgow Clyde Board have committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”) and have mismanaged the affairs of the Glasgow Clyde Board. By virtue of section 24(5) of the 1992 Act, the appointments of the chairing member and other members under article 3 of this Order have effect as if they had been appointed to the Glasgow Clyde Board under paragraph 3A(2)(a) and (f) respectively of Schedule 2 to the 1992 Act. This means that, under paragraph 5 of that Schedule (and subject to article 4 of this Order), these members hold and vacate office on such terms and conditions as the Regional Board for Glasgow Colleges (which is the regional strategic body to which Glasgow Clyde College is assigned under section 7C(1) of the 2005 Act) determines.

POLICY NOTE

THE GLASGOW CLYDE COLLEGE (REMOVAL AND APPOINTMENT OF BOARD MEMBERS) (SCOTLAND) ORDER 2015

SSI 2015/348

1. The above instrument is made in exercise of the powers conferred by section 24(2) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”).

Policy objectives

2. Colleges are vital to the success of Scotland and its people and college boards are vital to the success of colleges. Good governance is at the heart of the Government’s college reforms because students rely on college boards of management for the proper stewardship of their institution. Boards are responsible for ensuring good governance.

3. Ministers have since 1993 had powers to remove any or all board members (except the principal) of an incorporated college by Order. Section 24(1) of the 1992 Act sets out the circumstances in which the Scottish Ministers may remove board members

Board of Management of Glasgow Clyde College

4. The governing body of Glasgow Clyde College is its board of management. The Board of Management of Glasgow Clyde College (“the Board”) has a duty under section 12(1) of the 1992 Act of managing and conducting their college.

5. As Glasgow Clyde College is assigned to the Regional Board for Glasgow Colleges, and as the Regional Board is yet to satisfy the SFC that it has all the arrangements and processes in place to fund its colleges, Glasgow Clyde College continues to receive grants from the SFC under section 12 of the Further and Higher Education (Scotland) Act 2005.

6. Among other things, the Board is required to comply with the terms and conditions of its grant from the SFC, including complying with its Financial Memorandum and the Code of Good Governance for Scotland’s Colleges.

Removal of Board members

7. Using powers under Section 24(2)(a) of the 1992 Act, the following have been removed from office because it appears to the Scottish Ministers that the Board have committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 and have mismanaged the affairs of that Board:

- all Board members who were members of the Board during the relevant period (February – July 2015), except the Principal.

8. The reasons for this are set out in the Annex.

Appointment of new Board members

9. By virtue of section 24(2)(b) of the 1992 Act, where a removed member was appointed under paragraph 3A(2)(a) or (f) of Schedule 2 to the 1992 Act, Ministers may appoint another person in place of the removed member.

10. Ministers have appointed people with a proven track record to the Board. They will support Glasgow Clyde College through this difficult period. In recognition that these are emergency appointments; they are to hold office until 30 September 2016 (see para 13). At the end of their period of office, Ministers expect the posts to be filled following an open recruitment process as set out in College Sector Board Appointments: 2014 Ministerial Guidance¹.

Effect of Order

11. Article 2 of the Order removes from the Board the Chair and other named members.

12. Article 3 of the Order appoints a person to be the Chair and other persons to be members of the Board in place of persons removed from the office of Chair or of a non-executive Board member.

13. Article 4 provides that the appointed persons are to hold office until 30 September 2016. This should provide sufficient time for the matters which gave rise to the making of this Order to be addressed before the Glasgow Colleges' Regional Board recruit on a longer term basis.

Consultation

14. The Cabinet Secretary for Education and Lifelong Learning wrote to the Chair and other members of the Board on 9 September 2015 seeking their comments on her concerns. The Cabinet Secretary subsequently met the Chair and two Board members on 14 September 2015. Board members replied on 18 September outlining why they did not consider their removal was an appropriate action. However, the Cabinet Secretary was not persuaded by their reply, and was then minded to make an Order for the removal of the Board members specified in the Order.

15. As required by section 24(3) of the 1992 Act, the SFC was consulted in relation to the removal of board members in this Order. The SFC has advised that it considers this action to be justified.

¹ <http://www.gov.scot/Resource/0045/00458051.pdf>

Impact assessments

16. There are no significant equality impact issues arising from this Order. The Order removed two women and six men and appointed two women and five men.

