



## Module 11

### Human Resources

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 11, which sets out the college corporation's human resource (HR) responsibilities, explores the interface between governance and the management of staff, and describes the role of the clerk in ensuring governors receive the right level of information and advice. It details the corporation's and clerk's role in recruiting, managing and monitoring the performance of senior post holders including the principal.

Governing bodies can decide how they wish to manage their HR responsibilities within the framework of the instrument and articles of government and employment legislation. Most have a dedicated sub-committee, or they might use their finance and general purposes committee to establish the policies, and a remuneration committee to consider matters around senior post holders.

Services and staff may be engaged in different ways, and exactly how will be determined by the corporation's HR strategy, budget and local recruitment environment.

## Aims

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

- outline the governing body's main legal responsibilities towards the staff that it employs directly and other workers whose services it engages, and the responsibilities it delegates to the principal;
- explain the role of governors in establishing and keeping under review the terms and conditions of employment for staff;
- state the difference between governors' responsibilities for senior post-holders and for other staff;
- outline the governing body's responsibilities for staff learning, development, performance management and appraisals;
- describe employee relations mechanisms and communication methods with trade union representatives and officers;
- explain the role of governors in disciplinary, grievance and suspension procedures; and
- understand your role in supporting governors.

## Contents

Mark the sections you want to study and tick them off as you complete them.

To do	Done		
		Section 1	The governing body as the employer
		Section 2	Terms and conditions of employment
		Section 3	The governing body and senior post-holders
		Section 4	Employee relations
		Section 5	Disciplinary, dismissal, grievance and suspension procedures

## Working on the self-study activities

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**

To complete the activities in this module you will need the following:

- information about the different types of contracts that your college uses (permanent, fixed-term, variable hours, full-time, fractional, annualised hours, apprenticeship, consultancy, secondment, zero hours, senior post-holder, principal and chief executive);
- if applicable, the Trade Union Recognition Agreement, consultation, negotiation and dispute procedures and employee voice mechanisms;
- the 'employment framework' for staff other than senior post holders;
- the staff handbook (or at least copies of key policies and procedures: disciplinary; grievance; suspension; capability; recruitment and selection; staff code of conduct; remuneration; performance appraisal; equality; 'whistle-blowing'; learning and development; redundancy; employee relations; and health and safety);
- all policies, procedures and contracts relating to senior post-holders;
- names and designations of the senior post-holders.

# Section 1. The governing body as the employer

## Statutory and regulatory framework

### The Education Act 2011

In March 2012, the Department for Business, Innovation and Skills (BIS) issued a Modification Order effective from 31st March 2012 reflecting changes under the Education Act 2011. The 'freedoms' that it brought support the government's policy of de-regulation and self-regulation. The Modification Order applies to the Instrument and Articles Replacement Order 2007 [effective from 1 January 2008] and technical changes in the Modification Order of April 2010.

The Education Act 2011 and its Modification Order transformed the governance landscape and has placed colleges on a similar footing to charities operating within the independent/private sector. Whilst it relates largely to the school sector, the relevant section for our purposes here is '[Schedule 12, Further education institutions: amendments](#)' which lists the amendments to the Further and Higher Education Act (FHEA) 1992, including:

A further education corporation, designated institution or sixth form college corporation may now:

- dissolve itself
- modify its Instrument or Articles of Government.

Before the 2011 Act the Secretary of State could give a direction to a governing body under subsection (6) (c) relating to the dismissal of a member of staff; that is now not the case. While the Act did not change the key college powers given to them by the FHEA, it did remove the requirements for obtaining: consent from the 'relevant body' to form (or invest) in a company used to conduct an educational institution OR to provide education which is wholly or partly funded by the 'relevant body'; or prior consent of the 'relevant body' to borrowing by the college.

These changes created the freedoms for the corporation, as the employer, in line with good employment practice and legislation to determine all policies.

### Schedule 4, Instruments and Articles of Government

Prior to the 2011 Act, the Instrument and Articles of Government could only be changed with the consent of the Secretary of State in the case of FE colleges, or the Young Peoples Learning Agency (since replaced by the Education Funding Agency) in the case of sixth form colleges. Now, however, each corporation is empowered to modify or replace the Instrument and Articles, subject only to compliance with an amended Schedule 4 to the FHEA which prescribes the inclusion of the following matters:

- Corporation: number of members, eligibility for membership, staff/student members, parent members (sixth form colleges only) and appointment of members.
- Provision with regards to the procedures of the corporation and the college, in particular how the corporation may resolve for its dissolution and transfer of its property, rights and liabilities.
- Provision for there to be a chief executive and clerk.
- Respective responsibilities of the corporation, chief executive and clerk.
- The responsibilities of the corporation must include: the determination and periodic review of the educational character and mission of the institution and the oversight of its activities; and the effective and efficient use of resources, the solvency of the institution and the governing body and the safeguarding of their assets.
- Requirement that the corporation publishes arrangements for obtaining the views of staff/students on the matters for which the corporation is responsible.

- Provision permitting the corporation to change its name with the approval of the Secretary of State.
- Provision specifying how the corporation may modify or replace the Instrument or Articles, with a prohibition that any such changes must not result in the college ceasing to be a charity.
- Provision for copies of the Instrument and Articles to be available to members of the public, staff and students.
- Provision for the authentication of the application of the college seal.

While the Act does not require colleges to do anything, the less prescriptive Instrument and Articles afford flexibility (known as the ‘new freedoms’) over governance arrangements, for example to decide what exactly the governing body is responsible for, what it may delegate and to whom. The normal split of function on HR is:

- on the advice of the senior leadership team the governing body agrees the HR strategy and pay and conditions framework;
- once agreed, it is for the leadership of the college to implement it.

It is also good practice for the governing body, when setting the strategy, to agree a set of performance outcomes and benchmarks and periodically to monitor them.

## **Role of the chief executive**

The principal, as chief executive of the college (subject to any changes your governing body may have made to your colleges Instrument and Articles post the Education Act 2011), manages the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the corporation, of the pay and conditions of service of staff, other than the senior post-holders and/or the clerk, where the clerk is also a member of staff.

The principal is the accounting officer of the college. If the accounting officer is absent from the college for an extended period, the name of the person who will discharge the accounting officer’s responsibilities during the absence must be supplied to the appropriate funding agency.

The governing body should require the accounting officer to:

- Take personal, non-delegable responsibility.
- Assure them of compliance with:
  - the Instrument and Articles of Government for further education college corporations;
  - the financial memorandum; and
  - all other terms and conditions of funding.
- Appear before the Parliamentary Committee of Public Accounts to account for the corporation’s use of funds if required.
- ‘Whistle-blow’ the governing body to the Chief Executive of the funding agency if the accounting officer considers that a resolution is in breach of the financial memorandum.

While a finance professional, e.g. a finance director, may be appointed to take charge of the day-to-day running of the college finances, ultimate responsibility remains with the principal (appointed accounting officer) and these responsibilities cannot be delegated.

Other responsibilities of the principal might include:

- preparing annual estimates of income and expenditure for consideration and approval by the corporation;

- managing budget and resources within the estimates approved by the corporation;
- ensuring funds are used only for the purpose for which they are given and in line with any terms and conditions attached to them;
- appearing before the Parliamentary Committee of Public Accounts on matters relating to the college's use of public and college funds, where required; and
- advising the governing body of any action or policy under consideration that is incompatible with the financial memorandum.

## **Line between governance and management**

It is important to understand the two distinct and different roles of the governing body and the principal as outlined above, and to respect the principal's right to organise, direct and manage the college and lead the staff. As such, s/he will be responsible for applying the policies and procedures that form the framework, and providing information on whether the performance measures as agreed by the governing body have been met.

The distinct roles of the corporation, the principal and chief executive and the clerk are enshrined in the Instrument of Government. It may also be helpful to share role descriptions of the principal and chief executive, chair and vice-chair of corporation, chairs of committees and the clerk in order to re-enforce general understanding of where the boundaries lie.

## **Employees and other workers**

Workers services may be engaged by the college in a variety of ways:

- directly on a contract of employment;
- as self-employed consultants direct with the individual or through a third party, for example the Association of Colleges (AoC) Create;
- as an agency worker;
- as a contractor;
- as part of an outsourced service, such as IT, catering, cleaning, security; or
- on a shared services basis (services concentrated in one centre that many clients access by telephone or email).

While receiving more freedoms from central government control, colleges are simultaneously acquiring greater outward accountability towards their communities, students and employees. The changed governance landscape necessitates governors using their new freedoms strategically, not least as the employer, when looking at organisational design, business models and structures that best fit the delivery of their strategies, for example setting up companies, trusts or mutualisation models. Potential partnership models include the following:

- federations (or joint venture models with other colleges);
- working with an employer/groups of employers and an associated university to form University Technical Colleges (sponsored by the Department for Education);
- partnerships to deliver specific training opportunities, for example
  - working with National Skills Academies;
  - setting up specialist skills centres;
- working through Group Training Associations or Apprenticeships Training Associations to develop innovative Apprenticeships models.

