

# Annex B: Payment and Expenses for Governors

## Introduction

1. This document has been produced by the Department for Business, Innovation and Skills (BIS) with advice from the Charity Commission to guide further education colleges as to what expenses their governors are eligible for and in what circumstances it might be possible for governors to receive payment.
2. The voluntary principle of governorship has been established in further education institutions since their inception. Every further education institution in England currently has a governing body consisting of a majority of unpaid independent governors. Recent legislative developments including freeing colleges so they have greater control over their own governing body arrangements, increases the importance of high quality and robust governance. The recent review into governance undertaken by BIS has also prompted the need to improve the diversity of governing bodies and to consider how to incentivise improved governance.
3. Governors are entitled to reclaim any reasonable out of pocket expenses they incur in carrying out their duties. Expenses are not a financial benefit, so no permission is needed. It is good practice to encourage governors to reclaim expenses as it can enable a wider range of people to serve as governors.
4. Colleges who wish to pay governors will need to apply to the Charity Commission for express permission.
5. This guide provides further information on the necessary processes that apply to different types of payment such as payment for non-governor services, compensation payments for loss of earnings or payment for serving as a governor. We recommend you visit the [Charity Commission website](#) the trustee [expenses and payments \(CC11\) webpage](#) in particular offers a comprehensive breakdown of the topic.

## The Charitable Status of Further Education Institutions

6. Section 22A of the *Further and Higher Education Act 1992* bestows charitable status on Further Education Corporations and Section 33M bestows charitable status on Sixth Form College Corporations. Further Education Corporations and Sixth Form College Corporations are "exempt charities", meaning they are exempt from registration with, and oversight by, the Charity Commission. For exempt charities a "Principal Regulator" is appointed to promote compliance with the relevant charity law. When applying for permissions under charity law such as permission to pay their governors, colleges are still required to apply to the Charity Commission.
7. Other not-for-profit further education institutions (certain Specialist Designated Institutions) are also charities (because the advancement of education for the public

benefit is a charitable purpose) but they are not exempt, meaning they must register with the Charity Commission.

8. Like the further education sector, the charity sector has a long history of voluntary governorship (board members in charities are usually referred to as trustees). Except where payments are permitted by the law or their governing document, charities wishing to pay their trustees must apply to the Charity Commission for permission, explaining why payment is in the charity's best interests, how it will help the charity to fulfil its objectives more effectively and how the conflict of interest will be managed. The vast majority of charities in the UK don't pay their trustees for the role although few charities have quite the scale of delivery and financial responsibility of colleges.
9. The Secretary of State for Business, Innovation and Skills will shortly be appointed as Principal Regulator for all Further Education Corporations. In practice this will not change the application process with regard to the payment of governors. The change in regulator status will require the Charity Commission to consult with the Secretary of State regarding requests for permission for institutions to make payment to governors or for permission to compensate governors for loss of earnings. As before, all applications will need to demonstrate that there is a clear or significant advantage to be gained from payment that will outweigh any disadvantages.

## Duties of the Governing Body

10. Every governing body is constituted by an instrument and articles of government. Recent changes made by the *Education Act 2011* have given institutions greater freedom and flexibility to change their instrument and articles of government, and consequently the form and make-up of their governing body.
11. Subsequently, governing bodies are demonstrating greater variety in size, structure and operating models. Some features remain consistent across the sector: the majority of governing body members remain non-executive including the Chair of Governors; students and staff must be represented on the governing body; the executive Principal/CEO of each institution sits on the governing body; and a Clerk is employed to support the governing body and advise on constitutional and procedural matters, duties and powers.
12. The governing body is not only responsible for the strategic direction of the institution, they hold the Principal and executive leadership to account for their performance. In addition they are expected to have a role in the local community, representing the institution and helping to build connections with local stakeholders while ensuring that the community's voice is heard and influences the strategic direction of the institution.
13. As charity trustees, governors also have duties under charity law. In summary, these are:
  - Making sure the charity complies with the law and its governing document;

- Always seeking to further the charity's objects for the public benefit;
- Always doing what they believe to be in the charity's best interests (i.e. in the interests of most effectively carrying out its objects now and in the future);
- Acting responsibly;
- Exercising reasonable care and skill;
- Managing any conflicts of interest; and
- Making decisions collectively (i.e. as a group), except where decision making has been properly delegated to an individual or sub-committee.