Financial effects

17. The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on local government or on business.

**Colleges, Young Workforce and SFC Sponsorship Division
Scottish Government
October 2015**

STATEMENT OF REASONS FOR MINISTERS CONCLUDING THAT THE BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE IS FAILING

This note sets out Ministers' reasons for concluding that the Board of Management of Glasgow Clyde College ("the Board") has committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and has mismanaged its affairs

1. The Scottish Ministers consider that the Board is failing in relation to the following grounds of section 24(1)(a) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"):

- a) having committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") (section 24(1)(a)(ii) of the 1992 Act);
- b) mismanaging their affairs (section 24(1)(a)(v) of the 1992 Act).

Repeated Breaches of Terms and Conditions of SFC Grant (section 24(1)(a)(ii) of the 1992 Act)

2. Compliance with the *Financial Memorandum with Fundable Bodies in the College Sector*² ("the Financial Memorandum") and the *Code of Good Governance for Scotland's Colleges*³ ("the Code") are terms and conditions of the grant made by the Scottish Funding Council ("the SFC") to the Board under section 12 of the 2005 Act.

3. It appears to the Scottish Ministers that there have been breach of such terms and conditions because of the following.

Governance

(a) Paragraph C.3 of the Code provides that the Board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely. However, it appeared that:

Lack of preparation and due consideration of matters

- 1) Meetings of the Board took place without agendas on 14 April 2015 and 19 May 2015. It was therefore unclear to Board members what would be discussed at the meetings, and so board members had little or no opportunity to prepare for these meetings. In particular, it appeared that on 19 May 2015 at a meeting that members had been informed was for the purpose of

²http://www.sfc.ac.uk/web/FILES/Guidance_Governance/Financial_Memorandum_with_the_College_Sector_-_1_December_2014.pdf

³http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014_Goodpracticeincollegegovernance/Code_of_Good_Governance_for_Scotlands_Colleges.pdf

discussing issues with senior representatives of the Scottish Government, the SFC and the Glasgow Colleges' Regional Board, the Board decided to make detailed changes - with no advance notice - to the College constitutional document⁴ in relation to the making of arrangements for a disciplinary committee and an appeal committee.

Response by Board members

2) The Board explain that extraordinary meetings were convened to update the Board on the disciplinary position and developments with SFC. It advises that Board members were clear about the subject matter for discussion at meetings. It states that it frequently had to meet at short notice due to the SFC's actions. It also explains that information about the purpose of a meeting on 19 May 2015 was not shared with Board members in advance due to concerns about confidentiality. The Board also explains that constitutional changes were not circulated in advance because of time constraints and the need for solicitors to first discuss them with the Board. Finally, the Board stresses that it always acted in accordance with legal advice.

Ministers' consideration and conclusions

3) It is clear that the meetings in question went beyond providing updates, and that in particular the Board made detailed and complex decisions on important matters. Without an agenda, advance papers, or other notice of the subject of a meeting, I do not accept that all board members would know what matters were to be discussed in sufficient detail as to be able to prepare. In order to be effective, particularly in relation to decisions on complex matters such as that dealt with on 19 May 2015, board members need to know in advance what is to be discussed. I do not accept that robust decisions of such detail and complexity could be taken with confidence in the absence of appropriate papers, considered in advance. The Board advise that members ruled out from participating in any disciplinary panel included "student representatives", yet the board minutes of 19 May 2015 (6pm start version) record that the Board had identified one of the student members among the six board members "who could take part in the disciplinary committee or the appeal committee". Moreover, the student member in question had not attended any Board meetings since 26 March 2015.

4) It is not clear that the Board was forced to meet at short notice. However, even accepting that this was the case on some occasions, the period of notice was not so short as to prevent an agenda being prepared and circulated in advance. Further, concerns around confidentiality should not lead to a situation where board members do not know in advance what is to be discussed.

⁴ "the College constitutional document" means the document entitled **Constitution and Articles of Governance of The Board of Management of Glasgow Clyde College**, 1 August 2013.

5) It is of concern that the Board did not object to meetings being held without an agenda, or ask for consideration of complex matters to be continued to a later meeting so that they could fully consider matters, given the lack of opportunity to prepare in advance. In particular, the Board should have recognised that without advance notice of the proposed arrangements, they could not properly develop arrangements at the meeting itself of such detail and complexity as those set out in the minutes of the meeting dated 19 May 2015 (6pm start version).

