

Clerking in the new era:
implications for college governance
Summary report



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Catherine Brumwell, independent researcher and author of report

All sections of the report including the annexes can be downloaded from www.lsis.org.uk or www.fegovernance.org



Contents

1. Foreword	04
2. Introduction	05
3. Background	07
4. Summary of findings and emerging challenges	08
5. Priorities and recommendations for development	11
6. List of acronyms	14

1. Foreword

The organisational concept of a ‘clerk’ has a long and distinguished history in Britain, implying a role of seniority, standing and influence. Although the word has lost much of its currency in everyday parlance – with the term ‘clerical’ mainly now used to denote incidental supporting work that makes only limited intellectual demands – the role of clerk in further education colleges is still deservedly respected in the sector as requiring sound professional knowledge, insight and experience, together with the more subjective and sensitive skills required to understand how the people within an organisation work together and relate to each other. Those competencies are more than ever required now in this new era of greater college freedoms, demands and challenges.

Accordingly I welcome this report, which has been funded by BIS and commissioned by LSIS in response to the rapidly changing further education (FE) college environment introduced by the ‘New Challenges, New Chances’ report and the Education Act 2011. This is – surprisingly, perhaps – the first national survey of clerks for ten years; it will I hope act as a baseline for further benchmarking to explore how the clerk’s role is changing in response to national policy and the implementation of the new college freedoms and flexibilities. The survey provides a previously unavailable depth of information about the clerks’ backgrounds and roles. This has highlighted the qualifications and background of almost all clerks surveyed; 93% have been educated to degree level, with 40% having higher degrees, and with many coming into clerking from local government, civil service or higher education backgrounds.

FE college clerks have an essential role in the effective operation of college governance and in guarding its integrity – it is more important than ever, under the close scrutiny of today’s social and other media, that boards uphold the seven Nolan principles of public life. It has been long acknowledged that the advisory role of a clerk both enables and encourages chairs of governing bodies and principals to operate effectively; this report demonstrates that where clerking works well this is indeed the case. A strong working relationship between the triumvirate of chair, principal and clerk is essential to good college governance and effective strategic leadership. If boards of governors are to be able to use the new freedoms and flexibilities effectively and appropriately, they need to take advantage of the advisory role that an experienced clerk can provide. This makes the training and support of clerks now even more important. Currently some 40% have a clerking qualification, but the survey has underlined the need not just for qualifications but also both for continuing professional development and for the availability of legal advice to ensure that boards act in the best overall interests of their college. Professor John Stewart’s phrase about the equivalent person in local government being the “geographer of policy space” is equally applicable here!

This survey has been compiled from responses from 184 clerks in 220 colleges. It provides our sector with a detailed analysis of reliable evidence about clerking that will support chairs, boards and principals alike in effective governance. As colleges respond both to rapid changes and to new opportunities, the report shows the worth as well as the potential of the clerking profession; the priorities and recommendations that it makes will support the recruitment and development of clerks who recognise and aspire to good governance – in short, who are not only up to the job, but up for it as well.

Roger Morris

Chair, Governors’ Council, Association of Colleges

13 May 2013

2. Introduction

The role of the clerk is fundamental to the effectiveness of governance in colleges, and yet this research suggests the role can sometimes be misunderstood both outside the sector and within the sector itself. This study was commissioned as there was no existing research into the varied role of clerks and the changes to their role as a result of the new freedoms given to colleges. Informal evidence suggested that the roles of clerks varied across the sector, and were changing rapidly in some colleges as a result of ‘New Challenges, New Chances’ (NCNC) and the Education Act of 2011. This comprehensive survey provides, for the first time, sound evidence of the role of the clerk in further education (FE) colleges. The sample for this survey includes sixth form college clerks as these are often members of the Association of Colleges (AoC) and National Clerks’ Network (NCN). Although NCNC only applies to general FE (GFE) and land based colleges, the freedoms granted by the Education Act of 2011 do apply to GFE, land based and sixth form colleges. The term FE college used throughout the report and annexes includes all colleges whether GFE, land based, specialist or sixth form colleges.

