Further Education College Governors Development and Training Programme Resource Pack

Module 3
The Main Statutory Framework

For suggestions on how to get the most out of these self-study materials, see the booklet on ‘Using the Materials’.

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Introduction

Welcome to Module 3, which looks at the main statutory framework within which the governing board conducts its business. Some of the legal issues covered here are extremely complex. The aim is to give an overview and awareness of legal implications – it is not a substitute for appropriate legal advice. Further information and links are in the Further Reading section at the end.

The following additional legislation is covered in other modules:

- ‘Whistle-blowing’ or public interest disclosure
- Equalities
- Human rights
- Employment law
- Health and safety
- Corporate Manslaughter Act

Aims

By the end of this module you should be able to:

- describe the legal structure of your college and how it affects the board's activities;
- explain the need for caution when changing the legal status of the college, setting up subsidiary companies or entering into a joint venture;
- state the implications of a college's charitable status;
- list your college's powers and the consequences of acting outside them;
- know how to identify your responsibilities under the Instrument and Articles;
- identify the occasions when the college seal should be used;
- specify the lines of accountability regulating your college;
- outline the college's legal responsibilities to its students;
- understand the legal framework and the board's responsibilities for safeguarding;
- outline the college's responsibilities in relation to information legislation.

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**Working on the self-study materials**

These materials have been designed to be used flexibly (e.g. dip in and out for reference; complete in one sitting; work through alone or with others).

Where you need to make notes in response to activity questions, we suggest you do this in a notebook or on separate sheets of loose-leaf paper, and store the information you compile along with the module for future reference. References listed in the further reading section may also be helpful.

**What you will need**

- [Governance Guide (Operational and Accountability Framework)](BIS 2014)
- College Instrument and Articles
- The college document setting out mission, vision and strategic aims
- College safeguarding policy and safer recruitment procedures
- College safeguarding risk assessment
- College enrolment form or student agreement
- College publication scheme
- Acceptable use policy
Section 1. An overview of the statutory and legal framework

The main legal framework for further education (FE) in England and Wales was established by the **Further and Higher Education Act 1992** (FHEA). As a result of the FHEA all colleges were brought into a new ‘further education sector’ and made independent from LEAs. The FHEA has been amended by subsequent education and other legislation (Sections 3 and 4) The most recent legislation, the **Education Act 2011**, has resulted in the greatest changes to the FHEA since 1992.

Many of the provisions of these Acts are brought into effect by Orders of the Secretary of State, which are known as statutory instruments. These are referred to as secondary legislation, and include the Instrument and Articles of FE colleges (FECs) and sixth form colleges (SFCs). Historically colleges have been regulated by one Secretary of State. The split in recent years between the Department for Education (DfE) and the Department for Business, Innovation & Skills (BIS) has led to some overlapping of policy of which governors need to be aware. The relevant government departments can also issue advice and guidance on the legislation in the form of circulars and administrative memoranda.

The governing board is a ‘legal person’ (Section 2) with the same general legal responsibilities as other types of organisations, including the employment of staff, the offer of services and the ownership of assets. As such, it is subject to a raft of legislation that applies to organisations in England. Some of the main statutes are mentioned in this module.

In addition to these statutory duties, boards are subject to other types of legal duties and obligations:

- contractual obligations such as those arising from contracts with staff, learners and suppliers, including adherence to European procurement regulations;
- duties imposed by courts that are not based on either legislation or contract. These are common law duties, and the law relating to them is established through case law;
- duties of loyalty and good faith and of care, diligence and skills are owed by governors to the board due to their fiduciary position (a position of trust).

The governing board is therefore subject to statutory, contractual and common law duties.
Section 2. Legal structures and legal personality

Statutory corporations

Most FECs are statutory corporations set up by order of the Secretary of State under the FHEA. They are exempt charities and the BIS Secretary of State is the regulator. A statutory corporation exists only for the particular purposes which Parliament intended. These purposes (referred to as ‘powers’) are set out in sections 18 and 19 of the FHEA, as amended by later legislation. These statutory powers govern the relationship between FECs or SFCs and the outside world.

In 2014 BIS published a guide to college governance that sets out the accountability and legal frameworks for colleges. This guide only refers to FECs, not to SFCs, which look to the DfE for their accountability framework.

Section 4 has more detail on the powers of FECs or SFCs. In addition, colleges are governed by their Instrument and Articles of Government. These are prescribed in regulations made by the Secretary of State under powers established by the FHEA, although, following the 2011 Education Act, these can now be changed for colleges in England in most respects without having to get the Secretary of State's permission [Section 6].

The Instrument and Articles set out the college's composition and procedures and its internal powers, responsibilities and duties. These govern the internal management of colleges but if for any reason there was a contradiction between the powers and the Instrument or Articles, then the powers would override the Instrument and Articles.

In this and the following sections we will talk about ‘powers’ and ‘duties’. A power defines what the board is entitled to do if it chooses. A duty is something the board or an individual must do.

Designated institutions

A few colleges are collectively known as ‘designated institutions’. Generally, these are colleges which were not previously maintained by an LEA, and have a variety of legal structures. Most are companies limited by guarantee, registered under the Companies Acts. The company is governed by its Memorandum (which sets out the main objects of the company) and the Articles of Association, which set out its internal procedures, rights and responsibilities.

Other types of designated institutions may be governed by trust deeds in which case the governors may be called trustees. The other types of designated institution will generally have their own Instrument and Articles (or Memorandum and Articles of Association) which have been approved by the Secretary of State.

Innovative legal structures

The major change following on from the 2011 Education Act is that colleges are free to dissolve themselves, converting from their current legal structure to any legal structure
they believe will most help them to achieve their objectives. Colleges may convert to models that include:

- Higher Education Institutions: legally independent corporate bodies, similar to a college, but subject to regulation from the Higher Education Funding Council for England (HEFCE).
- Mutuals: subject to relatively light regulation by the Financial Conduct Authority (FCA). Membership will be restricted to participants, for example staff.
- Charitable incorporated organisations registered under the Charities Acts: governors will be members of the organisation. Registration as a charitable incorporated organisation has been possible since March 2013. Initially, it is only possible for new organisations to be thus created.

The college's mission and objectives should be the starting point in a decision making process about changing legal status, and suitable arrangements must be put in place to safeguard current learners.