A thorough appraisal of options would of course be necessary before making a decision about which one to follow. As the employer, governors would need to address the HR issues including:

- assessing the implications for staff;
- consulting staff and recognised unions;
- resolving staff terms and conditions;
- considering the Transfer of Undertakings (Protection of Employment) (TUPE), implications in respect of any transfer of business or service provision change; and
- considering the pensions implications and costs of transferring schemes, protecting the rights of individuals.

In April 2014, BIS published [‘Further guidance to further education colleges on ‘Structures and Prospects Appraisals’](#).

## **Specialist and independent advice**

Employment legislation and European Community (EC) regulations are complex and change frequently. Hence, it is prudent for the clerk with the SLT to ensure the governing body has access to professional advice from within the college and, when appropriate, externally. This will help manage the risk of mistakes that could lead to costly, time-consuming, reputation-damaging, morale-lowering litigation and avoidable settlements. As clerk, you might want to help the governing body consider the following actions.

- Ensure that the college’s HR function is headed up by an appropriately qualified and experienced individual. The Chartered Institute of Personnel and Development (CIPD) is the recognised body. Whether the college needs this level of support in house will depend on how the HR service is procured.
- Consider how best to exercise its responsibility in relation to the necessary policies, procedures and actions to form a legally sound and best practice employment framework. Corporations will adopt different forms of governance and some will choose to have an employment or other appropriate committee.
- Access external independent HR and legal advice when required, for example:
  - solicitors and barristers: as part of their tender to acquire business, some law firms offer a capped number of free training sessions. Others, for a fee, offer specialist governance ‘help lines’;
  - Association of Colleges (AoC): provides employment briefings, governance briefings, publications, helpline and conferences;
  - ACAS: provides conciliation, mediation and arbitration; advisory services on industrial relations and HR management; codes of practice on different aspects of industrial relations; and pre-Employment Tribunal individual case dispute conciliation.

## Activity

With the help of the college's HR director:

- Identify how many members of staff have been designated as senior post-holders. On what basis (e.g. permanent, fixed-term) were they engaged? Who are they and what roles do they undertake?
- Establish what policies and procedures exist for the management of senior post-holders. When were the policies and procedures last reviewed and next due to be reviewed?
- Identify how many members of staff the college employs directly and in what categories (e.g. permanent, full-time, fractional, fixed-term contracts, variable hours contract, management, professional academic, business support, apprentices, etc.).
- How do these figures compare with previous periods? Are staffing levels increasing, decreasing or stable and what are the reasons for any changes?
- Establish how many other workers' services are engaged (e.g. as consultants, contractors or via agencies)? What percentage of the total workforce does this represent? Has this human resource profile been achieved through strategic design, or has it simply evolved that way?
- Find out if benchmarking data is available to your college (e.g. from a commercial provider, AoC, HR network). If it is, how does your college compare with others of similar size? If there are significant differences, establish why this might be the case. Does this point to an area for review? Or is it a deliberate difference backed by rationale in the strategic plan?
- Find out what is the size (£) of the payroll. What is payroll expressed as a percentage of total income? How does that compare to others in the sector and to local colleges? Are your payroll costs higher or lower by comparison and if so why?
- Establish what is the annual staff turnover and main reasons for leaving the college.
- Establish from whom your external employment advice is sourced and what additional services they offer that governors might tap into, e.g. development sessions, update bulletins.
- Satisfy yourself that the current profile matches the overall strategy of the corporation in its future business plans, e.g. evolution of new curriculum areas.

## **Viewpoint**

No single human resource profile (mix of workers, types of contract, numbers) is universally correct, but your profile must be tailored to equip your college to meet its particular objectives and the requirements of its funding agency.

Selective use of benchmarking data can usefully point to areas for review. Balance the benchmarking data given to governors against the cost of producing it. Accurate human resource management (HRM) data is essential to enable governors to fulfil their responsibilities. However, because it can be expensive and time consuming to produce, governors need to be certain that the data they request are both absolutely necessary and sufficient in order to allow them to manage the task.

HR planning and setting budgets are intrinsically linked, hence the college processes of both HR and finance should reflect this.

As colleges begin to explore different college designs - e.g. federations - as part of the new freedoms, some are splitting the roles of principal and chief executive. If this option is pursued, care should be taken to provide clarity over role and responsibilities. In particular, governing bodies must specify which role will have the responsibility of 'accounting officer' (in accordance with the financial memorandum).

## Section 2. Terms and conditions of employment

### The employment relationship, HR policies and procedures

The employment relationship between the governing body and its employees is defined by agreements, including the contract of employment, together with terms implied by both common and statutory law. Other than for senior post-holders, the appointment process is managed by the principal and usually delegated to the director of HR (or equivalent). The Further and Higher Education Act 1992 made the role of the corporation to set the overall policy framework and manage the senior post-holders. Following the Education Act 2011, the Instrument of Government must make provision:

- For there to be
  - a) a chief executive
  - b) a clerk to the corporation
- About the respective responsibilities of the:
  - a) corporation
  - b) chief executive
  - c) clerk
- To publish arrangements for obtaining the views of staff (and students) for whom the body is responsible.
- About the procedures of the body and the institution.

### Contracts of employment

Your college will probably have a range of contracts and terms and conditions. For example, teaching staff terms and conditions are often different to support staff. As clerk, it will be helpful to familiarise yourself with the different workforce strategies your college uses. The main agreement is written in the contract of employment, which represent a legally binding offer by the governing body with acceptance by the employee, and are supported by payment. In addition to the written statement of terms or written particulars, a contract may also include a letter of appointment and other documents (such as staff handbook, policies and procedures).

It is important that those interviewing and recruiting are clear about the offer they are able to make and that the offer is in line with the framework the governors have agreed. As clerk, you need to be in a position to advise the corporation and should understand the different forms of contract. The college's HR service will provide governors with the technical support, but as clerk you still need to be alert to any arising issue. The main types of contracts are:

- A 'contract of service' issued by the corporation where an employee/employer relationship exists.
- Zero hours, although not a term recognised in law, is generally understood to mean "*a contract of employment in which there is no set minimum number of hours. Individuals on zero hours contracts may be engaged as employees or workers.*" (CIPD Factsheet)
- A 'contract for services' issued to consultants or external services.

### Employment framework

The corporation is responsible for setting and agreeing the pay and conditions for the senior post-holders and clerk, and setting a framework for the pay and conditions of service of all other staff.

The role that the governing body plays is to help define the overall HR policy, i.e. specify how the college will fulfil its obligations towards its employees, define its philosophy and values as an employer and ensure compliance with UK employment legislation, EC employment regulations and UK official codes of practice, e.g. [Advisory, Conciliation and Arbitration Service](#) (ACAS) and [Equality and Human Rights Commission](#) (EHRC).

The values governors select should reflect those of its particular college and will be specific to it but might touch on:

- equity, openness and transparency;
- the belief in a joint responsibility for learning and development and that effective knowledge management can provide a route to college success;
- a high performance culture (e.g. with performance indicators, service level agreements, probation, discipline, capability, appraisal, performance-related pay, employee of the month and suggestion schemes);
- promoting a good work-life balance (provision of a healthy, safe and, so far as is reasonably practicable, a pleasant working environment);
- the style of employee relations; and
- collaborative working.

Employment policies might include:

- recruitment and selection;
- equality and diversity;
- disciplinary matters for staff and senior post-holders
- grievance for staff and senior post-holders
- redundancy;
- reward management;
- learning and development, sometimes referred to as human resources development;
- employee relations and employee involvement (trade union recognition);
- health and safety;
- anti-bullying and harassment;
- whistle blowing and [Public Interest Disclosure Act 1998](#)
- use of email, intranet and internet;
- staff code of conduct (including dress code and customer service);
- safeguarding;
- performance management;
- pensions.

HR procedures specify how to interpret the guidelines on people management in the HR policy when issues actually occur. Procedures are concerned with the practicalities of taking action and hence tend to be more prescriptive, e.g. who will handle the issue, at what stage, within what timeframe and what the possible outcomes might be.

## Activity

Ask for a copy of the policies and procedures that collectively constitute the employment framework that the governing body is responsible for determining (which are likely to be available via the intranet rather than as hard copy); there may also be a staff handbook.

Read the policies on discipline, grievance, capability, equality, whistle-blowing and health and safety as a minimum.

Ask for and read all policies and procedures relating to senior post-holders.

- Do the existing policies and procedures support the framework that the governing body has put in place and reflect the employment relationship that it seeks to have?
- Do the policies and procedures clearly show the date that they were approved and when they are due to be reviewed? Are any overdue for review?
- As a governing body, are you collectively clear on the differences of policies/procedures for senior post-holders and the remaining staff group?
- Following the Education Act 2011, corporations are responsible for: “*publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities.*” How is this done by your corporation?