14. These duties mirror governors' duties under education law, and are explained in more detail in [The Essential Trustee \(CC3\)](#).

## Conflicts of Interest

15. A conflict of interest is any situation in which a governor's personal interests or loyalties could influence or affect their decision making.

16. There are particular conflict of interest issues around payments to trustees. Under charity law, trustees:

- Must not put themselves in a position where their personal interests conflict, or appear to conflict, with the interests of the charity;
- Cannot authorise benefits to themselves;
- Cannot simply resign as a trustee in order to receive a benefit.

17. When considering making payment to governors all governing bodies should be aware that paying a governor creates a conflict of interest which must be managed by:

- Ensuring that they are able to identify situations in which conflicts of interest occur;
- Ensuring that any element of trustee benefit arising from a trustee decision is properly authorised;
- Following any specific requirements in the institution's governing document that deals with conflicts of interest and how they should be managed;
- Where there are no specific governing document requirements, following a management process for conflicts of interest which requires conflicted trustees to:

- declare their interest at an early stage
  - withdraw from the quorum, discussion and voting on any matter in which they have a conflict;
  - Formally recording any conflicts of interest and how they were handled; and
  - Disclosing all expenses and payments to governors in the institution's Annual Report, and in cases when governors have been remunerated to serve as a governor justifying the reason why this is the case.
18. For more information on what conflicts of interest are and how best to manage them visit the Charity Commission website's [conflicts of interest page](#).

## **Payment and Expenses for Governors: Existing Permissions**

19. The following sections set out the current processes and the selected instances in which institutions can pay expenses, present a gift or make payments to governors. Firstly we cover the situations where Charity Commission permission is not required, if colleges adhere to the established rules.

### **Expenses (*Charity Commission permission not required*)**

20. All governors are allowed to receive expenses for costs incurred when fulfilling their role. Expenses are for out-of-pocket payments governors have to make in order to carry out their duties, for example:
- Travel to and from governing body meetings or events;
  - Overnight accommodation;
  - Telephone calls and broadband time for college work; and
  - Childcare or care of other dependents incurred while attending meetings.
21. The Charity Commission recommends that all institutions have a written policy setting out what is classed as an expense and a process to claim and approve expenses. The institution's Annual Report should set out the total amount reimbursed in each Financial Year.
22. It is good practice to encourage trustees to claim expenses as this can support governor diversity. Charity Commission permission is not required to pay expenses because expenses are not a benefit.

## **Small Gifts and Honorariums (*Charity Commission permission not enforced*)**

23. Institutions may award gifts or small financial sums to governors in exceptional circumstances, for example, as a retirement present. The Charity Commission does not insist on small gifts being authorised provided that:

- The value of the gift is minimal (total payments to all governors in any financial year must be less than £1,000 – this excludes expenses and other approved payments);
- Conflicts of interest are managed; and
- Non-conflicted governors are satisfied, and can show, that the payment is in the best interests of the charity.

## **Paying Governors to provide other services to the Institution (*Charity Commission permission usually not required*)**

24. The *Charities Act 2011* allows governors to be paid for providing services to their charity (without permission from the Charity Commission) subject to certain conditions. The kind of services covered could include:

- Provide specialist services, such as estate agency, IT consultancy;
- Delivery of a lecture or a piece of research work; and
- Occasional use of a governors' premises or facilities.

25. Before paying a governor, the governors must:

- Manage the conflict of interest by making sure that the affected governor takes no part in any meeting or discussion affecting their own payment or potential payment;
- Decide they are satisfied that paying that governor for those services would be in the interests of the charity, and the level of payment is reasonable;
- Produce a written agreement, including specifying the exact (or maximum) amount to be paid;
- Make sure that less than half of the governing body are (or are connected with people) receiving payments or benefits of any kind from the charity; and
- Make sure the college's governing document (instrument of government/constitution/articles) does not expressly forbid the payment.