Role of the clerk

It is useful at the outset to establish the statutory requirement for the clerk. The Further and Higher Education Act (FHEA) 1992 Instruments and Articles of Government (I&As) outlined numerous statutory responsibilities of the clerk with regard to the role, but attention is drawn to the following:

“The Clerk shall be responsible for the following functions: –

- (a) advising the Corporation with regard to the operation of its powers;
- (b) advising the Corporation with regard to procedural matters;
- (c) advising the Corporation with regard to the conduct of its business; and
- (d) advising the Corporation with regard to matters of governance practice.”

The original I&As were subsequently replaced in 2008 and modified in March 2012, with the Education Act 2011 amendments to the I&As retaining the statutory duty on corporations to have:

“an instrument must make provision for there to be a chief executive of the institution and clerk to the body”

and

“must make provision about the respective responsibilities of the body, the chief executive and the clerk”.

Research context

The recent LSIS publication ‘Challenges for FE college governance’ outlines a series of challenges for governance based on LSIS experience of working with colleges. The role of the clerk features among the challenges and areas for improvement:

“**Clerks as undervalued change agents** – LSIS has encountered many examples where clerks, with support of the chair and principal, have been a powerful force in stimulating and facilitating good governance. Clerks, especially when networked to regional and local peers, are a powerful

resource available to boards. In many colleges, however, they are still underpowered, underused or lack the skills and knowledge to help lead change in governance. This may reflect the view of some colleges that the clerk is not ‘part of the college’ and therefore they do not see the case for investing in developing the clerk.”

The document also highlights priorities for improving governor effectiveness so they can ‘grasp the new freedoms, flexibilities and accountabilities’. The clerk features among these priorities for development:

“The professionalism and impact of clerks – the clerk is usually the most readily available instrument for leveraging improvement within the governance team. Continuing support is needed to build up their professionalism and the ability of clerks’ networks to share good practice. Clerks should be seen locally and nationally as a key part of each college, worthy of investment, but also in need of clear performance management and appraisal. It is important to consider the time allocated to the role, as this is likely to be an indicator of how seriously the college and the board perceive the role, and even how seriously the college values the input of governors.”

This study, and its origins, is set against the backdrop of a changed landscape, with ever increasing challenges to governance and the role of clerking.

Research report and annexes

The summary is part of three levels of reporting, each with different degrees of detail and serving various audiences and needs. This report summarises the challenges and priorities arising out of the research. The full report outlines the changing policy landscape, challenges and priorities for effective clerking, and evidence from the survey of effective clerking. The annexes provide detailed survey results.

Purpose and use of this summary report

This summary highlights the challenges and priorities to effective clerking in FE governance which have emerged from the research evidence, particularly in the light of the new freedoms under ‘New Challenges, New Chances’. The research has revealed certain emerging conditions necessary for the clerk to be able to clerk effectively. These centre around six themes as outlined in chapter 4.

The document is intended for use by FE college boards to assess the conditions within their own college, and assess whether these enable their clerk to flourish and effectively provide the chair and the board with essential governance advice.

It is also intended for use by the ‘triumvirate’, ie chair, clerk and principal, in a spirit of mutual respect and partnership, to assess this crucial role effectively. Circulation to college human resources (HR) departments and senior management teams is recommended to increase their understanding of this senior role.

Finally, the summary should be distributed to national organisations shaping and influencing FE governance policy, as well as organisations supporting FE, including the Department for Business, Innovation & Skills (BIS), the Department for Education (DfE), Association of Colleges (AoC), FE Guild, Ofsted, Sixth Form Colleges Association (SFCA) and Landex.

3. Background

The importance of the clerk's role has never been more critical, following on from the commitment by the Coalition Government to free the sector so that it can respond directly to learner and employer need and be directly accountable for its delivery. These new freedoms were set out in the government's reform plan 'New Challenges, New Chances' (NCNC). Clerking is at a 'tipping point' in terms of the expectations of the role, and yet, paradoxically, there is evidence of pressures working against the clerk in some colleges. The necessity for boards to receive sound governance advice from their clerk is vital to board effectiveness, confidence in assessing and scrutinising risk, and the ability to make informed decisions.