Board minutes

6) Throughout the period from 12 February 2015 to 25 June 2015, there were deficiencies in the recording of discussions, decisions, actions and in the minutes of Board meetings. In consequence, in important respects there was an incomplete or inaccurate record of the business transacted by the Board. For example there was no record of the discussion and any conclusions on *Curriculum and Estates Review - EIS questions and letter* at the Board meeting on 12 February 2015 (because the minute-taker left the meeting for this item); the minutes of the Board meeting on 23 February 2015 do not record that it was discussed that the depute principal would assume the responsibilities of the Principal following her suspension; the minutes of the Board meeting on 26 March 2015 record more members voting confidence in the chair than were present; it is not clear from the Board minutes of 28 April 2015 what decisions, if any, the Board took; the minutes of 19 May 2015 (6pm start version) - while recording decisions - contain little information of the discussion that led to those decisions; and the minutes of 25 June 2014 record the involvement of the Board Secretary in a discussion, but does not record that she was present in the list of attendees.

7) Throughout the period from 12 February 2015 to 25 June 2015, minutes of meetings were not routinely approved at the next available meeting, and appear often to have been held over to the next quarterly ordinary meeting. At some meetings therefore, the Board had no agreed record, and therefore no common understanding, of the discussion and agreement at its previous meeting. This impaired the Board's ability to keep track of what decisions it had already taken, when considering matters before it. Of particular concern is that the minutes of the Board meetings of 23 February, 26 March and 14 April 2015 each give a different account of what the Board was asked to agree at the 23 February 2015 meeting. The minutes of the Board meeting on 14 April 2015 were taken by one of its members, potentially impairing him from fully participating at that board meeting.

Response by Board members

8) The Board explains that lack of a Secretary and pressure of business led to a delay in some Board minutes being made available and advises that when there was a Secretary, the minutes were her responsibility, not the Board's and that when there was no Secretary, a lawyer was often present and took notes or minutes. The Board state that all Board minutes have now been made available and approved. Two now former Board members did not

agree with certain draft minutes, but their proposed changes were disputed by the remainder of the Board. Although those two former Board members disputed certain minutes, all other Board members had a clear and shared understanding of what decisions had been taken.

9) The Board accepts that there was a delay in some minutes being made available, and that there was in some cases a dispute as to what had been agreed. However, it points out that this was primarily the responsibility of the Secretary when still in office, and that notes or minutes were prepared by a lawyer in the absence of the Secretary.

Ministers' consideration and conclusions

10) It is important that college boards, which are public bodies spending public money, keep a record of their business both for their own purposes and so that their operation and decisions and the basis on which they are made are clear and transparent to interested parties including the public.

11) I accept that primary responsibility lay with the Secretary. However, it is ultimately for the Board to ensure that its decisions are properly recorded, and the Board failed to ensure that the Secretary was putting draft minutes before it for agreement timeously.

12) Whilst the Board contends that most Board members had a clear and shared understanding of what decisions had been taken, that understanding was disputed by other Board members, indicating that there was no shared understanding across the Board. Had steps been taken to ensure minutes were agreed at the next meeting (other than in exceptional circumstances) differences of opinion would more quickly have come to light, and transparency would have been improved.

Board Secretary

13) The Board Secretary's role is to advise and support the Board, Chair and executive team in relation to governance matters, as set out in paragraphs D.14 and D.15 of the Code. Prior to her departure, the previous Board Secretary was not present at certain meetings that considered governance matters, and inadequate arrangements were made to cover her important functions at the Board meetings on 14 April 2015 and 19 May 2015.

Response by Board members

14) The Board states that it is now seeking to recruit a new Secretary, and to put in place suitable interim arrangements for cover.

Ministers' consideration and conclusions

15) As noted above, whilst the Secretary has primary responsibility for preparing and agreeing the minutes, it is ultimately for the Board to ensure that its decisions are properly recorded in a timely manner. It is of concern

that the Board has failed to acknowledge the problems inherent in a board member taking minutes of a board meeting (at the meeting on 14 April 2015), or in the inefficient use of resource in relying on a lawyer to take minutes (at the meeting on 19 May 2015).

16) The Board advise that the number of meetings and the short period between some has contributed to the delay in producing minutes. However, none of the gaps between meetings is so short that it would have been unreasonable to expect minutes to have been produced. My concern here is therefore not solely the lack of minutes available at the next meeting, but the lack of apparent concern by the Board of the impact this would have on its ability to discharge its functions effectively.