26. If the governors cannot fulfil these conditions, but they think the payment is in the charity's interests, they will need to contact the Charity Commission. For more guidance visit the Charity Commission website's [conflicts of interest page](#).

## **Going Further and Paying Governors to serve as Governors – The Debate**

27. There is an ongoing debate over whether governors should be remunerated, as is the case with non-executive directors of companies in the private sector and some parts of the public sector e.g. NHS Foundation Trusts (although these roles are different to that of a college governor in some respects). The view of BIS is that this decision is very much for individual colleges to consider.
28. The Charity Commission considers requests for permission to make payment on a case-by-case basis, based on the specific evidence presented. Relevant circumstances might include where an institution is experiencing particular recruitment challenges or where a particular role (such as the Chair of a large institution), demands a very significant time commitment. The case studies section (page 30) provides further detail.

## **Paying a Governor to be a Governor (*Charity Commission permission required*)**

29. As discussed previously, further education governors typically volunteer their services and receive no payment for their work. There are certain exceptions where permission may be granted by the Charity Commission to make a payment. When applying for permission an institution should be able to demonstrate that there is a clear and significant advantage to be gained that will outweigh any disadvantages. Factors to consider include:
- What additional skills or diversity of membership will be attracted to the governing body through payment?
  - What steps have been taken to recruit governors with the required skills or diversity without offering payment?
  - Are the functions to be carried out genuinely those of a governor, as distinct from an employee or a consultant?
  - Is there a clear advantage to paying a trustee as opposed to spreading duties among trustees or increasing the number of unpaid trustees?
  - What amount of payment is being considered? Is this amount reasonable and affordable?
  - What risks have been identified and how will the institution manage them?

- How will the conflict of interest be managed?
- How will performance be managed, and if necessary, payment be brought to an end?

## **Payment for Loss of Earnings (*Charity Commission permission required*)**

30. When considering diversity or skills shortages at governing body level or when dealing with a situation requiring an extraordinary time commitment institutions can apply for permission to make payment to a governor to replace loss of earnings. This is a similar process to payment to a governor (covered above). The bullet points in the governor payment section still need to be considered, but in addition institutions should also ask themselves:
- Can available applicants not afford to serve as a trustee because their employer does not pay for time spent on charity work during working hours?
  - Or in the case of self-employed candidates would they lose out financially by carrying out governor duties during normal business hours?
31. The amount paid as reimbursement for loss of earnings must be no more than either what is considered a reasonable payment for work undertaken, or, the amount lost in earnings by the governor, whichever is the lowest amount. In practice, therefore, it may be easier to justify compensation for loss of earnings than payment for serving as a trustee, as being in the interests of the charity.
32. Payment can either be made directly to the governor or to the employer directly to compensate for loss of earnings. In practice, whether the payment is made to the employer or directly to the governor is a matter for the governing body to decide and does not affect the issues that the Charity Commission will need to consider.

## **Diversity of Governing Bodies**

33. Recent studies undertaken by the Women's Leadership Network and the Association of Colleges in the Eastern Region (see analysis in Annex C) suggest that women, ethnic minorities and people with disabilities are under-represented on governing bodies when viewed in relation to the communities they serve. A lack of particular skills (e.g. finance) and a relatively small proportion of younger executive / middle-management professionals have also been identified as an issue. It is recommended that governing bodies regularly carry out a skills audit (see example [Trustee Works checklist](#)) to identify any additional skills or experience they require.
34. In certain cases, for example where potential financial hardship has been shown to be a factor (see case study 3, page 30) the Charity Commission has authorised payment to improve the diversity of a board but there are other approaches to improving diversity that governing bodies should consider first:

- Actively recruiting outside their circle of acquaintances (e.g. advertising, using recruitment agencies, approaching other organisations). See the [Trustees Week blog](#) for ideas on what to do and who to ask;
- Practical considerations like:
  - Accessibility of meetings (timing, location, transport);
  - Whether trustees are encouraged to reclaim expenses (see above);
  - How new governors are inducted and supported;
  - The culture of the governing body (how things are always done).
- Highlighting the potential benefits of serving as a governor in terms of skills development and experience.