## **Viewpoint**

The governing body determines the employment relationship it wants with its employees, its values and preferred culture, through the employment framework that it creates. It understands the relationship in this framework between governance and management.

HR policies provide guidelines on handling issues consistently, fairly and in line with the college's values. They go some way to reassuring governors that irrespective of where a worker is located within the college, they will be treated in accordance with the same frameworks.

While specific HR policies (e.g. grievance, disciplinary, equality) will be brought to the governing body for approval, the initial detailed research and drafting will be undertaken by the HR function and will be presented (by the principal or the HR director) to governors. The detail is the province of the management, whilst the overall direction is that of the governing body.

Overly prescriptive procedures should be avoided, although some line managers prefer the certainty they give. Failure to comply exactly with your own procedure will work against the employer in an employment tribunal and the more detailed it is, the greater the chance of this occurring. All staff required to implement procedures should first be trained in how to do so properly.

Governors might wish to ask, when employment procedures and policies are brought to them for approval, whether they comply with current UK employment legislation, European employment regulation, and Codes of Practice, for example those produced by the Health and Safety Executive, ACAS and the EHRC (see the Further Reading section at the end of this document for links).

By ensuring that sound employment policies and procedures have been produced, properly consulted on and communicated to all appropriate workers, the governing body is ensuring that it is meeting its legal and moral obligations and has created an effective employment framework that reflects the type of employer it chooses to be.

The employment framework is organic by nature but it can be helpful to the governing body (especially to new governors who will not have been present when all the current policies were approved) to list what collectively constitutes the 'employment framework' approved by the governing body that it requires the principal and chief executive to operate within. This framework can then be brought to the governing body for periodic review to ensure that it remains fit for purpose in the changing landscape. The governing body should then leave the principal to manage within this framework, requesting periodic monitoring reports.

Through the SPH disciplinary procedure it is important to have in place a clear policy and process for handling complaints against the principal and, as clerk, you will need to be confident in advising the chair/governors.

## **College employment**

Human resource planning (HRP), also known as 'workforce planning', is an essential part of HR management, budget forecasting and business planning. It enables the college to secure competitive advantage by recruiting, developing, retaining and promoting capable people. As such, it is within the province of governance to take an overview of HRP and monitor the implementation of the action plan, while leaving the principal to manage the day-to-day processes. The HRP process requires quantitative (sometimes known as 'hard') analysis, i.e. how many people will be required, by when, in what areas, in

order to realise the business plan, as well as qualitative, or 'soft' analysis, i.e. what behaviours and values are required to enhance the governors' desired college culture.

### **Recruitment and selection framework**

The corporation recruits and selects all senior post holders and clerks. In some colleges this may be just the principal, in others it could be three or four staff including the vice principal and head/s of finance, and quality and the clerk. The Instrument and Articles of the college will set down the number of senior post-holders. Also the college may own companies or academies where the memorandum sets out that governors will be involved in the recruitment of the chief executives of the business(es) and/or head teachers of the school(s).

Governors are required to approve an employment framework within which the principal manages non-senior post-holders. The recruitment and selection framework might address the following:

- defining requirements (using HRP analysis);
- defining individual job requirements, for example job role description, person specifications, salary (for further information see the section below on terms and conditions);
- identifying likely sources for the best candidates, for example hard-copy publications, on-line advertising, Jobcentres, agencies, specialist recruitment consultants, head hunter organisations;
- sifting candidates by matching applications to a person specification, interviewing, applying relevant tests, (e.g. personality, ability, aptitude);
- re-engagement checks, including:
  - compliance with Home Office and Criminal Record Bureau, child protection and safeguarding requirements; checking Companies House with regard to previously self-employed workers;
  - identity, qualification and address checks;
  - references; and
  - occupational health checks.
- confirming the offer and issuing a contract of employment;
- induction; and
- probation.

### **Talent management**

*"Talent management is the systematic attraction, identification, development, engagement, retention and deployment of those individuals who are of particular value to an organisation, either in view of their 'high potential' for the future or because they are fulfilling business/operation-critical roles."* (CIPD Fact sheet)

Having acquired the talent, it is important to manage and develop it (see below for further information) and capitalise on it when considering succession planning.

## Activity

- Does the college have a recruitment and selection policy?
- Does the college profile its applicants and monitor against the local population, existing staff profile and promotions. (For more information, see under 'Equality' below, about the Single Public Sector General Equality Duty.)
- Does the college train those, including governors, who are expected to be involved in recruitment and selection processes in how to perform this task?
- What child protection and safeguarding policy and procedures are in place in your college?
- How does your college compare when benchmarked against others, for example in terms of staff turnover? Is there a systematic college exit interview system that supplies reasons for turnover in the different parts of the college, for example promotion to posts in other colleges, to secure higher pay, better working conditions, to escape bullying or inappropriate management styles?
- Is there a procedure in place to ensure compliance and safeguard the college?

## Viewpoint

Engaging and terminating agency workers is more complex since the advent of the Agency Workers Regulations (AWR) 2010, which require an increased information flow between the hirer, the agency and the agency worker, in addition to introducing significant rights and protections for agency workers.

College exit interviews can provide the employer with useful data to correct any college problems that may not have previously come to light and improve future recruitment and selection. The AoC Workforce Benchmarking Data, which includes staff turnover and sickness absence rates, may help the employer with future workforce planning, and to ascertain whether its turnover is out of the ordinary.

Given the frequency of change to employment legislation, it is imperative that governors carefully and frequently monitor the relevance and compliance of their HR policies and procedures utilising the professional advice available to them via the college HR function, AoC and/or SFCA helpline (available where the college has paid membership subscriptions), solicitors and barristers.

## Reward management

The corporation is responsible for the 'grading' and 'determination' of pay for senior post-holders. In addition, it sets the framework for the pay and conditions of service for all other staff.

The governing body is free to accept, adapt or ignore the advice emanating from the annual negotiations between the AoC, the Sixth Form Colleges Employers' Forum (SFCEF) and the recognised trade unions, unless there is a specific reference to the recommendations of these bodies in the contract of employment. In considering any advice, it will need to be cognisant of what it can afford to pay, and the need to attract, retain and motivate employees.

The definition of reward management is that part of HRM that is concerned with managing remuneration (formally known as 'compensation and benefits').

*“Reward management is concerned with the strategies, policies and processes required to ensure that the value of people and the contribution they make to achieving college, departmental and team goals is recognised and rewarded.”* Armstrong’s Handbook of Human Resource Management Practice (2014).

Reward management lays emphasis on proactively utilising remuneration as a tool for furthering strategic business aims and values (e.g. fairness, equity, consistency, transparency and the value of return to the college created by employees) and is at the core of employment relationships.

Total reward management highlights the importance of all aspects of reward: financial (base salary) and non-financial (training, development, recognition, being given space and trust to achieve). While total remuneration is the value of all earnings, together with other benefits received, for example development and learning, sick pay, pensions (usually with the Local Government Pension Scheme or the Teachers’ Pension Agency), paid holiday, subsidised canteen, subsidised gym membership, season ticket loans, or company car.

Flexible benefits (sometimes known as ‘cafeteria benefit systems’) recognise that employees need different things at different points in their life (e.g. more annual leave in return for less cash benefit or vice versa) and allow choice up to a certain amount from a set menu of benefits. Allowances may be paid on top of basic pay (e.g. a regional cost-of-living allowance, subsistence, overtime payments). The governing body must ensure that it pays at least the national minimum wage.

In developing a reward framework, corporations will need to create a reward strategy setting out how it will support the achievement of its business objectives through its reward policies and procedures.

The corporation may wish to address the following in its reward policies:

- How it will ensure equal pay for work of equal value.
- How (and if) it will publicise its reward structure to employees for the sake of transparency.
- What mechanism it will use to ensure that its pay compares reasonably with what else is available in the locality (market pricing\*).
- Whether it wishes to apply a ‘market rate’ to posts that are difficult to recruit. \*\*
- What elements it wants to incorporate in ‘total reward’.
- Whether it wants to use ‘contingent rewards’. \*\*\*
- How it will grade posts (e.g. by job evaluation) and determine pay structures. \*\*\*\*
- For how long it will provide protection, for example after a redeployment or a job evaluation ‘downgrade’. While there is no legally defined period of time, it is common for a college to choose between six months and two years. Indefinite pay protection would run the risk of an equal pay claim.

#### Notes

\* **Market pricing:** systematically collecting pay data for similar roles in other colleges in order to identify the ‘market rate’ or ‘market price’ for job roles and thereafter tracking any changes. The corporation then needs to decide where it wishes to position itself: lower, median, upper quartile etc.

