

## Board Meeting

Date of Meeting	Monday 30 January 2023
Paper Title	Governance Report
Agenda Item	11
Paper Number	BM3-I
Responsible Officer	Board Secretary
Status	Disclosable
Action	For Noting

### 1. Executive Summary

**1.1** The following provides a summary report on areas of external governance development in the form of:

- a summary of material changes in the revised Code of Good Governance issued September 2022;
- a summary of significant changes in the revised Code of Conduct for Members of Devolved Public Bodies further to the Standards Commission session in January 2022 and formal adoption by the Board as of 1 August 2022;
- an update on Scottish Government progress with the issue of revised appointments guidance.

**1.2** Members should note that GCRB's Board Regulations are due for review (and had been awaiting completion of Scottish Government and Standards Commission revisions to regulations affecting their content). The review of the Regulations, in the first half of 2023, will allow for consideration of the implications of both revised Codes for practice at Board and committee meetings in key areas such as determining a quorum, confidentiality requirements, and declaring interests.

### 2. Recommendations

**2.1.** The Board is invited to **note** the information provided.

### 3. Code of Good Governance for Scotland's Colleges

- 3.1 Compliance with the Code of Good Governance for Scotland's Colleges is a condition of grant. The (2016) Code was reviewed over 2021-22 and a revised version was issued in September 2022. Although the majority of changes were organisational rather than changes to the principles themselves or associated requirements, there were several new or extended provisions. The revised Code is accessible on BoardEffect and on the CDN governance hub. There are no significant compliance concerns for GCRB arising from the changes as GCRB practice was already consistent with the revisions, however, some modification to the Board Regulations may be appropriate. To ensure Members are aware of key changes to content, they are as follows.

***C.4: Scottish Ministers have powers to suspend or remove by order any or all board members of an incorporated college (except the principal) or a regional board for serious or repeated breaches of a term and condition of grant.***

Power to suspend is new and follows the recommendation in 2016 of the Scottish Government's Good Governance Task Group to bring appointing bodies in the college sector into line with other public sector authorities.

***C.6: ...Board members have a personal responsibility to ensure any changes to their register of interests are notified timeously to the governance professional and to declare any specific conflicts of interest in the business of the meeting prior to the commencement of each meeting of the board and its committees and withdraw from meetings as appropriate. See section D.6 for the 'objective test' for judging if there is a conflict of interest.***

The wording of this provision has been extended to reflect the revised Code of Conduct. (Note also, throughout the Code 'board secretary' has been changed to 'governance professional' to reflect the range of roles having responsibility for board secretariat functions.)

***C.7 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, quality, management of staff, risk assessment, and management are established, monitored, continuously improved, and appropriately impact assessed. This includes:***

***...(d) setting quorum for board and committee meetings in line with good practice and preferably at 50% or higher are non-executive members. A board should satisfy itself that adequate arrangements are in place to ensure that decisions it has delegated to a committee are taken with a non-executive majority. When determining a quorum, the chair of the board may be considered to be a non-executive member.***

The wording under (d) is new and has been added to reflect in all decision-making the constitutional basis of boards in legislation, i.e., that they have a majority of non-executive members.

***C.13 The Audit Committee must support the board and the principal by reviewing the comprehensiveness, reliability, and integrity of assurances, including the body's governance, risk management, and internal control framework. The Scottish Government Audit and Assurance Committee Handbook promotes the development of an assurance framework to aid the Committee in fulfilling this role. See Audit and Assurance Committee Handbook.***

This provision has been extended to make specific reference to the Handbook and development of an assurance framework.

***C.16 ...in line with the Audit and Assurance Committee Handbook, ‘executive members of the organisation should not be appointed to the Audit and Assurance Committee’, and the majority of members must be non-executive.***

This wording is new, again strengthening the reference to and alignment with the Handbook.

***D.3 ...The senior independent member is also responsible for holding annual meetings with board members, without the chair, to appraise the chair’s performance and provide the chair with relevant feedback.***

The provision relating to the SIM has been moved from its earlier position under Corporate Social Responsibility to a section under Effectiveness where other roles are described. The wording above has been added to strengthen guidance around chairs’ performance appraisals.

***D.24 The board must keep its effectiveness under annual review and have in place a robust self-evaluation process. There should also be an externally facilitated evaluation every three to five years. The board should determine the timing for this externally facilitated review as part of the annual effectiveness review.***

The frequency of external reviews has been extended from three years to “three to five years” and the last sentence above is new.

#### **4. Code of Conduct for Members of Devolved Public Bodies**

- 4.1** Compliance with the Code of Conduct is a condition of appointment for all Board Members. The Code underwent significant revision in 2021. GCRB received a presentation from the Chief Executive of the Standards Commission prior to the January 2022 board meeting at which changes in the revised Code of Conduct were outlined and discussed.
- 4.2** The revised Code was formally adopted by the Board with effect from 1 August 2022. To ensure all Members, including those who did not attend the session last January, are aware of the revised Code, the following is a summary of the main changes of relevance to GCRB Members. Members should ensure they are familiar with the full Code in full, which is available on Board Effect and on the CDN governance hub. A range of guidance, including advice notes on specific areas, much of which has also been revised, is available on the Standards Commission website.
- 4.3** Members should note that GCRB’s Board Regulations are due for review (and had been awaiting completion of Scottish Government and Standards Commission revisions to regulations affecting their content). The review of the Regulations, in the first half of 2023, will allow for consideration of the implications of both revised Codes for practice at Board and committee meetings in key areas such as determining a quorum, confidentiality, and declaring interests.
- 4.4** A first person point of view is used throughout the revised Code to reflect personal responsibility for compliance.