## How to Apply to Pay Governors

35. Before proceeding, please ensure that you have considered the Commission's guidance on [trustee expenses and payments \(CC11\)](#).
36. Once you have decided that you would like to apply to pay a governor you will need to complete [the relevant form on the Charity Commission website](#).
37. Depending on the kind of payment you are applying for, the questions you will have to answer on the form may be slightly different. The indicative questions when applying to pay governors section (page 33) contains a sample list of questions.
38. In order to make an application the institution will need to include:
  - Their latest set of accounts (usually published within the Annual Report);
  - Their instrument and articles of government; and
  - Information on the current composition of their governing body (this may already be specified in the Annual Report).
39. If for any reason you are unable to make your application using the online form, you will need to [contact the Commission online](#), explaining the circumstances.

## Next Steps

40. The Charity Commission aims to reply to correspondence within 15 working days. The Commission recognise that permission may need to be given urgently and, subject to all relevant information being provided, Commission staff will aim to ensure they respond within this deadline.



41. Applications will need to address the various questions and issues highlighted in this guidance, and demonstrate with evidence that the proposed payment is in the best interests of the charity in the circumstances. If insufficient information is presented the Commission may request clarification or additional information in order to guide their decision.
42. The Commission will correspond directly with charities –charities do not have to communicate via a solicitor or other professional advisor.

## **Permission to Pay a Governor**

43. If the Charity Commission agrees to authorise payment, they will issue authority in the most appropriate form in the circumstances. For a Further Education Corporation, this is likely to be an order that will sit alongside the instrument of government. For a college set up as a company, this is likely to be authority to insert appropriate powers into the articles of association.

## Case Studies of the Remuneration Process

44. To give a better sense of how the process works below are five case studies taken from the Charity Commission guidance:

Subject	Case Study
<p><b>1. Payment of Chair</b></p>	<p>A large educational trust running a group of schools had expanded considerably, and was looking to extend its operations still further into Academy schools. The trust was attempting to recruit a new Chair with a commitment of around 60 days per year; it sought authority for reasonable payment in recognition of the increased time commitment and complexity the role of Chair now demanded.</p> <p>We were satisfied the trust had conducted an extensive advertising campaign, including use of a leading recruitment agency. The results showed considerable reluctance to undertake the commitment required on an unpaid basis. We agreed the proposed remuneration of the Chair, subject to our further approval to any subsequent increases in the agreed rate of payment.</p>
<p><b>2. Payment of Chair and Trustees</b></p>	<p>A large grant-making charity applied for remuneration for future Chairs and certain trustee posts on the basis of the high level of time and commitment involved. The charity felt that, without offering payment for the time commitment and for the responsibilities that come with oversight of a multi-million pound organisation, it could not attract the right calibre of candidate, and would be likely to attract only those who were retired or 'well-off'. It provided evidence that, even with a well targeted recruitment campaign, it was struggling to attract the right calibre of candidate.</p> <p>We approved payment for Chairs, but rejected an application for payment of five other trustee posts, for which the charity wished to attract experts in its field. There was little similarity in time commitment compared with the Chair, and no evidence that these posts were difficult to recruit for; indeed, previous recruiting campaigns suggested the opposite was the case, as a number of well-qualified candidates had come forward.</p>
<p><b>3. Increasing Diversity of Trustees</b></p>	<p>A leading disability charity wanted to ensure blind and visually impaired people are always able to have a voice on its trustee board. In this case, the charity wished to</p>