Annex A to the BIS policy document *New Challenges New Chances* recommends that any college seeking to change its model should conduct a Structure and Prospects Appraisal. Corporations are not required to do this but increase the possibility of legal challenge by one of their stakeholders if they do not. The factors for consideration are:

- vision for the future
- selection of delivery solutions and partners
- value for money
- impact on staff
- impact on learners
- impact on employers
- impact within the community
- impact on competition
- quality of provision
- strategic leadership and management

Specific factors to consider with regard to the most appropriate legal structure would be:

- legal personality (see below)
- business objects and charitable status
- business structure and partnerships
- relationship with stakeholders/owners'
- compliance and regulating bodies, e.g. Charity Commission, Financial Conduct Authority
- tax
- costs

Legal advice will be required to make the final decision, and colleges will need to consult upon and publish any changes.

[See Module 7: Collaboration and Partnerships, which also looks at federations and mergers.]
Legal personality

Those colleges with a corporate status - including statutory governing boards, companies and charitable incorporated organisations - have a legal identity that is distinct from the identities of the governors or members. With this separate legal identity the college can assume rights, duties and liabilities in its own name in the same way as a person can. Incorporated entities are sometimes termed ‘artificial legal persons’.

In theory, colleges might not have a corporate structure if they were created by trust deed without corporate status, or indeed were unincorporated associations. In this case they would not have a separate legal identity and could not be held responsible for their actions. In these circumstances, as a general rule, it would be the individuals (the governors as trustees) who would have to take personal responsibility in law for the college’s activities. An important consequence of this unlikely scenario would be that, on the insolvency of a college, creditors might be able to claim against the assets of the individual governors, whereas they cannot do this in the case of a college with a corporate structure. In practice the only unincorporated structures likely to be found in colleges are the smaller student unions.

Activity

- What is your college's legal structure?
- Does it have any subsidiaries?
- Has it established an academy?
- Note down what implications, if any, the legal status has for the board and you as a governor. Take some time to research the implications or ask the college's legal advisers.

Viewpoint

- It is important that the governors know the legal status of their college, and particularly that they understand the implications for personal liability of unincorporated organisations. Following the implementation of the Education Act 2011, boards carrying out strategic appraisals will include a review of their strategic intentions against their current legal status to ensure that it is fit for purpose.
Section 3. Charitable status

All publicly funded colleges, whatever their legal status, are charities. This brings with it benefits and obligations, which vary according to the route by which the college was recognised as a charity.

Registered charities

Many designated institutions are registered as a charity with the Charity Commission and are subject to the provisions of the Charities Act 2011. The Charity Commission exercises supervision over registered charities and has the power to act for the protection of the charity (for example by suspending trustees or governors).

Note that charitable incorporated organisations are registered charities. They have the legal personality advantages of companies limited by guarantee but charitable incorporated organisations are only subject to charity law, and not company law. Publicly-funded colleges have to be charities, so those colleges that are companies limited by guarantee are subject to company law but also have to register with the Charity Commission. However company law is generally intended to legislate for companies with profitable aims rather than charitable objectives.

Student unions are no longer considered exempt charities (see below) and are required to register with the Charity Commission if they have an annual income of over £100,000.

Exempt charities

FECs and SFCs are exempt charities for the purposes of the Charities Acts, and do not fall under the direct supervision of the Charity Commission. The rationale is that they are adequately supervised by other bodies such as the relevant funding agency, the Inland Revenue and the National Audit Office.

Since September 2013 the principal regulator for FECs is the BIS Secretary of State; the principal regulator for SFCs is the DfE Secretary of State. FECs and SFCs are therefore not registered with the Charity Commission, cannot describe themselves as a registered charity and do not have a registered number. However, their governors are required to follow Charity Commission standards.

Following the changes to the governance of colleges, their Instrument and Articles (Section 6) are much more flexible, but a college must not make any changes to its Instrument and Articles that would result in it ceasing to be a charity.

Regulations, such as the financial memorandum with the funding agencies, are also being relaxed (Section 7). It could be said that colleges were protected under the more prescriptive statutory instruments and regulations prior to April 2012. In effect these largely interpreted and applied charity law for the sector and, as long as these were complied with, colleges did not often have to look further to fulfil their obligations under the Charities Acts. FECs/SFCs now have to refer to and comply with charity law itself.
Requirements of charitable status

- Act in accordance with the charity’s powers and its charitable objects (i.e. as an educational charity).
- Promote the interests of the charity and ensure that its assets are applied only for its charitable purpose (i.e. the provision of education).
- Safeguard the assets of the charity.
- Demonstrate that the aims of the college are for the ‘public benefit’.

Special care must be taken when organising trading activities which may not be regarded as charitable, or entering into a partnership with another organisation that does not have charitable status. In these circumstances the college may set up a subsidiary company, or enter into another arm's-length joint venture or partnership agreement with a partner. Care also needs to be taken where, for example, the college wants to make a payment or gift which is not related to the provision of education. The same considerations apply to student unions which will usually be incorporated associations with charitable status (Section 6).

Tax implications of charitable status

- Colleges are exempt from capital gains, income and corporation taxes on income arising from carrying out the college's primary purpose – the provision of education. Advice must be taken on income generated from trading activities.
- Colleges are exempt from charging VAT. On the other hand they cannot claim it back on their expenses. In most cases subsidiary companies are not exempt. Professional advice should be taken on the VAT implications of using subsidiaries. College building projects are another key area on which advice about VAT implications will be needed.
- Colleges are exempt from the payment of stamp duty where, for example, a property is transferred from one charitable body to another.

Activity

- Think about how a college might demonstrate that its aims are for the public benefit. What evidence could it provide that this is the case?
- When was last time your board discussed the college's public benefits strategy?
Viewpoint

- We know that colleges' principle powers are for the provision of further, higher and secondary education. It should be possible, with reference to the college's mission, vision and strategic objectives, to prove that the education is for the 'public benefit'. References in these to benefits for the local community and business, and to the general advancement of economic prosperity are relevant. The ease of accessibility to college provision, as demonstrated in the college's admissions policy, will also prove the 'public' element of 'public benefit' aims.

- Further guidance on demonstrating public benefit is available from the Charity Commission. The Higher Education Funding Council for England has also issued useful guidance that can be applied to colleges.

- The AoC has also issued a guidance note for FE colleges on a ‘public value statement’.
Section 4. Education law

The statutory basis for FECs and SFCs is the Further and Higher Education Act (FHEA) which has been amended by a number of subsequent education acts, including:

- Learning and Skills Act 2000 – included powers for FECs/SFCs to form subsidiary companies
- Education and Inspections Act 2006 – permitted formal collaboration between colleges and schools
- Further Education and Training Act 2007 – enabled colleges to apply for foundation degree awarding powers; included guidelines on consultation with students, potential students and employers, and the facilitation of innovative delivery models
- Education and Skills Act 2008 – raising the education or training leaving age to 18; governors given duty to promote education and training for young people
- Education Act 2011 – ‘deregulation’ of the FE sector

Other relevant education legislation

- Education (No2) Act 1986: ensures freedom of speech for staff and students.
- Education Act 1994: covers student unions, where they exist.
- Education Act 2002: safeguards and promotes the welfare of children.