The changed policy landscape provides a complex environment for college boards. The responsibilities of the clerk in colleges, including general further education colleges (GFE), sixth form colleges, land based and specialist colleges are significantly increasing in response to changes from the Department for Business, Innovation & Skills (BIS), the Department for Education (DfE), the Skills Funding Agency, the Education Funding Agency (EFA) and Ofsted. The research shows that the clerk's role is expanding. Boards increasingly require the clerk to have the skills and knowledge to ensure governors are well informed, well trained and that the board is working within its legal powers. With the new freedoms came increased responsibility on boards. The role of the clerk is ever more important in this new framework of devolved responsibility. Boards require more guidance, direction and sound judgement from the clerk. This sound governance advice, including the legal implications of embracing freedoms whilst remaining publicly accountable, ensures the board is supported in scrutinising and assessing risk.

Challenges to effective clerking in FE governance have emerged from the research evidence, as have priorities. The research has revealed emerging conditions necessary for the clerk to be able to clerk effectively, including sufficient training, support and continuing professional development (CPD). This need coincides with the cessation of LSIS in July 2013 and the setting up of the FE Guild in August 2013. The AoC Governors Council is currently reviewing the support and training needs of Governors and clerks going forward and will want to take account of the findings of this research. In addition, at the request of the Minister, BIS, with support from the Governors Council, is also looking at how to incentivise and support excellence in governance and the findings of this research will feed into that work.

The conditions necessary for effective clerking centre around six themes in a changed policy landscape:

- the 'triumvirate' working relationship between the chair, clerk and principal;
- the ability to maintain high standards of public life and to assess and scrutinise risk to the college;
- sufficient skills and salary to reflect the demands and senior role of clerking;
- a recognition of the status and value of the clerk in colleges and FE sector;
- the clerk's capacity to fulfil their governance advisory role, including legal advice;
- sufficient training, support and continuing professional development (CPD), including continuing professionalisation of the clerk through qualifications.

Under the new freedoms given to colleges, there is a necessary and welcome increased responsibility on the board, and increased demands on the role of clerk. This changed landscape requires more than ever that the clerk is sufficiently skilled, qualified, receives appropriate training and support to clerk effectively, and is valued and recognised as the source of crucial governance advice to FE college chairs and boards.

4. Summary of findings and emerging challenges

The research has revealed some of the evolving conditions necessary for the clerk to be able to clerk effectively. Where these conditions exist, there is widespread evidence of effective clerking, as demonstrated in the full report.

In the spirit of the LSIS perspective ‘Challenges for FE college governance and priorities for development’, this summary paper mirrors the same format. This ensures consistency for college boards to be able to use this document to assess their own effectiveness, this time in relation to the role of the clerk.

Challenge 1: The ‘triumvirate’ – chair, clerk and principal

The ‘triumvirate’ relationship between the chair, clerk and the principal is absolutely crucial for effective governance. The evidence from this survey of the strength of this relationship is shown to be paramount to the clerk’s ability to clerk effectively, and in turn ensure effective governance. The survey has revealed numerous examples of the triumvirate working well, as revealed in the full report. This relies on good communication and mutual respect for each other’s role within the triumvirate, well evidenced in the survey, and should include regular annual appraisal of the clerk by the chair, which occurred in the majority of cases.

The challenge

The experience of some clerks, either currently or in previous colleges, is not conducive to effective clerking. This is largely due to difficulties in this triumvirate relationship. This experience is not only the preserve of new clerks into the FE sector. Clerks with many years of experience described circumstances that rendered them almost powerless if the equilibrium of this triadic relationship is damaged. In terms of communication, perhaps surprisingly, a minority of clerks never meet the chair or the principal outside of board meetings, are only formally appraised biennially, are never formally appraised, or are appraised by the principal alone.

Challenge 2: Nolan Principles, high standards of public life and assessing risk

Nolan’s seven principles of public life, of **selflessness, integrity, objectivity, accountability, openness, honesty and leadership** are as alive and relevant today as they were in 1994 when first devised with the establishment of the Nolan Committee. Annex D highlights the necessity to adhere to these seven principles within the context of the new freedoms offered under ‘New Challenges, New Chances’.