Subject	Case Study
	<p>enable three trustees (including the chair) with valuable specialist skills to contribute regularly to the board, without any financial hardship to themselves as a result. One was self-employed, the other two had to forego fees from other work on a number of occasions when attending trustee meetings and acting on charity business.</p> <p>We recognised the contribution made by these trustees, whose expertise ranged from IT support, disability employment services, Access to Work issues, and the needs of visually impaired people. We authorised payment by the charity to reflect their duties on the occasions when they would otherwise lose out. This was based on the charity's assessment of rates comparable to the chair and non-executive directors of NHS Trusts. As a result, the charity was able to retain the expertise of these three trustees, and further empower its users on the trustee board. The charity makes the point that it does not wish only to appoint trustees who can afford to be trustees.</p>
<p><b>4. Payment of Loss of Earnings</b></p>	<p>A charity providing social care and support across a wide spectrum of social need, including disability, wished to appoint a disabled person who was in employment as a consultant to serve as a trustee. The board felt it important to secure the appointment of the person concerned in order to give a wider perspective on its work. To avoid financial hardship as a result, the Charity Commission authorised reasonable payment to the new trustee as a direct replacement of loss of earnings while active on trustee business. In this case the payment was below what was considered a reasonable rate for work undertaken, which helped to justify it as being in the interests of the charity.</p> <p>In cases of payment for loss of earnings payment can also be made directly to an employer (see paragraph 32).</p>
<p><b>5. Conflicts of Interest</b></p>	<p>The case of one charity highlighted potential difficulty with managing conflicts of interest. We refused a power of remuneration that would have allowed the Chief Executive Officer to continue as a trustee. The person concerned was also the founder of the charity, and our main concern was that the trustee board was not taking adequate steps to strengthen its governance, so it could take decisions in the interests of the charity independently of the CEO, and also review his performance.</p>

Subject	Case Study
	<p>Where a charity's governance arrangements are strong – for example, they include clear procedures for managing conflicts of interest in an open and transparent manner – the impact of conflict of interests and undue influence on trustee decision making is greatly reduced.</p>

## Indicative Questions when applying to Pay Governors

45. Indicative questions for institutions are:

- Amount of payment (per hour/month or year if appropriate). In the case of payments over a fixed term state the total amount to be paid;
- State when the arrangement will start and (if appropriate) finish;
- Describe how the payment is affordable, and will not affect the charity's ability to carry out its objects;
- What steps have been taken to recruit unpaid trustees with the necessary skills and life experience? (If no steps have been taken please explain why);
- Explain how the functions to be carried out are genuinely those of a trustee;
- Why do you consider there are clear and significant advantages to the charity in paying a trustee rather than spreading duties among other trustees?
- What 'benchmarking' have you conducted (testing what is the 'going rate' for a similar job in a broadly similar organisation)? If you have not conducted any please explain why;
- Explain fully the duties for which the payment is made;
- What risks associated with the proposed payments have been identified and how will these be managed;
- Explain how the unpaid trustees will be able to review performance, judge value for money and if necessary, bring the payments to an end;
- How will conflicts of interest be managed, so that the conflicted trustee can still be effective in the governance of the charity?
- How has the charity consulted with those who have a significant stake in its affairs and what were the results of this consultation?

46. You will also need to sign a declaration stating that the trustees are satisfied that:

- The proposed payment is in the interests of the charity and will provide a clear and significant advantage to the charity over all other reasonable options;
- It is in the interests of the charity to pay a named trustee rather than recruit or retain unpaid trustees;
- The person named has played no part in the proposal or decision to pay them, except to provide information if requested;

- The potential conflict of interest will be managed and the person named will not be privy to any discussion or meeting at which their remuneration is discussed;
- The decision to make the payments was taken at a properly convened quorate meeting, excluding any trustees who may have a conflict of interest;
- The trustees, excluding any conflicted trustees, will be able to form a quorum to deal with performance reviews, etc; and
- The proposed appointment taken together with other payments already being made to trustees will not result in half or more than half of the trustees receiving benefits of any kind from the charity.

## Any Questions?

47. Please [email the Charity Commission](#) if you have any questions about any of the topics covered in this guidance.