Education Act 2011

The Act repealed a number of previous provisions in order to simplify and clarify the regulatory framework. This required colleges to focus more on general legislation, such as charity law, property law and competition law.

- It transferred the power to modify and replace a corporation's Instrument and Articles of Government from the Secretary of State to the college itself.
- It amended Schedule 4 to the FHEA so it only contains the essential requirements for governance that will enable colleges to properly constitute and conduct themselves (Section 6).
- It transferred the power to dissolve itself to the college, and gave it the responsibility to transfer its property, rights and liabilities to specified educational providers for educational purposes.
- It required the college to conduct a full consultation in accordance with regulations and take account of the views of those consulted in making its final decision to dissolve.
- It transferred in extremis powers to intervene in colleges from the relevant funding CEO to the relevant Secretary of State, and adds the power to direct a college to dissolve itself.
Section 5. The powers of further education boards

Colleges may only lawfully exercise those powers they have been granted. Sections 18 and 19 of the FHEA, as amended, grant principal powers to:

- provide further, higher and secondary education for those aged 14 and over;
- participate in the provision of secondary education at a school;
- supply goods or services in connection with the provision of education.

For the provision, or participation in the provision, of secondary education, the corporation must have consulted the local authority and have the agreement of the DfE.

Section 19 of the Act sets out supplementary powers. These are basically to do anything necessary or expedient for the exercise of the principal powers. This specifically includes:

- conducting an educational institution;
- providing facilities such as accommodation and recreational facilities for staff and students;
- acquiring or disposing of property;
- entering into contracts such as employing staff;
- borrowing money and granting security;
- investing money;
- forming, participating in forming, investing in or becoming a member of a company limited by shares, a company limited by guarantee, or charitable incorporated organisation (see below);
- accepting gifts for any of these purposes.

The principle of ultra vires

- If a college decided to do something which it was not authorised to do, the decision would be ultra vires (outside its powers). Similarly, a college would be ultra vires if it decided to act outside its charitable objects.

- Such a decision is open to challenge in the courts and may be declared invalid and void. An example of this would be carrying out a trading activity wholly unrelated to the provision of further education and training.

- Various consequences flow from a decision being ultra vires: the college could not rely on or enforce contracts arising from the decision; and any contracting parties who suffer a loss as a result may have a claim against the organisation. Governors may be personally liable for such a loss.

Whenever your board proposes to do something which falls outside the key provision of education and training the questions should be asked: have we considered whether the college has the power to do this? Does it fall within our charitable status? If the clerk is unsure, external professional advice may well be needed.
Activity

What is your college empowered to do?

Look at the following examples of decisions which might be made by your college. For each one, note down the reasons why you think the action is within the powers of the college or whether it would be ultra vires.

1. Your college decides to let out its sports hall at a market rate to a local gym club for three evenings a week.

2. Your college decides to go into partnership with a commercial organisation in order to deliver a specialised area of provision that it does not have internal expertise and facilities to deliver alone.

Viewpoint

1. Letting the sports hall out will gain the college useful additional income. The income is for an activity that is outside the powers of the college. In addition the market rate implies that a profit will be made which will mean that it will be outside the college's charitable objects. The college may be advised to use a subsidiary company in order to carry out this activity or ensure that it is run as a student work experience venue and students are involved in the running.

2. In this situation the college's partner does not have charitable objects. The college could enter into a contract to buy in the services that it requires from the partner, or it may wish to enter into a joint venture, in which case the lines could potentially become blurred between activities that are within the college's powers and its charitable objects, and the commercial elements of the provision. If a joint venture is the preferred way forward, the best solution could be to set up a joint venture company limited by shares.
Section 6. Instrument and Articles

The Instrument and Articles of Government are prescribed in regulations made by the Secretary of State under powers established by FHEA. The Instrument and Articles set out the governing board’s composition and procedures and its internal powers, responsibilities and duties, and govern its internal management. The board may add to the governance framework with more detailed internal governance policies and procedures, including standing orders. These will be subsidiary to the Instrument and Articles, which will override them if there is a contradiction.

Until April 2012, FECs and SFCs could only change their own Instrument and Articles with the permission of the Secretary of State, and colleges rarely went to the trouble of requesting bespoke changes. The different categories of designated institutions had slightly different Instrument and Articles. As a result the Instrument and Articles of most corporations in each category were very similar, if not identical.

Between 2008 and April 2012, most colleges operated under Instrument and Articles that had been issued by the Secretary of State in 2008. References to the Instrument and Articles in other parts of the training materials are currently to the clauses in the 2008 versions for general FECs.

Other modules in the training materials covering the Instrument and Articles are as follows:

**Instrument**
- Composition and appointment of members – Module 13: Search Committee
- Appointment of the chair and clerk – Module 5: The Process of Effective Governance
- Meetings, proceedings and related activities – Module 5: The Process of Effective Governance

**Articles**
- Roles and responsibilities of the chair, principal and clerk – Module 5: The Process of Effective Governance
- Board responsibilities with regard to the employment of the principal and senior post-holders – Module 11: Human Resources
- Board responsibilities with regard to the employment of the clerk – Module 5: The Process of Effective Governance
- Board responsibilities with regard to strategy and educational character – Module 6: Strategy and Educational Character
- Board responsibilities with regard to finance and resources including staff – Module 10: Finance and Module 11 Human Resources
- Board responsibilities with regard to audit – Module 12: Audit Committee
- Board responsibilities for quality and the curriculum – Module 9: Quality and Standards, and Module 8: Curriculum

**2012 changes to the Instrument and Articles**
- Colleges now have the power to change their own Instrument and Articles, as long as they cover the minimum criteria laid down in the FHEA for an Instrument.
The Instrument and/or Articles (if in use) is a college's core constitutional document and the new version must specify how it can be modified or replaced. Because of their significance, colleges may wish to write into their Instrument and/or Articles that they may only be changed by a higher than usual percentage of the vote in favour of the resolution.

In changing their Instrument and/or Articles, colleges must strike a balance between on the one hand protecting the institution, its assets, its core aims and its stakeholders, and on the other hand enabling the college to be responsive, flexible and efficient.

A change to the Instrument and/or Articles is significant but is still less fundamental than dissolving the college and creating a different kind of legal entity. The latter must always come about as a response to strategic need. A change to Instrument and/or Articles may simply reflect a review of the practical workings of the college.