\*\* **Market rate:** there may be occasions when the college will wish to pay more than its usual reward systems assessment, e.g. to attract and retain a particularly talented individual and/or fill a post that is difficult to recruit to. However, it should be remembered that market rate analysis is not a precise science and an employer should collect a reasonably sized sample of data on similar jobs and only use the results for guidance.

\*\*\* **Contingent and variable pay:** contingent payments are those financial rewards over and above base pay earned through exceptional performance or acquisition of a new competence. Schemes include:

Performance Related Pay (PRP); Skill Based Pay; Competency Based Pay and Contribution Related Pay. They may be college wide, team-based or individually based. Where such payments are not consolidated into base pay, they are termed 'variable pay'.

To be successful, such payments must be worth having, assessed fairly and consistently, and be within an individual's power to achieve, for example changing behaviour, enhancing skills, being more productive. There needs to be absolute clarity over exactly what the individual needs to do to achieve the reward. The disadvantages of this type of reward are that not everybody is motivated by money alone, it may de-motivate those who do not receive it, and it can be bureaucratic and costly to administer.

\*\*\*\* **Job evaluation grading of posts and pay structures:** a job evaluation scheme will help the governing body to ensure that it meets its 'equal pay for work of equal value' obligations. Job evaluation systematically ranks jobs within a college through the analysis of job roles, and provides a platform from which to design an equitable grading structure. A salary modelling process can then be used to establish what level of pay the college can afford to attribute to each grade. The grade attributed will depend on the size of the job. Grading provides the employee with the opportunity to progress financially within a grade on a 'time served' basis or linked to performance. Alternatively to a grade, a college may opt for a 'spot grade'/'spot rate', i.e. no pay progression is built in, although an annual 'cost of living' increase may be applied.

In approving grade and pay structures, governing bodies will provide a considered framework within which its pay policies can be implemented by the principal. In so doing, the governing body should consider:

- its college culture;
- the need for equity, transparency and clarity;
- flexibility to apply market grades; and
- the need to control payroll costs.

In determining its grading structure, i.e. the hierarchy of grades/bands under which to group its posts, the governing body should be advised (normally by the HR director) about the options (e.g. multi-graded; broad graded; broad banded; job family; and single column pay spine) against what it is trying to achieve. Michael Armstrong describes these options as follows in his Handbook of Human Resource Management 11th edition:

**Multi-graded** : a sequence of ten or more job grades, within a narrow pay range (20-40 per cent), with progression normally linked to performance.

**Broad graded:** a sequence of six to nine grades, within a fairly broad pay range (40-50 per cent), with progression linked to contribution which may sometimes be controlled by thresholds.

**Broad banded** : a series of five to six broad (50-80 per cent) pay bands with progression linked to contribution and competence.

**Job ('career') family** : separate grade and pay structures for 'job families' (i.e. groups containing similar jobs) with progression within these groups based on competence and/or personal contribution.

**Single column pay spine:** a series of incremental pay points covering all jobs, with personal progression linked to individual competence and/or contribution.

### **Benchmarking**

In order to determine its pay structure, the governing body should be advised about the different levels of pay for jobs or groups of jobs by reference to their respective worth. It can rank the posts internally via job evaluation and externally via employers' association guidelines, market rate surveys, or benchmarking with other 'like' colleges. The director of HR will usually provide this advice.

## Single, spinal–column pay structure

The general shift in the FE and skills sector has been towards a single, spinal-column pay structure covering the whole college (excluding senior post-holders), and harmonisation of terms and conditions wherever affordable.

## Senior post-holders

Governors may have responsibilities for determining the pay and conditions of service of senior post-holders. Some governing bodies elect to create a remuneration committee to look at the detail of setting senior post-holders' base pay, whether contingent pay is appropriate (and if so, what type of scheme) and what benefits might apply.

### Activity

- As clerk, it may help you to advise the governing body if you understand what a 'market rate' policy is - talk to the HR director to see how the college policy is set.
- Establish whether there is a pay protection policy. Has it been reviewed against the Equality Act 2010?
- What system does your college use to rank and grade its posts (e.g. by job evaluation)?
- Has your college conducted an equal pay audit? If not, how does the corporation, as the employer, know that it is not falling foul of equal pay for work of equal value?

### Viewpoint

Depending on the college's financial circumstances, market rates should be reviewed at reasonable intervals to ensure that they are still relevant and to avoid claims under equal pay legislation.

Best practice demonstrates that pay scales within grades should not be too lengthy, since if progress up the pay scale is to be on a time-serving basis only, it may constitute age discrimination.

What framework for determining 'pay' and 'grading' should the governing body opt for, in order to maintain competitive rates of pay that attract, retain and motivate staff and support the overall realisation of college goals?

## Health and safety

The Health and Safety at Work (HASAWA) Act, 1974, places specific responsibilities on the employer to manage health and safety at work effectively. This includes the management of resources, communication, documentation of procedures and systems; monitoring performance and implementing systems for improving knowledge, attitudes, motivation and a commitment to a safety culture. As the employer, the governing body will be required to produce evidence of establishing, operating and reviewing its health and safety management systems.

A governing body must ensure that:

- It produces (and periodically reviews) a health and safety policy. There must be documented arrangements to ensure the implementation of effective planning, control, monitoring and

review of preventative and protective measures. These arrangements should have regard to the nature of the college's activities and size of its operation.

- It undertakes suitable and sufficient assessment of risk, and ensures that the findings are followed through and recorded on the main risk register to assist with such tasks as capital planning and setting budgets.
- It appoints one or more 'competent persons' to help it comply with its statutory obligations.
- It provides adequate health and safety training to staff at induction and throughout their employment in the college.

The [Corporate Manslaughter and Corporate Homicide Act, 2007](#) made it possible for colleges to be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care. It also clarified criminal liabilities of companies where a serious failure in the management of health and safety resulted in a fatality.

While prosecutions will be of the corporate body as opposed to individuals, the liability of the directors, board members and others under health and safety legislation and criminal law remains unchanged, so the 'corporate body' (governing body) and individuals may still be prosecuted in respect of separate health and safety offences. Note that Section 37 of the Health and Safety at Work Act continues to allow for the prosecution of individual directors and other senior officers following an offence by the 'body corporate'.

## Activity

- **Communication:** does your college have any safety representatives, e.g. a safety committee? For further information, see the Safety Representative and Safety Committee Regulations, 1977, the Health and Safety (Consultation with Employees) Regulations, 1996, and the Health and Safety Executive's guidance document (INDG232) entitled [Consulting employees on health and safety](#).
- **Health and safety documents, procedures and systems:** has the governing body approved a health and safety policy? If so, when is it due for review?

### Monitoring performance

- Does the governing body, or one of its committees, receive regular reports and a health and safety management plan at least termly to enable it to monitor the effectiveness of health and safety in the college? Does the college's 'competent person(s)' attend these meetings to present, and to answer governors' questions?
- Does the governing body receive an annual health and safety report containing data, including accident statistics and trends, to enable it to ensure compliance with its legal responsibilities?
- Does the governing body employ, or have access to, a 'competent person' to assist it and the principal to comply with their health and safety responsibilities? Note that it is expected that governing bodies will have appointed a principal who has an understanding, or the commitment to acquire the necessary understanding, of the impact that health and safety has on the business.

The Institute of Directors and Health and Safety Executive (HSE) has published guidance entitled [Leading health and safety at work: Leadership actions for directors and board members](#), which governors may find useful in managing their health and safety responsibilities in connection with the Corporate Manslaughter and Corporate Homicide Act, 2007.

If you want to know more about health and safety generally, speak to your principal or health and safety manager, or visit the [HSE website](#).

## Viewpoint

In reality, the governing body will need to delegate specific health and safety tasks to others, but retains ultimate responsibility.

Good links between the HR and health and safety functions are essential to ensure that the employer meets its equality and occupational health obligations, for example in relation to disability, new or expectant mothers.

It is good practice for the governing body to receive an annual health and safety report and a termly report that might usefully include:

- a summary of all accidents, incidents, near-misses, investigation findings and follow-up actions. Specific reference should be made to items that had to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, 1995 ([RIDDOR](#));
- the cost of accidents;
- a record of safety monitoring systems, for example safety tours, audits, inspections, 'spot checks' and the outcomes;
- details of health and safety training provided;
- risk assessment information, general and specific, for example display screen equipment, manual handling, Control of Substances Hazardous to Health regulations ([COSHH](#));

A health and safety policy should include: a general statement of intent, college details for achieving health and safety, arrangements and appendices. This policy should cover:

- general and specific legislation relevant to your college;
- responsibilities of the governing body, principal, competent person, staff and others;
- arrangements for health and safety including risk assessment, accident reporting, first aid, fire and other emergencies;
- any specific hazards and the precautions that need to be taken by workers at, and visitors to, the college;
- consultation procedures, for example safety representatives and a safety committee;
- methods of communicating health and safety information and training workers; and procedures for visitors, contractors, and the public.