#### **4.5 General Conduct**

##### **Respect and Courtesy**

This section has been extensively revised and so is included in full below. New provisions have been added in respect of bullying and harassment, unlawful discrimination, the undermining of employees, taking unfair advantage of the position of board member, involvement in

operational matters, and respect for the principle of collective responsibility.

- 3.1** *I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.*
- 3.2** *I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.*
- 3.3** *I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.*
- 3.4** *I accept that disrespect, bullying and harassment can be:*
  - a)** *a one-off incident,*
  - b)** *part of a cumulative course of conduct; or*
  - c)** *a pattern of behaviour.*
- 3.5** *I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.*
- 3.6** *I accept that it is my responsibility to understand what constitutes bullying and harassment and I will utilise resources, including the Standards Commission's guidance and advice notes, my public body's policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.*
- 3.7** *Except where it is written into my role as Board member, and / or at the invitation of the Chief Executive, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and Executive Team.*
- 3.8** *I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.*
- 3.9** *I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.*
- 3.10** *I will respect and comply with rulings from the Chair during meetings of:*
  - a)** *my public body, its committees; and*
  - b)** *any outside organisations that I have been appointed or nominated to by my public body or on which I represent my public body.*

**3.11 I will respect the principle of collective decision-making and corporate responsibility. This means that once the Board has made a decision, I will support that decision, even if I did not agree with it or vote for it.**

#### **4.6 Gifts and Hospitality**

Provisions have been clarified and strengthened throughout this section although fundamental requirements have not changed significantly so they are not reproduced here. A new requirement has been added to notify the Standards Officer promptly of any significant offer received.

#### **4.7 Confidentiality**

Provisions in this section have been clarified and strengthened. In particular, the following references to express consent are new, as is the reference to whistleblowing disclosures.

**3.22 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I should assume it is not given.**

**3.23 I accept that confidential information can include discussions, documents, and information which is not yet public or never intended to be public, and information deemed confidential by statute.**

**3.24 I will only use confidential information to undertake my duties as a board member. I will not use it in any way for personal advantage or to discredit my public body (even if my personal view is that the information should be publicly available).**

**3.25 I note that these confidentiality requirements do not apply to protected whistleblowing disclosures made to the prescribed persons and bodies as identified in statute.**

#### **4.8 Registration of Interests**

There have been numerous clarifications and simplifications to the wording of this section. The references below to a one month time limit, and close family members are new.

**4.1 I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a board member must register their registrable interests within one month of becoming a board member, and register any changes to those interests within one month of those changes having occurred.**

**4.23 I will register the interests of any close family member who has transactions with my public body or is likely to have transactions or do business with it.**

#### **4.9 Declarations of Interest**

This section has been entirely rewritten and simplified to refer to a new procedure based on identifying 'connections'. It is reproduced in full below.

##### **Stage 1: Connection**

- 5.1** *For each particular matter I am involved in as a board member, I will first consider whether I have a connection to that matter.*
- 5.2** *I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.*
- 5.3** *A connection includes anything that I have registered as an interest.*
- 5.4** *A connection does not include being a member of a body to which I have been appointed or nominated by my public body as a representative of my public body, unless:*
- a)** *The matter being considered by my public body is quasi-judicial or regulatory; or*
  - b)** *I have a personal conflict by reason of my actions, my connections or my legal obligations.*

**Stage 2: Interest**

- 5.5** *I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.*

**Stage 3: Participation**

- 5.6** *I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.*
- 5.7** *I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.*
- 5.8** *I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the dispensation is sought and that I cannot take part in any discussion or decision-making on the matter in question unless, and until, the application is granted.*
- 5.9** *I note that public confidence in a public body is damaged by the perception that decisions taken by that body are substantially influenced by factors other than the public interest. I will not accept a role or appointment if doing so means I will have to declare interests frequently at meetings in respect of my role as a board member. Similarly, if any appointment or*

***nomination to another body would give rise to objective concern because of my existing personal involvement or affiliations, I will not accept the appointment or nomination.***

## **5. Revised Appointments Guidance**

**5.1** Publication of a consultation on the revised ***College Sector Board Appointments: Ministerial Guidance*** has been delayed until Statutory Instruments have been drafted for the introduction of trade union board members. It is anticipated that consultation will take place over a 6-week period in Spring 2023.

## **6. Risk and Compliance Analysis**

**6.1** The report is primarily relevant to the mitigation of Risk 0013: There is a breach of legislation/ guidance/code of practice and this results in a failure of governance.

**6.2** There are no direct legal implications of this report.

## **7. Financial and Resource Analysis**

**7.1.** There are no new financial implications arising from this report.

## **8. Equalities Implications**

**8.1** There are no equalities implications associated with this report.

## **9. Learner Implications**

**9.1.** This report does not have direct implications for the learner, however, robust governance arrangements are the essential to the effective determination and delivery of GCRB objectives.