The minimum requirements for the Instrument are paraphrased below:

- Provision for number and eligibility of board members, and appointment procedures.
  - Members must include staff and students of the institution, and, in the case of SFCs, parents of students at the institution aged under 19.
- Provision about procedures of board and the college, in particular with regard to dissolution and transfer of property, rights and liabilities.
- Provision for there to be a chief executive of the college and a clerk, and their respective duties.
- Responsibilities of the board must include:
  - for some SFCs, the preservation and development of their educational character and mission, and the oversight of activities;
  - for other colleges, the determination and periodic review of the educational character and mission and oversight of activities;
  - for all, the effective and efficient use of resources, the solvency of the college and the board and the safeguarding of assets.
- Requirement for the board to publish arrangements for obtaining the views of staff and students on these compulsory matters for which the board is responsible.
- Permission for the college to change its name with the approval of the Secretary of State.
- Specification of how the college may modify or replace the Instrument and Articles.
- Prohibition from making changes to the Instrument and Articles that would result in the college ceasing to be a charity.
- Provision for a copy of the Instrument to be given free of charge to every board member and for it to be available free of charge or at cost of copy, on request by anyone.
- Provision for a copy of the Instrument to be available for inspection at the institution on request during office hours, by every college member of staff and student.
- Provision for the authentication of the application of the corporation seal.
Corporation seal

Most contracts are signed to show that the parties have agreed to them; the execution of a document by a corporation seal is an alternative to this. It is not compulsory for colleges to have or to use a corporation seal.

Certain documents relating to land transfers require execution by a seal, as a ‘deed’, to be legally effective. If a college is worried about other long-term contracts, it may also choose to use a seal for these. Executing a deed may also be useful where there is an agreement but no ‘consideration’ or value changing hands. If in doubt, legal advice should be taken on when to use a seal.

It is usual practice for the seal to be used with the signatures of two governors, and for the clerk to maintain a formal record of the use of the seal.

The new Schedule 4 of the FHEA simply says that the Instrument “must provide for the authentication of the application of the seal of the body”. Thus if a board decides to have a seal then the rules it chooses to make for authenticating the application of the seal should be included in the board’s Instrument.
Section 7. Accountability

- All colleges are financially accountable to the government through the funding agencies and ultimately to Parliament through the Public Accounts Committee and the Secretary of State.

- The principal, as accounting officer for the college, is directly accountable to Parliament, through the Public Accounts Committee, for the organisation’s stewardship of public funds.

- The board is also subject to a parallel line of accountability to and through the courts.

This form of accountability to Parliament and the courts is distinct from the duty of responsiveness to stakeholder groups. Accountability can be enforced by legal and financial sanctions; responsiveness generally cannot.

The funding agency

Colleges are required to enter into a financial memorandum with a funding agency. Where they draw down funds from more than one, the financial memorandum will be with the one from which they receive the most funds. The agency imposes its own terms and conditions on the payment of grants. Breaching such a term will give the agency the right to impose a sanction, such as withholding payment.

Financial audit

Since August 2013, a joint audit code of practice (JACOP) has been in place, setting out colleges’ obligations to both the Education Funding Agency (EFA) and the Skills Funding Agency (SFA). FECs and SFCs are required to arrange for their accounts to be audited externally. The external auditors will also carry out a ‘regularity’ audit to ensure that the money allocated has been spent properly and for the purposes for which it was intended. External auditors are therefore often known as ‘financial statements and regularity auditors’. Under the new JACOP, colleges don’t have to have an internal auditor. [See Module 12: Audit Committee.]

The Secretary of State

The Government, through the relevant Secretary of State, can intervene in extremis in order to protect students and public money, and has the power to direct an FEC or SFC to dissolve itself on a particular date. The Secretary of State’s role in this regard is akin to the Charity Commission’s role for charities. The Secretary of State also needs to be consulted over a change of name for the FEC or SFC.

The courts

As public bodies, colleges are subject to administrative law and can be challenged through the courts by a process known as judicial review. Any decision by the board can be challenged by a person who has an interest in that decision on the basis that it is:
• illegal (e.g. outside its powers)
• irrational
• flawed by procedural impropriety; colleges must comply with the requirements of procedural fairness and natural justice – the right to a hearing and unbiased decision making.

Judicial reviews must generally be brought as soon as possible. The usual remedy is to quash the decision and for the college to reconsider, although the court could require them to follow a specific course of action. The courts’ jurisdiction over the activities of colleges is based on case law, not statute law.

Governing boards can also be held to account through the criminal justice system if they have committed a criminal offence (for example, where the college has breached health and safety legislation, or, in extreme circumstances, the Corporate Manslaughter and Corporate Homicide Act 2007) where governors could be personally liable. They may be held to account to third parties through the courts where they have failed to comply with their legal obligations imposed by statute, or where they have breached their contractual obligations, or have failed to comply with duties imposed by the courts.

Personal liability of governors

Generally if a college is being sued, it will be the corporate entity that is sued. As long as the institution has corporate status, and providing governors act in good faith and exercise such skill, care and diligence that could be expected from a reasonable person, it is very unlikely that individual governors will be held liable.

If governors have breached the duties imposed upon them by the Articles of Government, by statute, or the courts, it is theoretically possible that they could be held personally liable. This is very unlikely to happen and the college can take out appropriate insurance.

In addition, if a governor is found liable in civil proceedings for an action or omission as a governor, an application may be made to the court to make an order extinguishing, reducing or varying the liability, if the court deems the action or omission to be honest and reasonable. Likewise governors may apply to the Charity Commission for relief as a charity trustee under Section 38 of the Charities Act 2006.

The 2008 Articles allow colleges to insure their members against liabilities incurred as members, and to pay the corresponding premiums. Insurance cannot be taken out against criminal liabilities.
Activity

- What practical action can governors take, apart from making sure they have insurance, to minimise the risk of personal liability?

Viewpoint

- Governors must act openly and honestly at all times, but this is not enough. They need to get the necessary training to understand their duties, responsibilities and liabilities. They also need to understand how their responsibilities fit together with those of the principal and senior team.

- Once they fully understand their duties and responsibilities, governors should ensure that they are getting sufficient and timely information in an understandable format to enable them to take decisions; and they should take independent professional advice where they feel this is necessary.

- They need to declare financial and other interests, and to make sure that the board operates in accordance with its procedures.