The Homicide Act, 2007: the governing body should keep its health and safety management systems under review, as outlined above. In particular, it should monitor the way in which they are managed by the principal and senior management team.

Although not a requirement, consideration might be given to designating one governor as the governing body's health and safety champion, while acknowledging that this does not affect collective responsibility.

## Learning and workforce development

### Learning and development strategy

*“Learning and development strategy is an organisation strategy that articulates the workforce capabilities, skills or competencies required, and how these can be developed, to ensure a sustainable, successful organisation.”* (CIPD Factsheet)

The governing body needs to ensure that the skills, knowledge, and capabilities of its staff are developed to enable it to achieve its goals, motivate, nurture talent, aid succession planning, improve services to students and attract high-calibre job applicants.

As clerk, it is important that you are able to support the governing body access their development needs. The governing body should not forget its own development needs in order to ensure that it is (and remains) capable of meeting its duties and responsibilities, collectively as the governing body and individually as governors.

Ideally, the clerk might conduct annual individual skills audits with governors, devise personalised continuing professional development (CPD) plans for them and produce board wide development plans for the corporation. The governing body needs to allocate appropriate resources to deliver the learning and development strategy for its staff and itself.

The governing body therefore will want to ensure that there is Learning and Development Strategy - sometimes referred to as Human Resource Development (HRD) or Workforce Development Strategy – and that it is linked to its business strategy. This strategy should identify:

- learning and development needs (e.g. learning needs and analysis of skills gaps);
- what it aims to achieve;
- what priorities (local and national) it will (must) support;
- how those priorities will be supported;
- who is responsible for delivering which objectives;
- the resources needed;
- how evaluation will take place;
- how the return on investment will be calculated; and
- how talent will be identified, managed and retained (see above).

Some colleges find the framework provided by the quality mark ‘Investors in People’ (IiP) a useful tool in developing, implementing and subsequently evaluating its learning and development strategy.

### Modes of learning and development

Methods of learning and development can be selected to best suit an individual’s learning style, time and resources and learning objectives. For example, specific one-to-one ‘on the job training’; secondment; work shadowing; internal or external short courses; formal training leading to a qualification; self-directed learning; e-learning; pre-meeting briefings by college experts; and blended learning.

### The Education & Training Foundation

The Education & Training Foundation was created in 2013. Its areas of priority are:

- Professional Standards & Workforce Development
- Leadership, Management & Governance
- Research & Innovation

- Vocational Education & Training

The Foundations aims are to:

- Raise the quality and professionalism of teachers and trainers across the FE and training sector.
- Deliver consistently excellent outcomes for students and employers.
- Support colleges and training providers of all types in achieving their own improvement objectives.
- Promote this vibrant sector to employers and national influencers, and raise awareness of its vital role in rebalancing the economy.

#### Priorities for 2014-16

- Improving the teaching of English and Maths, and embedding these key subjects within the curriculum.
- Supporting the sector in bringing standards of leadership, management and governance up to the level of the very best.
- Developing a Vocational Education Training (VET) system, based on genuine partnership between providers and employers.

#### The ETF and Professional Standards & Workforce Development

The ETF is committed to:

- Professionalising the sector workforce.
- Attracting the brightest and the best people to teach in the sector.
- Enabling the sector to take the lead in improving the quality of teaching and learning.

It aims to achieve this by working with stakeholders, leaders and practitioners in a range of settings across the sector to review professional standards, drawing on research into practice both in the UK and internationally; enabling teachers and trainers, supported by their employers, to shape their own professional learning and development; encouraging informed debate about modern approaches to professionalism.

#### Workforce Data - The Staff Individualised Record (ILR)

The ETF has taken over the role of annually collecting sector workforce data. Governing bodies can use the ILR results to benchmark their activities against other providers.

#### Support for those joining the sector as teachers

The ETF hosts the 'FE Advice Service' which anybody considering teaching in FE, wanting to find out how to do so, about financial support and/or the latest bursary information can access by telephone/on-line.

#### Teaching and Trainers Professional Development – Foundation Online Learning

The Foundation Online Learning service provides access to a free resource for teachers and trainers looking to improve their leadership and management skills, providing access to online learning, discussion forums and shared resources.

#### The new professional standards for teachers and trainers in England

In addition to its workforce development activity, the ETF was charged with reviewing the current professional standards for teachers, tutors and trainers in the lifelong learning sector, which were developed in 2007.

The standards are being updated to dovetail with the 2013 Education and Training Qualifications ensuring consistency of expectations for trainee teachers in the Further Education sector. ETF undertook an online consultation about the standards with its stakeholders in 2013/14.

### **Activity**

- As clerk, you will need to be able to advise your board on senior staff appointments. So what are the development and learning priorities for your college's senior post-holders? Have they been discussed, agreed and recorded at senior post-holders' appraisal and development meetings? Have they been costed and placed into the budget?
- What comments were made in your last Ofsted inspection about staff skills and learning and development opportunities? Have any criticisms been addressed? Are all staff needs (and not just those of teaching and learning staff) addressed in your strategy? As clerk, do you feel that recent papers to the governing body have adequately covered the issues? If not discuss with the head of quality.
- Does your college complete and return the Individualised Staff Record (ILR) to the Education & Training Foundation? Does your governing body receive reports on the results and/or use it for benchmarking purposes? If it doesn't, as clerk have you drawn SLT attention to this issue?

### **Viewpoint**

The Investors in People (IIP) award is by no means essential, nor is it being endorsed here, but it can provide a useful best practice framework for your college's learning and development strategy. IIP also flags a commitment to CPD for existing staff and would-be job applicants.

Governors will be judged in an Ofsted inspection on how well professional development has been deployed to improve teaching and learning and hence may wish to:

- agree key performance indicators (KPIs) for the acquisition of appropriate qualifications, in a timely manner, by its workers; and
- link satisfactory completion of probationary periods, pay progression and promotion to the timely acquisition of relevant qualifications and undertaking CPD.

Working with the Education & Training Foundation could be interpreted as implying a commitment to standards of professional development and qualifications. For individuals the emphasis will be on engaging with CPD and acquiring relevant qualifications. The outcome of both should be improved teaching and learning.

### **Performance management and appraisal**

Your governing body will need to be assured that there are active performance management schemes in place. There are different models. The human resources management (HRM) system of performance management attempts to improve performance systematically by:

- integrating overall college performance objectives with departmental, team and individual objectives;

- agreeing SMART targets;
- reviewing progress towards achieving those targets; and
- taking any necessary steps to address slippage and adjust actions for unplanned, external environmental change.

Performance management differs from performance appraisal. The former is an holistic, whole-college approach to setting, monitoring, reviewing and adjusting college, team and individual targets in an integrated way in order to meet the overall mission. Performance appraisal, however, is more narrowly focused on the individual employee's performance over the previous year, agreeing targets for the next year, in-year reviews and an individual development plan linked to the achievement of the overall college plan.

For schemes to be successful, it follows that the appraisee should take a proactive role in the process and joint responsibility with the appraiser for making a success of the exercise (i.e. it should not 'be done to them'). The appraisee should give thought to likely targets, development and learning opportunities, and maybe undertake a self-assessment prior to the interview to identify areas for development.

The appraiser should normally be the line manager, given their first-hand knowledge of the appraisee's performance and abilities.

When determining the performance appraisal framework, governors need to reflect what it is that they are trying to achieve in their performance appraisal policy statement. This might include: that all employees are clear of what their role is, what they are expected to deliver and by when, what 'success' will look like and what support they might expect to help them deliver, in order that the college achieves its overall objectives.

The governing body needs then to ensure that its performance appraisal procedure describes how this is to be achieved in practice, without being overly prescriptive or bureaucratic, allowing time out of the normal routine for frank, two-way discussions and feedback. Such a procedure might include:

- preparation, for example to complete a self-assessment, locate the current job role description and person specification, look for suitable and affordable development opportunities, carry out observations of key tasks;
- who the appraiser will be (normally the line manager);
- how the appraisal interview should be conducted, e.g. any standard agenda items, venue to be somewhere that avoids interruptions, expected behaviours;
- outcomes, for example agreed SMART targets and an agreed personal development plan;
- in-year review;
- when to repeat the performance appraisal cycle;
- the timescale of the performance appraisal cycle; and
- the appeals procedure.

## Activity

- Obtain a copy of your college's performance appraisal policy and procedure for staff other than senior post-holders. Does it successfully link individual targets and development plans to those of the overall college? If so, how?
- When was the scheme approved? When is it due to be reviewed? Does the governing body receive reports on the scheme's effectiveness? Is it still fit for purpose in the current governance landscape?
- If a grading scheme is used, do the grade distributions across the college appear reasonable? Have all staff (including fractional staff) been appraised in accordance with the performance appraisal cycle. If not, why?
- Does the governing body receive (anonymised) reports on the use and outcomes of staff probationary, capability, disciplinary and classroom observation procedures?
- What data does the governing body require - and what actions does it take as the employer - to ensure that teaching and learning are improved through vigorous performance management and professional development?