In light of the foregoing, I conclude that Board decision-making processes were not transparent, properly informed or rigorous.

Relationship with students

(b) The relationship between the Board and students is one of the key relationships for any college. Paragraph B.1 of the Code provides the following in relation to student engagement: "*The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions*". Paragraph B.2 provides that "*the board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience.*" (See also paragraph 18 below.) However, it appeared that:

1) There had been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. This was prompted in part by the exclusion of the student members from a Board meeting on 23 February 2015 which in turn appears to have resulted from a misreading of a provision of the College's constitutional document (the provision reflected a statutory provision which was repealed in 2003 and was not in compliance with the Code).

2) In the 2014/15 academic year, no student was willing to put themselves forward for election as a students' association officer to replace the outgoing student members, and the planned election was postponed.

Response by Board members

3) The Board advises that, aside from the events of the February 2015 meeting, there have been no issues between the students as a body or their representatives on the one hand and the Board on the other, but accept there was a breakdown in the relationship between the Chair and certain student representatives. The Board suggest that this arose in the case of the past Student President, attributing it to his loyalty to the Principal. The Board further note that the past Student President sought to influence the Board in its discussions on the SFC review, and that he (along with SFC) were at pains

to suggest a breakdown in the relationship. The Board notes that the “casualties” of this situation have been the students themselves.

4) In relation to the other former student board member, the Board states that she stopped attending Board meetings shortly after the Principal was suspended. The Board refute any suggestion that it was the result of the way in which she had been treated at Board meetings, advising that it would be reasonable for her to have addressed the Board had that been the case.

5) The Board advises that now that students are standing for election as student officers, the situation will normalise.

Ministers’ consideration and conclusions

6) It appears to me that the relationship between the Board, particularly the Chair, and the Student’s Association did break down, evidence for which include:

- i. the Board discussed the Students’ Association’s vote of no confidence in the Chair at its meeting on 26 March 2015. While I accept this was prompted by the exclusion of two students from the Board meeting on 23 February 2015, it does demonstrate that the issue went beyond a breakdown in the relationship between individual student representatives and the chair, as the Board suggests.
- ii. the 2014/15 Glasgow Clyde College Students’ Association executive team wrote expressing concern about the treatment of the two student Board members, advising that the executive team had taken a collective decision not to stand for a sabbatical post. Student concerns was mentioned by the Scottish Government Director of Advance Learning and Science when she attended the board meeting on 19 May 2015 and in a subsequent letter dated 4 June 2015. The executive team’s letter was subsequently sent to the Board Chair with most of the student names redacted at their request.

7) Student board membership is integral to the proper functioning of a college board of management. Paragraph 3A(2)(e) of Schedule 2 to the 1992 Act requires the board to include two student members nominated by the students’ association. It is therefore clearly important to college governance that there is a functioning students’ association able to make these appointments. Students’ associations cannot function without the active participation of students. The fact that no student stood for election in academic year 2014/15 has made it more difficult to ensure the continued operation of the College’s Students’ Association from the start of academic year 2015/16.

8) It is of concern that the Board made no attempt to find out why a student member stopped attending meetings and, apparently without any evidence base, refute any suggestion that it was the result of how she had been treated by the Board. Board members have a general duty of care to

each other, but in relation to its student members I would have expected it to have been especially vigilant.

9) Whilst I note the Board's belief that with new student Board members matters will now "normalise", and I accept that a change in student leadership may provide an opportunity for a fresh start with the student body, I am concerned that the Board has demonstrated insignificant awareness that there has been a fractured relationship in the past. While I could understand the Board considering that it was not responsible for the breakdown in the relationship, I am concerned that the Board has not even acknowledged there was a problem. I therefore have no confidence that similar problems would not present themselves in the future.

Based on the foregoing, it appears to me that, contrary to the Code, the Board have failed to lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience.

Financial requirements in relation to delegated financial limits to expenditure

(c) Appendix A to Part 3 of the Financial Memorandum sets a limit of £25,000 on expenditure for procurement of services through non-competitive action. Any such expenditure incurred beyond that requires the prior written approval of the SFC. However, it appeared that:

1) The College procured legal services in relation to the disciplinary process relating to the Principal from an Edinburgh based firm of solicitors. The total incurred cost of those services was over £90k. The College sought retrospective approval from SFC on 22 April 2015 at which point the liability incurred by the College was already over £55k.

