

Board of Management

Date of Meeting	Monday 18 December 2017
Paper Title	GCRB Responsibilities in Relation to Assigned College Principals
Agenda Item	10
Paper Number	BM3-K
Responsible Officer	Penny Davis, Board Secretary
Status	Disclosable, subject to redaction of legal advice
Action	For Decision

1. Report Purpose

- 1.1. To ensure GCRB fulfils its legal role effectively in relation to the appointment and terms and conditions of Assigned College Principals.

2. Recommendations

- 2.1. The Board is invited to:

- **consider** the opinion of the SFC and the legal advice obtained by the SFC regarding the extent of GCRB's powers over changes to the terms and conditions of Assigned College Principals;
- **consider** the conclusions and recommendations of the Nominations and Remuneration Committee; and
- **decide** on an appropriate course of action.

3. Background

- 3.1. The Further and Higher Education (Scotland) Act 1992, Paragraph 16A, states that:

The appointment of a principal of a college which is not a regional college, and the terms and conditions of such an appointment, have effect only if approved by the regional strategic body for the college.

- 3.2. The Nominations and Remuneration Committee sought legal advice earlier in the year to clarify:

- whether the wording of the Act should be interpreted to mean an ongoing responsibility on GCRB's part in approving changes to a principal's terms and conditions subsequent to their appointment by GCRB; and
- whether GCRB had any role in relation to changes to terms and conditions of principals who had been appointed prior to Paragraph 16A coming into effect.

- 3.3.** The legal advice received, and shared in full with the Board at its September 2017 meeting, was that substantive changes to terms and conditions would constitute a renewal of contract and that, on that basis, substantive changes to the terms of principals appointed by GCRB, and those appointed prior to GCRB's powers coming into effect, would both require GCRB approval.
- 3.4.** The Board affirmed its support for a college-led approach to any amendment of principals' terms and conditions, with GCRB involvement only to the extent that would be necessary to fulfil its legal duties.
- 3.5.** To take the matter forward and establish a clearer position on GCRB's role, the Board appointed a panel comprising the Chair of the Board, Chair of Nominations & Remuneration and one other Committee Chair (the Chair of Audit was invited to join the panel). The panel was tasked with gathering further information in the first instance.
- 3.6.** The following report and recommendations are based on further information obtained and considered by the panel and the Nominations and Remuneration Committee.

4. Detail

- 4.1.** The panel sought the views of the SFC, and the SFC wrote to GCRB, advising that, on the basis of legal advice SFC had obtained, the SFC's view was that the only circumstances in which GCRB's powers of approval would be triggered subsequent to an appointment being made were such as in the event of a fixed term contract becoming due for renewal, that is, if a principal were in effect being reappointed. Changes otherwise would amount to variations to contract and would not require GCRB approval.
- 4.2.** The panel passed the SFC's advice to the Nominations and Remuneration Committee, which considered the matter further at its meeting on 30 November, alongside the full legal advice obtained by the SFC and the legal advice originally obtained by GCRB.
- 4.3.** The SFC's letter and the legal advice obtained by the SFC are attached at Annex 1.
- 4.4.** The Nominations and Remuneration Committee, having considered the matter in detail, would ask the Board to note that:
 - the opinion of the SFC, as GCRB's primary regulator, should be accorded appropriate weight in considering how best to proceed;
 - the opinion of the SFC and its legal advisors is consistent with the Board's stated intention to support a college-led approach and limit intervention in college-related employment matters; and
 - the SFC's legal advice does recognise GCRB's responsibilities to monitor colleges' financial affairs and refers to the options available to GCRB to ensure that colleges comply with their conditions of grant, including in relation to public sector pay policy.
- 4.5.** On that basis, the Nominations and Remuneration Committee would recommend that:
 - the Board agrees to proceed on the basis of the SFC's opinion and legal advice obtained by the SFC;

- the Board agrees that GCRB has no ongoing role in the approval of variations to Assigned College Principals' terms and conditions subsequent to their appointment;
 - the Board recognises that GCRB's powers of approval may be triggered in certain circumstances subsequent to appointment, which would include the renewal of an Assigned College Principal's contract at the end of a fixed term;
 - further consideration should be given to how GCRB might most effectively ensure compliance with the requirements of the Financial Memorandum and consistency with public sector pay policy; and
 - to that end, the panel should remain in place to receive and consider appropriate information and oversee compliance and consistency with relevant regulation and policy, reporting as necessary to the Board;
- 4.6.** With regard to seeking legal advice in future, the Chair agreed with the Scottish Government and SFC that, as a matter of principle, a joint approach should be pursued wherever possible to minimise public expenditure on legal fees.

5. Risk Analysis

- 5.1.** In facilitating a decision on the basis of legal advice, consultation with the SFC and detailed consideration at Committee and Board level, this report seeks to mitigate *GCRB Risk 0012: There is a breach of legislation/guidance/code of practice and this results in a failure of governance.*
- 5.2.** There is a reputational risk in the potential for conflict between public/external perceptions of GCRB's accountability for use of public funds and GCRB's actual powers, which (on the basis of the SFC's legal advice and the recommended approach) would be limited in relation to Assigned College Principals' remuneration.

6. Legal Implications

- 6.1.** Legal implications are considered in the report and Annex.

7. Resource Implications

- 7.1.** There are no immediate resource implications arising from this paper.

8. Strategic Implications

- 8.1.** This report is not directly relevant to the Regional Outcome Agreement/Strategic Plan. However, compliant and effective governance arrangements across the Glasgow region are essential to the effective determination and delivery of GCRB objectives.



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Our ref: 248707872

15 November 2017

Grahame Smith
Interim Chair
Glasgow Colleges Regional Board
By email

Dear Grahame,

I am writing to follow up recent communications from Robin Ashton and the discussion we had on 27 October on the role of the GCRB in principals' salaries.

When we met I said that the legal advice that SFC had sought on this issue confirmed that GCRB's role was in approving the appointment and the terms of conditions of principals of assigned college on appointment. The GCRB had no role in the salaries of principals appointed prior to the 2013 Act coming into force.

At the meeting we discussed whether GCRB had any continuing role in the salaries of principals appointed after the Act had come into force and which had been approved by GCRB on appointment. Our legal advice is that the GCRB does not have a role in this. While the Act makes reference to GCRB's role on appointment, the accompanying guidance suggests that GCRB has a role 'when contracts become due for renewal'. Our interpretation, based on legal advice, of this is that this would only apply where there was a fixed term contract and the principal was, in effect, being reappointed. In that case the GCRB role would be as in an appointment. Other changes would be variations rather than renewals and would not involve GCRB.

I hope this clarification is useful.

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A handwritten signature in black ink, appearing to read 'J. Kemp', with a stylized flourish at the end.

John Kemp

Interim Chief Executive

Cc Robin Ashton, Linda McLeod

Annex C: SFC Legal Advice