- They also need to ensure that appropriate risk management policies, assessments and plans are in place and followed through.
Section 8. The college and its students

The student contract and complaints

- The student contract is fundamental to the relationship between the college and students. It does not have to be in writing and can be drawn from sources such as the prospectus, handbook, student charter, offer and acceptance letters, disciplinary, complaints and appeals procedures, and departmental literature. It may also include statements made by staff in interviews and elsewhere.

- The contract is formed when the student unequivocally accepts an offer of a place by post, email, telephone, enrolment or registration.

- Students are generally regarded by the courts as consumers, so that all terms must be fair and written in plain, intelligible English.

Colleges should have published complaints and grievance procedures in place and governors may be involved in the last step of the appeals procedure. These procedures should contain a clear process by which a student or other organisation can make a complaint and have it investigated, reviewed and resolved. The procedure should also outline the process, timescales and named individuals. There should be an appeals process to deal with any challenges to the decision reached. Colleges should ensure that students or other organisations are given relevant information about such procedures.

When complaints cannot be resolved by the college, students should be provided with relevant funding agency contact details. If the course is in an HE institution then students will be able to appeal to the Office of the Independent Adjudicator. External bodies will not usually investigate complaints until the college's procedure, including the appeal, has been exhausted. The external bodies reviewing complaints are not courts of law, and will focus on whether the college followed its own procedures, and whether the outcome was fair.

If students are still dissatisfied following the complaints procedure they may take complaints to the civil courts.

Governors will be concerned about quality, equality and safety for their own sakes. In addition, resolving a complaint can take a disproportionate amount of time and can affect the reputation of the college. Governors need to ensure that the organisation has an open culture which will acknowledge and address problems and learn from them before they have a chance to escalate. There should be a complaints procedure in place, and having put it in place, it is important that staff then follow it.

Many boards receive an annual complaints report. This will identify whether the number of complaints is increasing or decreasing, how quickly and effectively complaints are addressed, and whether there are any trends that might indicate underlying problems.

Student discipline

Under the 2008 Articles, the board is responsible, after consultation with students’ representatives, for making "rules concerning the conduct of students, including procedures for
their suspension and expulsion”. The principal is responsible for student discipline. Governors can now allocate responsibilities to anyone they choose.

It is necessary to balance the smooth functioning of the college and its duty to protect its staff, students and reputation against the rights of the individual students being disciplined. The disciplinary code should satisfy the principles of natural justice and fairness, in particular the principles that every student has a right to a hearing before an impartial adjudicator, and to be accompanied. There should also be a right of appeal to a person who has not previously been involved in the disciplinary process.

The basis of a college’s power is its contract with the student. It is therefore important to ensure that the disciplinary code is effectively incorporated into the student contract.

**The student union**

The law does not require colleges to establish a student union, but most, if not all, colleges will have a union or association. Where there is a student union in place, the Education Act 1994 imposes extensive duties on the governing board. The board should “take such steps as are reasonably practical to secure that any Students’ Union...operates in a fair and democratic manner and is accountable for the finances”.

This includes ensuring that the student union has a written constitution covering elections, appointment of officers, allocation of funds and financial reporting, complaints procedures and affiliations to external organisations. The board needs to approve and review the constitution at regular intervals. If the board fails to discharge its statutory responsibilities in relation to the student union it is possible that the board itself could be sued for debts owed by the student union.

Under the 2008 Articles, the board is responsible for approving the constitution of the student union and receiving its audited accounts annually. Going forward, this is not one of the areas that must be included in the Instrument under the revised Schedule 4, but governors should still be mindful of the provisions of the 1994 Act. The auditing of the accounts usually takes place as part of the overall process for auditing the college’s accounts.

A student union is regarded as having a separate legal identity to the college. Its legal status will be that of an unincorporated association (similar to a club) and it is perceived as a charity. Therefore the officers of the student union, who may in some cases be sabbatical officers, will be trustees of any property held for the purposes of the union. Under charity law, the student union is required to register with the Charity Commission if its income is over £100,000.
Section 9. Safeguarding

Safeguarding of children and vulnerable adults in the UK is covered by a plethora of laws and guidance that are continually being amended, updated and revoked (see Further Reading for key pieces of legislation). A child or young person is an individual up to their eighteenth birthday. A vulnerable adult is a person aged 18 or over: “who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation” (Law Commission Report 1997).

All organisations that work with children and vulnerable adults have a responsibility to safeguard and promote their welfare. They must ensure they have in place safeguarding and safer recruitment policies and practices, including Enhanced Disclosure and Barring Service (DBS) checks for specific roles.

Significant developments: vetting and barring

The vetting and barring scheme (VBS) was created to help safeguard children and vulnerable adults following the Bichard inquiry\(^1\). Many thought it was well-intentioned, but a disproportionate response to the risk posed by a small minority of people who wished to commit harm to vulnerable people. Following a thorough review in February 2011, a number of its recommendations were built into the Protection of Freedoms Bill. The key changes include:

- abolishing registration and monitoring requirements;
- redefining the scope of ‘regulated activities’;
- abolishing ‘controlled activities’.

However the barring\(^2\) functions remain.

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) were merged to create the Disclosure and Barring Service (DBS), a non-departmental public body, from 1 December 2012.

The Government has made commitments to improve disclosure and barring services by scaling them back to ‘common-sense levels’.

Although the Protection of Freedoms Act was passed in 2012, the changes to disclosure and barring did not commence immediately, and safeguarding regulations introduced in October 2009 continue to apply, including those listed below. The only exception is provisions applying to volunteers which will change slightly.

- A person who is barred by the DBS from working with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups.

\(^1\) An inquiry set up following the murders of Holly Wells and Jessica Chapman.

\(^2\) Barring refers to a register of individuals who are barred from working with either children or vulnerable adults or both. This is now managed by the Disclosure and Barring Service (DBS)
An organisation that knowingly employs a barred individual to work with children or vulnerable adults will also be breaking the law.

If your college works with children or vulnerable adults and you dismiss a member of staff or a volunteer because they have harmed a child or vulnerable adult, or you would have done so if they had not left, you must refer this information to the DBS.

The DBS is responsible for both disclosure of criminal records and for barring. Colleges will be required to ensure that they have the relevant safeguarding processes and practices that comply with these legal requirements.

A checklist for success in overseeing safeguarding

- High-quality leadership and management that make safeguarding a priority across all aspects of the organisation's work.
- Stringent and appropriate checking procedures in place for staff and other adults.
- Rigorous safeguarding policies and procedures in place, written in plain English, compliant with statutory requirements and updated regularly.
- Safeguarding arrangements that are accessible to everyone, so that everyone knows who they can talk to if they are worried.