The challenge

To ensure that these principles of public life lie at the heart of good governance and are central to the ethos of college boards in whatever form or structure boards choose to adopt. These principles can get lost among the multitude of choices open to college boards. It is the role of the clerk to remind and ensure that boards and the executive team continue to embrace these fundamental principles. Clerks have traditionally described their collective role as ‘a conscience of clerks’ and this role remains critical, particularly in the context of the new freedoms and devolved responsibilities placed on corporations. To ensure that the clerk is sufficiently skilled to be able to support the board in assessing and scrutinising risk. This includes ensuring clerks have ready access and are adequately trained in the legal aspects of the new freedoms, including charity law and company law, particularly if the college embraces a new model or new structures. This may also include identifying and managing possible conflicts of interest, for instance if the college sponsors an academy or other educational institution. Ready access to legal advice is essential and consequently colleges should ensure the clerk has ready and funded access to legal advice and services. The ability of the clerk to remain independent and offer impartial advice is

vital. There is the potential for this independence to be hampered if the clerk is line managed by the principal or executive team.

Challenge 3: Skills and salary

The survey has revealed a very highly qualified workforce. By far the majority (93%) of all clerks are degree level educated or higher. A further 40% hold a higher degree level qualification. Many degree or higher degree qualifications held by clerks are directly useful and relevant to the clerking role. Relevant degree or higher level qualifications including law degrees and qualified solicitors, Institute of Chartered Secretaries and Administrators (ICSA), accountancy, finance, business management, human resources management and corporate governance.

Clerks were asked to give a brief description of relevant background or previous experience prior to clerking. They brought a wide range of relevant and valuable previous experience from other sectors. These include senior management roles in local government, civil service, higher education, further education, human resources and finance. There is also evidence from the survey of men entering the clerking profession as part-time employees in their 50s and 60s with extensive previous experience often at a senior level. This extremely highly skilled workforce often brings highly relevant previous experience. Most clerks are very well equipped to carry out their clerking role, and perhaps confirms the assumption made in the recent LSIS publication 'Challenges for FE governance':

“Clerks as undervalued change agents – LSIS has encountered many examples where clerks, with support of the chair and principal, have been a powerful force in stimulating and facilitating good governance. Clerks, especially when networked to regional and local peers, are a powerful resource available to boards.”

The challenge

The survey reveals evidence of lower salaries in some parts of the sector, wide use of part-time contracts, including term-time only contracts, and low skills requirements when colleges are recruiting for new clerks. There is also evidence of new clerks feeling overwhelmed in their new role, isolated, and not as yet skilled or equipped to meet the challenges of 'New Challenges, New Chances'.

Challenge 4: Value and status

There is evidence in the survey of clerks feeling highly valued by their chair, board members, principal, executive team / Senior Management Team (SMT) and colleagues. Equally, there is wide evidence of clerks viewing their status as senior members of staff and, perhaps more importantly, being viewed as senior members of staff by the chair, principal and colleagues. The evidence of effective clerking in the full report demonstrates the added value the clerk gives to governance when this occurs, particularly where the triumvirate relationship is working well.

The challenge

A lack of recognition in some colleges of the importance and seniority of the role of clerk. This is particularly the case with senior managers in colleges. The evidence suggests less experienced clerks are also more likely to view their role as middle management, and to feel less valued. The seniority and value placed on the clerk may reflect the value placed by the college on governance itself.

There is also a misconception of the role of the clerk outside the FE sector, but also inside, where it is viewed as administrative rather than governance advisory. This misconception, many clerks feel, is not helped by the title 'clerk'.

Challenge 5: Capacity to fulfil advisory role, including legal advice

There is evidence in the survey of clerks adding real value to their college governance, often stimulating governance, as seen in the examples of effective clerking in the full report. There is evidence of a broad range of papers being authored by the clerk, and being received by the board, for example in relation to the English Colleges' Foundation Code of Governance. There is also evidence of clerks being recognised for their added value; in some cases increased hours and salary are suggested by the chair and supported by the principal. Increased hours have allowed clerks to concentrate on governance advice and management. Increased workload was in some cases a direct consequence of NCNC, particularly the impact of college sponsorship of academies or other educational institutions. This has occasionally included the appointment of deputy clerks to alleviate the time pressures.