## Viewpoint

Individuals should only be subject to the performance appraisal scheme if they are employees. Hence the performance of those on probation will be assessed under the probationary procedures, until they are confirmed in post. (The performance of those workers engaged via an agency or as contractors will be assessed via different arrangements.)

It is imperative to the success of such schemes that the governing body ensures that the principal has consulted widely on the draft before implementation; is seen to be leading its implementation from the top; launches it with adequate training (and periodic refresher training); and monitors the scheme to ensure that everybody receives their appraisal on time and that agreed outcomes are followed up.

Performance appraisal schemes should have clear links to improving teaching and learning and to the overall college quality assurance system.

As clerk, it is important to distinguish your role. The college HR service will provide advice to SLT and they will put forward the framework to governors - your role is to advise the chair and board on whether it meets best practice.

## Equality and safeguarding

### The Equality Act 2010

The [Equality Act 2010](#) consolidates previous equality legislation under one single Act, thereby simplifying and rendering it easier to follow as well as developing existing legislation to make it more effective. However, while many former concepts of discrimination remain the same, some have been added.

**Protected characteristics:** the protected characteristics (i.e. the various strands of discrimination) under the Act include: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation; marriage and civil partnership.

**'Responsible body':** the governing body is the 'responsible body' under the Act in respect of further education colleges in England and Wales.

**Responsibility for acts of discrimination, harassment and victimisation:** the governing body is legally responsible for acts of discrimination, harassment and victimisation undertaken by its workers during the course of their employment as well as for its 'agents' (such as contractors, consultants, agency workers taking action on its behalf), irrespective of whether it knew or approved of those acts. If, however, the employer can show that it took 'all reasonable steps' to prevent its employees and agents from not complying with the law, it will not be held responsible. Irrespective of whether the employer is also liable, employees/agents of a further education college are personally liable for their own acts of victimisation, discrimination or harassment, even if they were unaware that their actions were illegal, unless instructed that they were not illegal by the employer or principal. In that case, the employer's or principal's action of making a false statement to get the employee/agent to act unlawfully will constitute a criminal offence and result in a fine .

**Complaints procedure:** in the event that an individual believes that they have been discriminated against, it is important that the governing body has ensured that there is a complaints procedure in place, that has been publicised, that can be used to assess discrimination, harassment and victimisation complaints, and that there have been attempts to resolve the dispute outside court.

### **The Equality Act 2010 (Specific Duties) Regulations 2011**

The Equality Act 2010 (Specific Duties) Regulations 2011 came into force in September 2011 and are intended to facilitate public authorities' compliance with the general duty to publish equality information. Governors need to be aware of the Public Sector Equality Duty and the need to have due regard to it when making decisions about any of the college's functions, including HR, financial and college decisions.

These regulations require public authorities, (including learning and skills colleges) to:

- publish equality objectives at least every four years; the first equality objectives were to be published by 6 April 2012; and
- publish information to demonstrate compliance with the general equality duty by 31 January 2012, and at least annually thereafter. This will include information relating to employees (for public authorities with 150 or more staff) and others affected by their policies and practices. There will be flexibility for public authorities to decide what information to publish.

**'Equal pay':** equal pay was addressed by the Equal Pay Act 1970 and has been addressed further by the Equality Act 2010. There has been considerable litigation on this issue involving local authorities and the health service and this is likely to extend to the FE and skills sector.

An equal pay audit may help your college identify likely issues which, if found, can be addressed before anybody need resort to litigation. It can be expensive to address such imbalances. It is imperative therefore that HR and finance professionals liaise throughout to ensure that appropriate and timely financial planning takes place to manage the situation.

## Safeguarding

### Definition

“Protecting children from maltreatment; preventing impairment of children’s health or development; ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best outcomes”. ([Keeping children safe in education Information for all school and college staff April 2014](#)).

Anyone under the age of eighteen is classified as a child.

Abuse might be physical, emotional, sexual and/or arise from neglect.

Examples of specific abuse include: Child sexual exploitation; bullying (including cyber bullying); domestic violence; drugs; fabricated or induced illness; faith abuse; female genital mutilation (FGM); forced marriage; gangs and youth violence; gender based violence; mental health; private fostering; radicalisation; sexting; teenage relationship abuse and trafficking.

### Statutory framework

The main statutory guidance in this area of governors responsibility is contained within, *Keeping Children Safe in Education*.

Colleges contribute to a wider safeguarding system (comprising Police, Social Care, health services etc.) for the protection of children, described in the statutory guidance *Working Together to Safeguard Children 2013*.

### The Governing Body should ensure that:

- **Legislation** – The corporation complies with its duties under the legislation.
- **Statutory Guidance** – It shows due regard to the [Keeping Children safe statutory guidance for schools and colleges. April 2014](#) when make safeguarding policies, procedures and training in their institutions effective and legally compliant.
- **Inter-agency working** - The institution contributes to inter agency working as outlined in the statutory guidance [Working together to safeguard children. A guide to inter-agency working to safeguard children. March 2013](#)
- **Child Protection Policy** –
  - It approves and annually reviews the child protection policy taking care to ensure that it dovetails with other relevant policies for example: the staff code of conduct (behaviour and relationships at work), recruitment, discipline and dismissal.
  - A copy is provided to all direct employees together with those workers and volunteers whose services are engaged indirectly
  - It is available publicly, for example by the institutions website.
- **The designated safeguarding lead** -
  - One of its direct employees is appointed as the designated safeguarding lead, allocated sufficient time, funding, training, resources and support to enable him/her to give advice and support to others, participate in strategic discussions and inter-agency meetings.
  - Receives child protection update training at least every two years.

- **Recruitment, selection and pre-employment vetting –**
  - Its recruitment and of senior post holders procedures and employment framework for other workers, is *'based on checks and evidence including: criminal record checks (DBS checks), barred list checks and prohibition checks together with references and interview information'*
- **Ofsted Inspection** – An assessment of the effectiveness of the institutions safeguarding arrangements will form part of Ofsted's assessment of leadership and management including the recruitment policy and procedures).

**The Governing Body might additionally wish to consider:**

- Whether a designated link safeguarding governor might be useful or not.
- When determining the educational character of the institution how children might be taught about safeguarding.
- Appointing a deputy to the designated safeguarding lead for when that individual is absent.

**Should college governors be subject to a Disclosure and Barring Service (DBS) check?**

“College governors who are volunteers should be treated on the same basis as other volunteers, that is, an enhanced DBS check with barred list check should only be requested if the governor will be engaged in regulated activity.

Governing bodies can request an enhanced DBS check without a barred list check on an individual as part of the appointment process for governors.” (Keeping children safe in education. April 2014)

**Further advice**

Further advice on safeguarding may be obtained from AoC Employment Team, their Employment Briefings, on line resources; the Sixth Form Association; the NSPCC [www.nspcc.org.uk](http://www.nspcc.org.uk), [Disclosure and Barring Service website](#) and DfE website.

## Activity

As clerk, you may wish to read the detail in the Equality and Human Rights Commission's document entitled [Guidance for employers about their rights under the Equality Act 2010](#). This covers the key areas of: recruitment; working hours, flexible working and time off; pay and benefits; career development – training, promotion and transfer; managing workers; dismissal, redundancy, retirement and after a worker has left; equality policies, equality training and monitoring; when you are responsible for what other people do; the duty to make reasonable adjustments for disabled people; and what to do if someone says that they have been discriminated against.

Does your college's equality action plan contain SMART targets and show progress towards the following?

- elimination of discrimination, harassment and victimisation
- advancement of equality of opportunity
- fostering of good relations

What arrangements does the college have in place for consulting with local groups with a particular interest in equality, such as the local authority, youth clubs, student groups and religious faith groups?

What arrangements does your college have in place to meet its obligations as an employer under the requirements of the Protection of Freedoms Act 2012? Do these arrangements meet the requirements of Ofsted?

Has your college subscribed to the Disclosure and Barring Service Update Service? If it has, have the relevant documents been reviewed and revised to reflect the fact?

## Viewpoint

As clerk, you may wish to view the Equality and Human Rights Commission; AoC Equality and safeguarding sites and/or seek advice from the SFCA/AoC Employment advisors.

You may want to draw governors attention to the AoC safeguarding, equality and diversity web pages a useful resource in meeting its employer equality duties.

The Equality Act 2010 is particularly important to governing bodies since they are both employers and service providers.

## Section 3. The governing body and senior post-holders

Under the Further and Higher Education Act (FHEA), senior post-holders comprise: *“the post of the principal and such other senior posts as the corporation may decide”* for the purposes of the Articles of Government. The governing body decides how many senior post-holders there will be (in addition to the ‘given’ of the principal). Being a member of the senior management/leadership team does not automatically confer senior post-holder status on those individuals.