A prevent strategy

- Excellent communication systems with up-to-date information that can be accessed and shared by those who need it.
- A high priority given to regular training in safeguarding, generally going beyond basic requirements, extending expertise widely and building internal capacity.
- Robust arrangements for site security, understood and applied by staff, students and visitors.
- A curriculum that is used to promote safeguarding, not least through empowering students to stay safe, to protect themselves from harm and to take responsibility for their own and others' safety.
- Responsible behaviour by the students, enabling everyone to feel secure and well-protected.
- Well thought-out and workable day-to-day arrangements to protect and promote students' health and safety.
- Risk assessments used to good effect in promoting safety.
- Statutory compliance and ensuring governors understand their responsibilities.
Activity

The governance safeguarding checklist

Work through the checklist below, awarding scores using the following key:

1: This is in place and working effectively.
2: In place but not reported to the board.
3: Not sure, so need to check.

Items in grey support the college in meeting legal responsibilities; the rest are examples of best practice.

<table>
<thead>
<tr>
<th>Best practice element</th>
<th>1</th>
<th>2</th>
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<tbody>
<tr>
<td>There is a safeguarding policy that is regularly updated.</td>
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<tr>
<td>There is a process to involve all stakeholders in policy review and development.</td>
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<tr>
<td>The policy is underpinned and related to other policies, e.g. safer recruitment,</td>
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<tr>
<td>anti-bullying, reporting a disclosure, inclusion, equality and diversity.</td>
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<tr>
<td>The college has a risk assessment process that supports key safeguarding decisions and planning.</td>
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<tr>
<td>The college is moving towards an approach to e-safety/e-responsibility that includes and involves students and staff, and encourages and supports them to take responsibility for their own actions.</td>
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<tr>
<td>The college operates safer recruitment procedures and makes sure that all appropriate checks are carried out on staff and volunteers who work with students.</td>
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<tr>
<td>The college has a clear strategy for the use of enhanced DBS checks.</td>
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<td>The college has a robust process for making referrals to the DBS.</td>
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<tr>
<td>The college has appropriate checking and recording systems in place for agency and other contracted staff.</td>
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<tr>
<td>The college has appropriate procedures for dealing with allegations of abuse against members of staff and volunteers.</td>
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<tr>
<td>The college has a safeguarding team to include a senior lead for safeguarding and at least two designated people (DPs).</td>
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<tr>
<td>All other staff members have received appropriate training to equip them to carry out their safeguarding responsibilities effectively, and this is kept up-to-date by refresher training at three-yearly intervals.</td>
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<tr>
<td>Governors understand how safeguarding is promoted across the college, and all staff and contractors are aware of their safeguarding responsibilities.</td>
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<tr>
<td>Governors understand how safeguarding is promoted to all students.</td>
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</tr>
<tr>
<td>Any deficiencies or weaknesses in safeguarding arrangements are</td>
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brought to the board's attention and appropriate action taken.

There is a nominated board member who takes responsibility for liaising with the senior management team in relation to safeguarding matters.

The college reviews safeguarding policies and procedures annually and records how the above duties have been discharged.

When you have completed this activity, identify and record three key actions you should take in order to further improve your understanding and confidence in how the college is meeting its statutory requirements for safeguarding.

**Viewpoint**

Considering these elements will help you to reflect on how effectively the college is responding to its statutory safeguarding responsibilities. Governors might wish to ensure that their responsibilities for safeguarding are properly fulfilled by receiving annual reports on:

- the college's review of safeguarding policies, and review of recruitment procedures from a safeguarding perspective;
- the implementation of safeguarding procedures and their impact;
- the review of the college's safeguarding risk assessment.
Section 10. Information and communication

Information and communication in their many forms are at the core of college business in. Much of the curriculum can now be delivered online and many resources for students are available electronically on a virtual learning environment (VLE) or via the college website. Email and texting are now standard means of communication on a daily basis, and governing boards are moving into a world of ‘e-governance’.

Module 5 deals with openness, communications, publications, the college website and intranet, and reminds us how technology has enabled governance to be much more transparent. Being open and transparent in decision-making processes are at the core of good governance practice. Module 2 explains the Nolan Principles of standards in public life, which governors sign up to as part of their Code of Conduct. The code is also reflected in the English College’s Foundation Code of Governance.

Within this environment, boards will need to have an awareness of the requirements of information legislation, as well as the legislation that surrounds a college’s cyber-liability and increased use of information and communication technology (ICT). Boards will need to be satisfied that policies and procedures are in place.

The Information Commissioner’s Office

The Information Commissioner’s Office (ICO) is the UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. Most UK colleges and universities are considered to be public bodies under this legislation.

The ICO is responsible for legislation relating to information rights. As well as data protection and freedom of information, the ICO is responsible for the law relating to electronic communications, environmental regulations and the regulations on sharing spatial data, all of which apply to colleges. More detail can be found in Further Reading.

The Data Protection Act 1998 (DPA) aims to balance the right of individuals to privacy and the need for institutions to process personal information for their legitimate business purposes. The Act ensures that the information (data) held about people is processed only with their knowledge and consent.

The DPA only applies to personal data (i.e. information which relates to a living individual who can be identified from that information). It covers all records and information, whether digital or print, current or archived. Consent for processing is only required for ‘sensitive personal data’, i.e. information about an individual’s racial or ethnic origin, political opinion, religion, beliefs, sexual life, alleged criminal activity and court proceedings.

The DPA relates to how data are obtained, held and stored, disclosed, retrieved, used and destroyed. In fact it applies to any activity relating to personal data. The people who determine why and how information is processed are referred to as data controllers (e.g. a college), and those whose data are processed are known as data subjects (e.g. students, staff, alumni).
Colleges keep a wide range of personal data, mainly about staff and students, including factual information, expressions of opinion and photographic images. The DPA has been amended by the Freedom of Information Act 2000 to enhance the rights of individuals to see more of their personal information, including 'unstructured' personal data.

There are eight data protection principles, stating that personal data shall be:

1. Processed fairly and lawfully.
2. Obtained only for specified and lawful purposes.
3. Adequate, relevant and not excessive in relation to the purposes for which they are processed.
4. Accurate, and, when necessary, kept up to date.
5. Not kept for longer than is necessary.
6. Only processed in accordance with the rights of individuals under the DPA, the main one being the individual's right of access to data held about him/her.
7. Protected against unauthorised or unlawful processing and against accidental loss, destruction, or damage.
8. Not transferred to a country outside the EU unless it adequately protects personal data.

Colleges must maintain a data protection notification with the ICO and appoint a nominated Data Protection Officer who is responsible for complying with the eight principles. The DP Officer is usually also responsible for compliance with the provisions of the Freedom of Information Act 2000 (see below) and there is considerable overlap between the two.