The challenge

The survey has revealed evidence of clerks in some colleges having insufficient hours due to part-time contracts, and some term-time only contracts. In some of these cases clerks were unable to focus on governance advice due to the volume of administrative responsibilities. Nearly a third of all clerks do not have administrative support. There is also evidence of additional roles in college which are sometimes very close to operational duties. The demands of NCNC are placing added time and pressure on clerks, particularly those where colleges have sponsored academies or other educational institutions, or have adopted new models or structures as a result of the new freedoms.

Challenge 6: Training, CPD and clerk qualification

The research has revealed widespread evidence of highly trained and extremely effective clerks. Around four in ten clerks hold, or are working towards, clerks' qualifications. Training for clerks and their governors is valued as making a real contribution to improving the governance of colleges. Clerks value LSIS highly, including the governance training programmes, online governor training materials, courses and conferences. Clerks also value the National Clerks' Network and Regional Clerks' Networks, as well as other training and support services as outlined in the report.

The challenge

There is widespread concern amongst clerks at the cessation of LSIS, and the continuity of the clerks' qualification programme, governor training materials, annual conference and governance support. The immediate challenge to the sector is to work with the FE Guild to ensure continuity where there is clear evidence of demand.

A further challenge is the clerk's ability to access training and support. Barriers some clerks face include difficulties accessing college budgets, and often limited budgets for training, not just for themselves but for their board members. For almost a fifth of clerks the training budget for their own training and board members was under £1,000 per annum. Geographical barriers exist, as do the added time and cost, for clerks in more remote AoC regions which prevent them from travelling to national training events.

There was widespread evidence of additional training and CPD requirements for clerks as a result of the new freedoms. These included legal updates and training on company law, charity law and revisions, and advising on bespoke college-specific Instruments and Articles of Government. New clerks in particular were overwhelmed by the policy changes, and were not always sure where to seek advice. Many clerks sought the streamlining of policy updates and information.

The increased demands on the clerk, as a direct result of the new freedoms under 'New Challenges, New Chances', highlights the importance of investing and maintaining a highly skilled, highly qualified workforce of clerks. Investment in the training of clerks should be continued to embrace the challenges under NCNC, to enable clerks to continue to add value to their boards and maintain the aim of excellence in governance standards in FE colleges through effective clerking.

5. Priorities and recommendations for development

The priorities for development identified from the survey evidence are outlined using the six themes in the challenges. Some development activities span several challenges and are included within each theme.

Challenge	Priority	Recommendation
<p>1: The 'triumvirate' - chair, clerk and principal</p>	<p>To raise awareness of the crucial triumvirate relationship within college boards.</p>	<p>To encourage an effective self-assessment of the triumvirate relationship.</p> <p>Where there is evidence of a lack of communication, including appraisals, training for the triumvirate members is recommended.</p>
<p>2: Nolan Principles, high standards of public life and assessing risk</p>	<p>The clerk must be able to remain independent and offer impartial advice.</p>	<p>To raise awareness within college boards of the clerk's role in ensuring accountability is adhered to, particularly under 'New Challenges, New Chances'.</p> <p>To ensure that the clerk is sufficiently skilled to support the board in assessing and scrutinising risk.</p> <p>To ensure the clerk has ready access and is adequately trained in the legal aspects of the new freedoms, including charity law and company law, particularly if the college embraces a new model or new structures.</p> <p>To ensure the clerk is adequately trained to identify and scrutinise possible conflict of interests, for instance if the college sponsors an academy or other educational institution.</p> <p>Colleges should ensure the clerk has ready and funded access to legal advice and services.</p>