Response by Board members

2) The Board does not accept responsibility for this matter, advising that it did not approve any spend, and that it perceived the matter to be under the control of the Depute Principal. In support of its position, the Board refer me to a draft internal audit report prepared by BDO. That report states that Simpson & Marwick were appointed by Board members without a competitive process; that college procedures were compatible with all procurement and SFC requirements but were not followed; that the Board Secretary did not initially share the engagement letters, and there is no evidence of them being considered; that Simpson & Marwick state that they did not receive requests for fee estimates and that there was no dialogue on expected fee levels until after the £25,000 limit had been exceeded; and that there was no monitoring of costs for the first month.

Ministers' consideration and conclusions

3) The draft internal audit report suggests that, by incurring liabilities, the College could not be said to be 'incurring expenditure'. In my view, on such

an interpretation the limit would fail to serve any useful purpose as huge liabilities could be incurred without breaching the limit as long as the money was not paid before approval was obtained. I do not accept that interpretation. I conclude that the delegated limit of £25,000 was exceeded without SFC approval, and that SFC approval was not sought until more than 3 weeks after it was apparent the limit had been exceeded.

4) The Board states that it does not accept that it has failed in any way in this matter. But given the weaknesses identified by BDO, I cannot accept that view. The Board has overall responsibility for the operation of the College. Paragraph 2 of Part 2 of the FM provides: "The responsibility for ensuring that the institution complies with this FM rests with the governing body of the institution". It therefore appears to me that the Board does not understand or accept its role as a governing body.

5) The Board has drawn my attention to the "action plan" which it intends to undertake to address this issue. This includes being clear about who is responsible for monitoring costs, using capped fees, sharing relevant documentation, training for Board members on procurement requirements and recruiting a suitably qualified Board Secretary.

6) Some of these measures will clearly help to improve governance (for example, having a suitably qualified and experienced Board Secretary) and control (eg capped fees). Others appear to be tackling the matter from the wrong end (eg it appears to me that a clear lesson the Board should have drawn is to better engage with the senior management team, rather than improving the knowledge of individual board members about the detail of procurement rules).

7) However, I note that (a) despite the terms of the draft internal audit report and the FM, the Board do not accept that they have failed in any way in this matter, (b) existing College procedures (which were compliant with FM and the College's procurement rules) simply were not followed, and (c) even once it was known that the delegated limit had been breached, approval was not sought from SFC for over 3 weeks.

4. I conclude that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. The total cost of the action incurred by the Board was significantly more than three times this limit.

5. In addition, the College failed to follow its existing procedures (which were compliant with SFC and procurement rules) and the Board do not accept responsibility for this failure notwithstanding their close involvement in this matter and overall responsibility for the governance of the College.

6. **The Scottish Ministers have concluded that, in light of the above, the Board has committed repeated breaches of the terms and conditions of the grant made to the Board under section 12 of the 2005 Act, in terms of section 24(1)(a)(ii) of the 1992 Act.**

Mismanagement of Affairs (section 24(1)(a)(v) of the 1992 act)

Failure to discuss governance concerns of its Principal

7. It appeared that governance concerns raised by the Principal by email dated 18 February 2015 immediately prior to her suspension have not been considered by the Board, despite the Chair advising the Principal in his reply dated 19 February 2015 that he asked the Board Secretary to convene a board meeting “as soon as possible”. The Principal’s email advised the Board that she intended to seek advice from the College’s solicitors on “*governance issues in relation to propriety, processes, procedure, conflicts of interest and behaviours*”. The Board minutes record no Board discussion of the concerns raised by the Principal in her email. In particular, there is no record of any discussion about seeking further details of the Principal’s concerns, those of its most senior officer with specific responsibility under the FM for ensuring the Board’s propriety.

Response by Board members

8. The Board advises that it did not discuss or seek further detail of the Principal’s concerns because the disciplinary process was underway, which in its view prevented the Board seeking details from the Principal. However, the Board advises that it is a reasonable assumption that the Principal will elaborate on her concerns as part of the disciplinary process.

Ministers’ consideration and conclusions

9. I note that (prior to her suspension) the Principal raised serious concerns about governance which the Chair undertook to convene a meeting of the Board “as soon as possible” to discuss. The Principal was then suspended by the Chair later that day for reasons I understand to be unconnected with her email.