Breaches of the provisions of the DPA can lead to criminal and civil liability. It is therefore important that internal documents are regularly reviewed to ensure they comply.

Unlike school education records, where the law sets out parental access rights, there is no similar right in respect of the education record of students at a college, and so disclosure to a parent will need to be done in accordance with the DPA. This means the consent of the student will usually be needed.

**Data protection and mobile devices**

Mobile devices can be defined as memory sticks, mobile phones, personal digital assistants (PDAs), tablets, netbooks and laptops. Such devices are used more and more in teaching and learning activities. The DPA obligations apply equally to information stored on mobile devices on- or off-site, as well as to college networks and systems, a fact which may be overlooked.

**Freedom of Information Act 2000**

The Freedom of Information Act 2000 (FOIA) gives a right of access to information held by 'public authorities'. Unlike the DPA, the FOIA covers all information, not just personal, and similarly covers all records and information held, whether digital or print, current or archived.
As a general rule colleges should assume that information will need to be disclosed. Information may only be withheld where one of the Act’s exemptions applies. Some exemptions are absolute but for others a public interest test has to be applied.

Colleges must produce and maintain a Publication Scheme - approved by the Information Commissioner and regularly reviewed - which details the type of information routinely provided to the public and how it may be accessed. The Information Commissioner provides a model Publication Scheme for colleges on its website, which most colleges use.

Activity

- Compare your college’s Publication Scheme with the model scheme approved by the ICO, and identify when it was last reviewed.

Any member of the public, anywhere in the world has the right to ask for information which is not already available through the publication scheme. The person requesting information need not indicate that the request is a freedom of information request.

All non-routine requests for information, except those identified as concerning the requestors’ own personal data, should be treated as freedom of information requests. The college is not entitled to know why the information is being requested but for a request to be dealt with according to the FOIA, it must:

- be made in writing, for example in a letter, email or text;
- contain the applicant’s real name;
- be sent from a postal or email address to which the college can reply.

The request should be answered within 20 working days. The college must disclose if the information exists and must disclose if an exemption applies. If the information is already readily available elsewhere, for example on the college website or detailed within the Publication Scheme, then the college does not have to provide it again.

Breach of the provisions of the FOIA can lead to a case being brought before an Information Tribunal, or ultimately before the High Court. If information is refused as it is covered by an exemption, the college must explain why, including explaining any public interest, and explain the rights to an internal appeal and thereafter a complaint to the ICO.

The Protection of Freedoms Act, 2012 extended the scope of the Freedom of Information Act to provide greater transparency and created a new ‘right to data’ ensuring that all data published by public bodies are published in an open and standardised format so that they can be used easily and with minimal cost by third parties. Full details are available on the ICO website.

With emerging technologies it is essential to consider security, reliability and other risks as well as cost efficiencies to ensure that the risk of data loss is minimised as far as possible.
Cyber liability and e-safety

E-safety is an important area for colleges today, which have legal and statutory duties to safeguard the welfare of all students when making use of ICT. Colleges also have a legal duty in terms of health and safety legislation to protect staff, students and others from any reasonably foreseeable harm, as well as a common law duty of care towards staff, students and others.

One of the core areas of college inspection is behaviour and safety, which includes e-safety. Colleges must have regularly reviewed procedures to ensure that e-safety is included as part of safeguarding students.

Other legal issues include: cyber bullying, harassment, defamation, hosting liability and data protection. Each college should ensure that its staff and students use ICT facilities in accordance with the terms of an ‘Acceptable Use Policy’. It is recommended that this is issued to students at enrolment and to staff as part of their induction, and regularly updated. Staff and students should sign to say that they have received a copy and understand it.

E-safety law is wide-ranging and there are implications for many different areas of the law. JISC Legal has some helpful e-safety resources.

Cybercrime

Colleges can be affected by cybercrime such as hacking, fraud and theft, obscene content and harassment. Many of these are crimes prosecuted within the existing criminal justice structures. In addition some are classified as crimes under the Computer Misuse Act 1990.

Computer crime may be classified into the following categories: content-related crime; traditional crimes committed by means of a computer; attacks on computers and computer systems.

- Hacking, the introduction of viruses, and fraud and theft using computers are criminal offences.
- It is illegal to publish material that tends to deprave and corrupt those viewing it. Although material generally available in newsagents is unlikely to be illegal, such material is probably inappropriate for use on the college system.
- It is a crime to befriend a minor on the internet or by other means and to meet or intend to meet the child with the intention of abusing them. This has particular significance for staff in colleges who are deemed to hold positions of trust.
- The Protection from Harassment Act 1997 is intended to prevent ‘stalking’ and other similar unsocial conduct including by email or by other computer-related means such as discussion forums.
- It is an offence to send an indecent, offensive or threatening letter, electronic communication or telephone message.
Internet content can also contravene the rules enacted to prevent the making of anti-religious, racist or inflammatory and politically subversive or seditious statements.

**Copyright**

Colleges should ensure they have appropriate permissions to use any digital material, including software. Availability on a website does not make it automatically available for use, although sometimes use will be permitted for educational purposes. Where appropriate, licences should be obtained, although not all copyright holders sign up to collective license arrangements. Materials authored by students will not be owned by the college and the college will not have rights to use them. Specific written consent should be obtained.

In most cases, copyright infringement is dealt with as a civil matter where a court requires that the copying stops and damages are paid. Exceptionally, where there has been deliberate infringement for commercial purposes it may be a criminal matter.

**Online defamation**

Words are defamatory if they tend to reduce the reputation of an individual in the minds of ‘right-thinking members of society’ and a college can be vicariously liable for the consequences of the misuse of ICT systems by members of staff acting in the course of their employment.

Colleges providing discussion forums, blogs and other similar facilities should remind participants that the law of defamation applies in the online world. Also, they should ensure that they have well-understood, clearly publicised take-down procedures, in order to minimise the risk of liability.

Colleges have the right and power to monitor the use of their network and their facilities to prevent abuse. Staff and students, as far as is reasonably possible, should be made aware that monitoring may take place. This might be done in a variety of ways, for example in the form of clauses within a student contract or contract of employment or through the college’s Acceptable Use Policy.

**Sharing music**

Music or other file-sharing can be unlawful and students or staff who trade, swap or share music files illegally over the internet open themselves up to the possibility of civil legal action, or, where this is carried out commercially, criminal action.
Module review

Summary of key learning points

- Most FE colleges are statutory FE corporations incorporated under the 1992 Further and Higher Education Act, but there are various other possible legal structures. Since April 2012 colleges have been free to decide their own legal structures but should act with caution when considering change because of the wide-ranging implications. Any change of legal status should be based on a strategic appraisal, including a Structure and Prospects Appraisal.