Challenge	Priority	Recommendation
<p>3: Skills and salary</p>	<p>To ensure the existing highly qualified workforce is retained and replenished by highly qualified entrants, particularly given the challenges of NCNC.</p>	<p>For new clerks, introduce a ‘meet and greet’ by a regional clerk network link member, and a formal mentoring scheme.</p> <p>Colleges should consider succession planning if experienced clerks are due to retire or leave.</p> <p>To raise awareness with college boards, executive and human resources (HR) of the highly skilled role and required salary of an effective clerk.</p>
<p>4: Value and status</p>	<p>To raise awareness of the senior role of the clerk, and the governance advisory role, to alleviate the misconception that the role is purely administrative.</p>	<p>To distribute this summary document to college senior management, and college human resources (HR) departments involved with recruitment.</p> <p>To ensure college human resources (HR) departments involved with recruitment explain the requirements of the role in advertisements.</p> <p>To consider a review of the title ‘clerk’ to include alongside, for instance, ‘governance advisor or ‘director of governance’.</p>
<p>5: Capacity to fulfil advisory role, including legal advice</p>	<p>To ensure the clerk has sufficient capacity to fulfil their governance advisory role.</p>	<p>To review the contract of hours to enable clerks to carry out their clerking role effectively.</p> <p>To ensure the clerk has sufficient administrative support to enable them to carry out their governance advisory role.</p> <p>To assess and keep under review the increased demands on clerks due to the new freedoms, including the revision and advisory role for college specific instruments and articles of government, clerking and / or governance advice involved in sponsorship of academies or other educational institutions, and the ‘company secretary’ role for colleges adopting new models and structures.</p>

Challenge	Priority	Recommendation
<p>6: Training, CPD and clerk qualification</p>	<p>To ensure clerk and governance training continues under the FE Guild, including the availability and updating of the LSIS governance training materials.</p> <p>To ensure the continued professionalisation of the clerk's role through the Level 4 and Level 5 clerks' qualification programme, soon to be the remit of the FE Guild.</p> <p>To ensure the continuation and extension of continuing professional development (CPD) or 'top-ups' for clerks, particularly in relation to the new freedoms.</p> <p>To provide support and training for new clerks, including the clerk induction programme, clerk induction pack, a formal mentoring scheme for clerks in their first year of clerking and 'meet and greet' by regional network members.</p>	<p>To assess the feasibility of a Level 7 clerk qualification.</p> <p>To consider the introduction of a national strategy for CPD for all clerks, particularly in response to the new freedoms.</p> <p>The delivery of training and support may need to reflect local demands more fully, perhaps using the Regional Clerks' Networks as a catalyst for events and training, and introducing more online resources.</p> <p>Continued investment in the training of clerks to enable them to provide advice and support in response to NCNC and to aim towards excellence in governance.</p> <p>To provide / signpost legal training and support for clerks to ensure appropriate revision of college specific Instruments and Articles of Government.</p> <p>To provide legal training to increase knowledge and interpretation of the law due to the new freedoms, eg charity and company law, and to review the streamlining of sources of policy updates.</p> <p>To assess the suitability and funding of full ICSA Company Secretarial qualifications for clerks in colleges which have fully embraced the new freedoms.</p> <p>To consider innovative delivery of regional training, eg an expansion of those delivered locally via AoC Regional Clerks Networks as well as online training.</p> <p>To review access to training budgets in colleges for governance training.</p> <p>To review the annual value of training budget for governance training.</p> <p>To raise awareness of the proactive role of the clerk in recruitment of governors and provide training materials for good practice and signposting.</p>

6. List of acronyms

AGC	LSIS Annual Governance Conference
AoC	Association of Colleges
BIS	Department for Business, Innovation & Skills
CPD	Continuing professional development
DfE	Department for Education
EFA	Education Funding Agency
FE	Further Education
FHEA	Further and Higher Education Act 1992
GFE	General Further Education (college)
I&As	Instruments and Articles of Government
LSIS	The Learning and Skills Improvement Service
LEPs	Local Enterprise Partnerships
NCN	National Clerks' Network
NCNC	New Challenges, New Chances
SMT	Senior Management Team
SFC	Sixth Form Colleges
SFCA	Sixth Form College Association

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