10. I do not accept that the Principal’s suspension would prevent the Board from investigating or considering her concerns. I do not think it is reasonable for the Board to assume that the Principal will raise these concerns during the disciplinary process, and even if it were, it is now more than 7 months since the concerns were raised. The very fact that the Principal was suspended almost immediately after she raised these concerns should, in my view, have led the Board to identify this as a matter requiring prompt and careful consideration.

11. There is a serious failure of governance in that concerns raised by the Principal by email dated 18 February 2015, immediately prior to her suspension, have still not been clarified and considered by the Board some 7 months later.

Failure to obtain prior approval before exceeding delegated limit

12. As noted at paragraph 4 above, I conclude that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. The total cost of the action incurred by the Board was significantly more than three times this limit.

Improper delegation of function

13. There appeared to have been an improper delegation of functions to an individual Board member (who is not the Chair) in relation to the disciplinary process following the suspension of the Principal.

Response by Board members

14. The Board states that they took legal advice on this matter and that there was no delegation to a single board member (who is not the chair) to decide whether to proceed to formal disciplinary action in relation to the Principal. Rather, the relevant Board member was “standing in” for the human resources manager.

Ministers’ consideration and conclusions

15. I conclude that this was an improper delegation to a single member of the Board. As such, it was contrary to section 12(4) of the 1992 Act. The Board has powers to delegate functions to a member of staff or a committee, but it does not have powers to delegate functions to a single Board member who is not the Chair.

16. There was an improper delegation of functions to an individual Board member in relation to the disciplinary process. While, I accept that this was done on the basis of legal advice, my primary concern is that having raised this matter with the Board, the Board appear unable to recognise that anything improper has occurred. That the Board has powers to delegate to a member of staff does not vest it with powers to delegate a function to an individual member of the Board (who is not the chair) by virtue that they are carrying out a function the Board’s procedure envisaged would be carried out by a member of staff.

17. While at first sight an improper delegation of this type may appear a minor failure in governance, it has potentially ramifications for the disciplinary process.

Relationship with students

18. As noted above, I conclude that the relationship between the Board, particularly the chair, and the student Board members did break down. This appears to have been triggered by the Secretary’s incorrect statement that student Board members could not take part in discussion of the Principal’s suspension, and by the Chair’s treatment of the student Board members at that meeting (and in the case of the past Student President, at subsequent meetings) and the lack of any challenge by other Board members to that treatment.

19. The Scottish Ministers consider that in light of the above (paragraphs 7 to 18, the Board has mismanaged its affairs in terms of section 24(1)(a)(v) of the 1992 Act.

Board’s request for further detail of my concerns

20. In relation to a number of issues which I have raised with them, the Board has provided its response and then requested that, if I do not accept its response, I provide further detail of the issue raised (in others, they have simply provided their

response and asked for more detail.) I consider that I have provided sufficient detail to allow the Board to respond fully to the issues I have raised with them. It does not appear to me that there is any confusion or lack of agreement as to the matters at issue. As such, I do not consider it necessary to provide further detail to the Board in order to obtain their fully considered response.

Removal of Board Members

21. The nine key principles of public life are set out in paragraph A.2 of the Code and include “accountability and stewardship, openness and leadership”.

22. Paragraph D.1 of the Code provides that the chair of the board is responsible for the leadership of the board and ensuring its effectiveness in all aspects of its role. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members and fostering constructive relationships between board members. Paragraph D.12 provides that the chair and the principal have a shared responsibility to provide leadership for the college.

23. Paragraph D.3 of the Code provides that the whole board is collectively responsible and accountable for all board decisions. Paragraph A.3 of the Code provides that board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves. Paragraph A.5 provides that the board provides overall strategic leadership of the college.

24. I have identified both repeated breaches of terms and conditions of grant and instances of mismanagement by the Board. The nature of these matters themselves and the Board’s explanations of these matters (and in particular, the Board’s view that almost none of these matters were its responsibility) leads me to the conclusion that the Board is unlikely to perform its role adequately even with additional support from SFC or others.

25. Given this, and the board failings I have identified, I consider it necessary to remove from office all Board members who were members of the Board during the relevant period (February – July 2015), except the Principal.

**Colleges, Young Workforce and SFC Sponsorship Division
Scottish Government
October 2015**