- Colleges are charities and governors must act within the charity’s powers and objects, and make sure its assets are applied only for its charitable purposes.

- The college’s powers govern the relationship between the college and the outside world. If the college does something outside its powers, the act in question is invalid and void.

- The Instrument and Articles of Government set out the board’s constitution, procedures and its internal powers and responsibilities, and govern the college’s internal relationships. Governing boards can modify or replace their own Instrument and Articles, as long as they include the minimum requirements set out in the FHEA, and ensure that the board continues to be a charity.

- Boards are upwardly accountable to the government through the funding agencies, and ultimately to Parliament through the Public Accounts Committee and the Secretary of State. In extreme circumstances the Secretary of State can still intervene in the affairs of the college. Governing boards are also accountable to the courts through the process of judicial review.

- In law, students are regarded as consumers, and the student contract is fundamental to the relationship between the college and its students. The college therefore needs to have appropriate complaints and grievance procedures in place, as well as a disciplinary code. The board needs to ensure that any student union operates in a fair and democratic manner, and is accountable for its finances. Student unions with an income of over £100,000 must register with the Charity Commission.

- The board has specific legal responsibilities for ensuring that policies and practices for safeguarding children and young adults are in place. The law on this continues to evolve and governors should be briefed on how it develops. Boards should ensure that policies and procedures go further than the law and follow good practice.

- The technical development of information and communication channels continues apace and the law has developed alongside it. Two key interrelated areas affecting colleges are data protection and freedom of information, both regulated by the Information Commissioner’s Office. Cybercrime, e-safety, copyright and defamation are also areas where criminal and civil liability can be incurred.
The college is subject to a raft of general legislation and other types of legal duties and obligations that cover all organisations. Governance and the important areas of safeguarding and information and communication are covered in this module. Some of the other key ones, for example equalities, whistle-blowing and human rights are covered in the other modules.

Where next?

You have now completed work on Module 3: The Main Statutory Framework. If there are areas in which you need more guidance or information, they may be covered in other modules. Turn to ‘Check your current knowledge and skills’ in ‘Using the Materials’. This self-assessment questionnaire will help you to decide which modules or sections of modules may help to fill these gaps. Tick the useful sections for further study.

Putting it into action

We hope that working through this module has raised useful questions, increased your knowledge and awareness of issues and given you ideas for practical action that you would like to follow up.

Further reading

- Association of Colleges (AoC) and the Excellence Gateway websites for emerging guidance and case studies on legal structures for colleges.
- Education Act 2011, especially Schedule 4.
- The Charity Commission website for law and guidance applying to all charities.
- New Challenges New Chances, Further Education and skills system reform plan: building a world class skills system (2011) BIS. Chapter 6 is particularly interesting on new organisational and business models and new partnerships. Annex A outlines a structural appraisal tool.
- JISC legal information provides guidance on legal issues in relation to ICT.
- Information Commissioner’s Office for information on Data Protection and Freedom of Information.
- The Financial Memorandum with the college’s funding body.
- Audit Code of Practice for your college.
- Eversheds offers a legal guide to the Instrument and Articles, which can be purchased as part of, or separately to, their broader governance subscription services (governance@eversheds.com). Your college’s own law firm may also offer a fixed price governance advisory service.

- Key legislative documents for organisational and individual safeguarding practice
- Protection of Freedoms Act 2012: the Government made commitments to improve disclosure and barring services by scaling them back to ‘common sense levels’.
The Children, Schools and Families Act 2010 empowered Local Safeguarding Children boards to require safeguarding information to be provided to them.

The Equality Act 2010 replaced existing anti-discrimination laws with a new single Act. It protects students and staff from discrimination on the basis of protected characteristics.

The Children and Families Act 2014 makes significant changes to the 0-25 Special Needs system with effect from September 2014.

Working Together to Safeguard Children 2006 (updated in 2010) states that: “all agencies and individuals should aim to proactively safeguard and promote the welfare of children”.

Safeguarding Children and Safer Recruitment in Education 2007: a consolidated version of earlier guidance material, which looks at the recruitment and selection processes and checks, and duties for safeguarding and promoting the welfare of children in education.

Safeguarding Vulnerable Groups Act 2006 provided the legislative framework for the introduction of the Independent Safeguarding Authority and a new Vetting and Barring scheme.

Immigration, Asylum and Nationality Act 2006 made employers responsible for checking that employees subject to immigration control have leave to be in the UK and are allowed to work.

Every Child Matters: Change for Children, 2004 set out the national framework to build services around the needs of children and young people in order to maximise opportunity and minimise risk. It underpins five key outcomes: stay safe; be healthy; enjoy and achieve; make a positive contribution; achieve economic wellbeing.

Children Act 2004 placed a duty on each local authority to make arrangements with relevant agencies to co-operate to improve the wellbeing of children; and gave a range of organisations the duty to operate with regard to the need to safeguard and promote the welfare of children.

Education Act 2002 placed a duty on FE institutions including sixth form colleges, and independent schools, including academies and free schools, to carry out their function with a view to safeguarding and promoting the welfare of children and young people.

Human Rights Act 1998 mostly came into force in October 2000. It contains five articles of particular relevance to safeguarding:

- Article 3 – no one shall be subjected to torture or to inhuman or degrading treatment or punishment
- Article 5 – the right to liberty and security of person
- Article 6 – the right to a fair trial
- Article 8 – the right to respect for private and family life
- Article 14 – freedom from discrimination in the enjoyment of Convention rights

Privacy and Electronic Communications Regulations 2003 apply to how cookies and similar technologies for storing information are used on a user's devices.
- **Environmental Information Regulations 2004 (EIRs)** provide individuals with the right to obtain information about the environment, which a college must proactively disseminate as well as responding to requests from the public. Colleges must provide information relating to the “state of the elements of the environment” together with relevant policies, plans, agreements and reports.

- **INSPIRE (Infrastructure for Spatial Information in the European Community) Regulations 2009** are designed for sharing spatial data, such as plans and maps, to aid infrastructure development.

**Acknowledgements**

The first edition of these training materials was published in 2000. They have been periodically updated and this fourth edition has been published by the Association of Colleges (AoC) as part of its Governance Library, commissioned and funded by the Education and Training Foundation and is updated to December 2014.

We would like to thank all the authors and critical readers who have contributed to the 13 modules which constitute the complete set of governance training materials.

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