The Education Act 2011 no longer requires there to be senior post-holders. Most colleges will retain the title for existing post-holders unless they decide to negotiate otherwise individually. The governing body’s relationship with senior post-holders differs from that with other staff because it has direct control over appointing, appraising and determining the pay and conditions of its senior post-holders, although in reality it is the principal who supervises these individuals on a daily basis.

### Determining pay and conditions

It is for the corporation to determine the pay and conditions of senior post-holders and clerks, and to set the framework for the college. To do this many colleges have a remuneration committee for senior staff, and when refreshing the college strategy they often set up a staffing sub-committee or ask the finance and general purpose committee to look at the options and to report back. While the Instrument and Articles of Government do not require the governing body to set up a remuneration committee, many find it useful to do so, in order to look at the detail and devise an appropriate level of pay (and pay increases).

Pay may be determined in a number of ways, although, since incorporation in 1993, this tends not to be by collective bargaining, but more based on unilateral decisions by the employer. It is imperative that, when determining pay, governing bodies comply with employment law, equality law and European Community regulations. Other external factors include the market rate for particular specialisms; benchmark data for similar sized colleges; ability to pay; and whether the pay increases and benefits packages for senior post-holders differ significantly from those that non senior post-holders might be getting, being mindful that different treatment can lead to resentment and division.

In addition, some governing bodies have a performance-related pay system either linked to individual performance or team performance. Perhaps less commonly now, some senior post-holders’ pay is expressed as a percentage of the principal’s pay. However, this is not good practice as individuals perform differently and it would not be appropriate to increase one post-holder’s pay (or hold off from doing so) simply because the principal was performing well/unsatisfactorily, irrespective of the other SPH’s performance.

#### Activity

- What mechanism does your governing body use to determine the principal’s pay and conditions? What about those of other senior post-holders? Is there a remuneration committee or, if not, what other arrangements are in place to consider these matters?
- What mechanisms does your college have in place to ensure that the principles of equal pay for work of equal value as outlined in the Equality Act 2010 are adhered to?

## **Viewpoint**

Whatever system of determining pay is chosen, it should be legal, fair, open, transparent and stand up to scrutiny under audit. Implementing a job evaluation scheme can help to achieve this.

In addition to pay, benefits packages (including such benefits as private health care or a car) may be approved, for which there will be tax implications.

The AoC produces the 'Survey of Remuneration of Management Staff and Senior Post-holders'. This can be useful for reference and benchmarking, rather than slavishly followed for setting pay.

## **Appointing a chief executive and appointing (and promoting) other senior post-holders**

The appointment of the chief executive and senior post-holders is a non-delegable function. The Education Act 2011, Schedule 4, requires that the Instrument make provision for the appointment of a chief executive of the institution and specify the respective responsibilities of the chief executive, the clerk and the governing body.

The appointment of the clerk is reserved to the corporation but the clerk is not a senior post-holder unless the governing body so determines.

Where a vacancy for a senior post-holder occurs, best practice suggests that the corporation ensures that:

- the post is advertised nationally;
- a selection panel is formed, comprising a minimum of five corporation members including the chair and vice chair to appoint a principal (the chief executive), and a minimum of three corporation members to appoint other senior post-holders; and
- the selection panel decides the arrangements to select candidates for interview, interview the candidates and, where they can, recommend one for appointment by the corporation.

If the corporation approves the selection panel's recommendation, the successful candidate will be offered a contract of employment.

### **Failure to agree**

In the unlikely event that the selection panel is unable to agree on a single candidate to be recommended to the corporation for appointment, or the corporation feels unable to accept the recommended candidate, then the corporation may itself appoint a person from among the candidates already interviewed. Alternatively the governing body may require the selection panel to repeat the process. This may be done without first re-advertising the post.

### **The clerk**

The Education Act 2011, Schedule 4, requires that the Instrument must make provision for there to be a clerk to the body and that it must specify the responsibilities of the clerk.

The corporation must appoint a clerk who may be a member of staff and directly employed on a contract, self-employed, or supplied through a specialist agency, but the clerk cannot be the principal of the college. Currently the majority of clerks are appointed independently of the senior management

team. In the absence of its usual clerk, the corporation may appoint a temporary clerk (other than the chief executive).

Research funded by BIS in 2013 (overseen by LSIS, working in close partnership with the Association of Colleges (AoC), the National Clerks' Network National Committee and BIS) into the various roles of clerks, the changes to those roles as a result of 'New Challenges, New Chances' (NCNC), and their resulting training needs produced the comprehensive 'Clerking in the New Era'. Governors and others seeking to appoint, remunerate, train and support clerks will find this document useful. The [full and summary report](#) can be downloaded along with the annexes and case studies.

### **Consideration should be given to creating a succession plan**

A succession plan can be defined as:

*"Planning the availability of internal candidates for promotion into key positions. Its importance lies in ensuring that there are suitable candidates to take over key positions in the event of strategic changes or replacements of individuals."*

An Introduction to Human Resource Management, Wendy Bloisi, London Metropolitan University, 2007.

Succession planning is most commonly used to fill leadership roles due to turnover or new roles resulting from a strategic shift in the business, but can be applied across the college.

It necessitates:

- analysing the skills and functions of employees;
- auditing the senior leadership team's skills and roles, identifying internal and external future supply pools; and
- talent management: individual career path planning, e.g. via appraisal, fast track promotion routes for 'high fliers', planned development and learning opportunities to match future needs.

### **Activity**

- What are the names and designations of the senior post-holders within your college? What was the rationale for designating those posts as SPHs?
- How does the employer/employee relationship between the governing body and SPHs differ from that with other staff?
- Does your college have a SPHs' succession plan?
- If the current principal gives notice of his/her retirement or resignation, what steps should the governing body and clerk take to recruit a successor?
- What would be the differences if the notice of retirement or resignation was from a SPH rather than the principal?
- What arrangements are in place to cover the eventuality of the clerk's absence?

## Viewpoint

The governing body is not obliged to create any SPHs, only to make provision for there to be a chief executive and set out what the CEO's duties will be. Senior post-holder status can be a useful recruitment tool to attract high calibre, ambitious candidates and thereby also assist with succession planning.

On the other hand, the fewer the SPHs, the less direct control the governing body needs to take or can exercise (and therefore the greater control the principal has) over the appointment and appraisal of key staff. The exact mix is a choice for the governing body to make to best suit its needs and preferred style as the employer.

The chief executive may delegate the power to dismiss a non-senior post-holder. (The HR policies and procedures, Article and Instrument of Government should reflect the agreed procedures.)

It is helpful to add the rationale for deciding to designate a particular post as a senior post in the governing body minute recording that decision.

When recruiting SPHs, governing bodies may decide that the arrangements for selecting candidates for interview could be managed in-house with the support of the HR function and clerk; could involve a third party (e.g. a specialist recruitment agency such as AoC Create); or could be managed in-house with some external input. In drawing up a contract for the chief executive or other SPHs, the corporation could consider adopting the AoC 'Model Contract for the Chief Executive' and 'contract of employment for senior post-holders'.

It will help manage the risk of an interruption to the corporation's business if there is a contingency plan to cover the eventuality of the clerk being temporarily unable to fulfil her/his duties, for example, have the contact details of a third-party specialist agency; form a reciprocal cover arrangement with the clerk of another college not in direct competition with your own; or, where there is a deputy clerk, ensure the job description requires the post-holder to cover in the absence of the clerk.

Ensure that at least one member of the selection panel recruiting the clerk has detailed experience of governance (ideally in the FE and skills sector) to test the candidates' knowledge at an appropriate level.

What type of contract do you want to issue to your chief executive? SPH's? The AoC model contracts offer two models of employment:

- A fixed term for a specified period. (This would allow the corporation to designate a job as a SPH for a specific period, linked to a specific task.)
- An indefinite open-ended model.

## Ensuring the development of senior post-holders

Having spent considerable time, effort and money to recruit the right principal, SPHs and a clerk, it would be counterproductive not to have a professional development and learning policy for them, supported by a suitable budget. An agreed CPD plan linked to achieving corporate targets and individual SPHs' responsibilities and aspirations will be useful for retaining good people, helping with succession planning and keeping the knowledge of your most valuable assets current and useful to the college.

## Activity

- Establish how the principal and other SPHs' professional development and learning needs are identified, met and evaluated.
- Is the budget adequate for its purpose?
- Do your SPHs' CPD plans support the achievement of the colleges overall strategic plan?

## Viewpoint

- A personal development plan might usefully be agreed annually between each SPH and his/her reviewer.
- It is usual for the principal to have operational management of the learning and development budget for other SPHs and approve in-year applications, rather than for each learning event application to be signed off by the corporation.
- CPD is the joint responsibility of the SPHs and their employer, i.e. it is not a one-way responsibility.
- In a rapidly changing environment like that of the FE and skills sector, knowledge and skills can become out of date quickly and competitive edge lost. Hence it is important for the employer to maintain the culture of a learning environment.

## Ensuring the rigorous appraisal and performance management of senior post-holders

*"If you are not already doing so, it is very important that you conduct an annual professional appraisal of your principal, which examines and reports on their performance to date and sets clear SMART targets for the year to come."*

Dr David Collins, CBE, FE Commissioner's letter of 24.02.14 to chairs and principals.

The governing body needs to ensure that there is a fair and open system for appraising its SPHs that:

- enables Specific (Stretching), Measurable, Agreed, (Appropriate, Achievable), Realistic and Timely (SMART) targets to be agreed between the appraisee and appraiser;
- evaluates subsequent performance against those SMART targets, giving positive and negative feedback as necessary;
- gives space for consideration of the individual's developmental needs to fulfil their current role, any additional responsibilities that are planned for them to take on, and their own career aspirations. It is useful for the governing body to know the short-, medium- and long-term career plans of their SPHs in order to help with its HR recruitment and succession planning; and
- where performance-related pay (PRP) schemes exist, the appraisal scheme may be used to justify payment of or not paying the PRP element, and to quantify how much of it has been earned. However, it is advisable to keep this discussion separate if the governing body wants the appraisee to be frank, admit where there may be problems and seek support where needed.

As clerk, you need to ensure that the corporation has access to senior salary benchmark data. You will also need to be in a position to discuss the risk to reputation of any abnormally high rises.

## **Performance management and appraisal of the principal and chief executive**

It is essential to have a system in place to appraise the principal in order to recognise the need to offer support in what can be a lonely role; continually develop the competencies of the post holder; manage his/her performance; set objectives; and ensure compliance and accountability.

The appraisal arrangements need to be agreed by the governing body, reviewed regularly and made explicit to the principal on appointment. When determining such arrangements, the governing body may wish to consider the following matters.

### **Who should conduct the appraisal?**

Given the need to be frank and open, a one-to-one appraisal, ideally conducted by the chair (or vice chair) is more likely to be conducive to meaningful dialogue than appraisal by a panel. The agreed outcome, as opposed to a detailed record of the discussion, might then be shared more widely, e.g. with a remuneration committee. Advice on any technical HR matters can always be sought from the HR director.

### **Before the appraisal interview**

The appraiser should identify stakeholders and their interests, as well as individuals who might usefully be asked to provide a written input on the principal's performance in their role. They should collate the relevant documentation to be considered at the appraisal interview, for example:

- a 360 degree feedback questionnaire completed by staff, partnership personnel and other stakeholders who come into regular contact with the principal;
- SPHs' exit interview summaries;
- the most recent Ofsted report;
- audit reports;
- data on progress against previously set key performance indicators (KPIs);
- the principal's CPD record;
- the principal's job role description; and
- a self-assessment.

Governors should link the individual's targets to the strategic priorities of the college in order to ensure that the overall aims are realised.

### **The interview agenda**

- Performance management: review performance (both strengths and weaknesses) against previously agreed objectives.
- Agree objectives: set SMART (short-, medium- and long-term) targets linked to the business plan. Identify barriers and discuss how to overcome them.
- Support, learning and development: identify appropriate CPD for the principal's needs. Review the usefulness of the support given by the chair and governing body to the principal. Increasingly, principals are being provided with a coach, often of their choosing, to assist with their CPD.

## Activity

Read the following three brief scenarios and then answer the question immediately below each scenario.

Following budget cuts and a college restructuring resulting in fewer senior managers, each SPH is expected to have a broader portfolio next academic year than the one that they were appointed to deliver and have had experience of and training in to date.

- What steps could be agreed at the SPHs' appraisals that might ease their transition into this new role?

A long-serving senior post-holder is approaching appraisal as a hurdle to be crossed, rather than entering positively into it as a genuine review of performance and an opportunity to agree development needs.

- What steps might be taken to engage this individual with the process?

The principal has indicated that s/he is too busy to undertake any continuing professional development in the academic year following appointment, arguing that when appointed s/he was deemed qualified to perform the role.

- What business case might you put to dissuade the principal of this view?
- In each of these scenarios what would the clerk's role be?

## **Viewpoint**

Appraisal systems might include a variety of techniques in addition to the one-to-one interview with the appraiser, for example: self- assessment by the appraisee; 360-degree feedback; feedback on observation of task performance; peer appraisal; results of external assessments (e.g. Ofsted) and audits.

Support mechanisms might include providing a mentor (internal or external to the college) to a SPH; arranging a work shadowing experience and/or visits to a known 'best practice' college.

Any matter relating to capability, disciplinary issues or probation should be dealt with under the appropriate procedure rather than be tackled in an appraisal interview.

Failure to update skills and knowledge continually in a rapidly changing external environment will damage SPHs' ability to respond effectively to new challenges and opportunities in the interests of the college and reduce their personal currency as leaders.

SPHs' appraisals not related to pay may be conducted by the principal. When determining the salary of SPHs, the governing body may wish to seek advice from the principal (i.e. the day-to-day line manager); the HR director in relation to equal pay, the context of 'pay freeze' or increases due to all other staff; and the finance director (in relation to affordability); and refer to available SPH salary benchmarking data, such as the AoC Commission.

Keep the principal's appraisal simple (no more than six objectives with clear success criteria); keep it strategic (it is for the principal to determine the detail of how s/he will achieve the outcomes required); be honest with feedback, backing it with facts, and be realistic.

## Section 4. Employee relations

Employee (or employer) relations refer to the management of the employment relationship, i.e. terms and conditions of employment; matters arising from that employment; pay bargaining; and two-way communication mechanisms between employees and the employer.

Various parties play different roles in employee/employer relations, such as the state, the European Union, the governing body, management, HR function, employers' organisations (e.g. AoC, SFCF), trade unions and employee representatives.

The function is governed by a legal framework, EC Directives, ACAS, and Employment Tribunals. Subsumed under the overall umbrella of employee relations is the industrial relations function. The industrial relations function involves the relationship between management and trade unions and covers such things as: collective agreements (where they exist); collective bargaining; dealing with disputes; the employment relationship; and the working environment. Industrial relations will be affected by the external environment, such as the politics of the government of the day, the state of the economy, European Union regulations and initiatives, as well as the internal college environment.

Inevitably since the payroll is such a significant percentage of the budget, it becomes a focus in times of contraction. This may lead to pay freezes, redundancies, overtime bans, reduced hours, less favourable special leave arrangements, the need for multi-tasking and greater flexibility from the workforce. All of these matters will be managed under employee relations mechanisms.

The governing body needs to agree an employee relations framework which enshrines its philosophy and the type of relationship it wants to engender with employees and trade unions (for example management-led, highly consultative, power sharing).

The employee relations framework may cover:

- a trade union recognition agreement;
- collective bargaining arrangements;
- employee relations procedures (grievance, disciplinary, redundancy, etc.); and
- the extent of involvement above that required by law that an employer is willing to allow employees and unions.

If a good working relationship can be built between management and union representatives, most issues can be resolved informally or by using the formal internal processes. However, if the employer cannot resolve a dispute, it may look externally for help in its dispute resolution in the form of conciliation, arbitration or mediation (e.g. from ACAS).

### **Pay negotiations**

The AoC conducts pay negotiations in respect of FECs in England through the National Joint Forum (NJF) which includes the recognised unions in the sector - currently UCU (formerly NATFHE), ATL, AMiE, UNISON, UNITE (formerly TGWU) and GMB. The outcomes of these negotiations are then issued to AoC members in the form of pay award guidelines for English FECs to consider adopting, or not, as appropriate to their local circumstances.

Periodically, AoC undertakes a review of its National Negotiations activities. However, to date the majority of members have voted to retain the status quo, i.e. where AoC undertakes 'national pay recommendations' and negotiates 'Joint Agreements and Guidance'.

The SFCF conducts pay and conditions' negotiations specifically for sixth form colleges.

## Staff/Employee Voice

The Education Act, 2011: the Articles of Government identified one of the responsibilities of the corporation as being:

*“3.(1) (a) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities.”*

The Corporation needs to agree how these views are collected. CIPD research has identified that this concept works via:

- ‘Upward problem solving’, whereby management communicates directly with employees electronically, face to face, via suggestion schemes and attitude surveys, and through project teams.
- ‘Representative participation’: partnership schemes, European Works Councils, Joint Consultation, collective representation and employee forums.

In addition, ‘New Challenges, New Chances’ explains that colleges: *“considering a major change in their delivery model will undertake a ‘College Structure and Prospects Appraisal and consider carefully and thoroughly the impact on their communities, consulting widely and transparently on their proposals, and taking explicit account of the views of people – learners, employers, and the broader community – that they serve.”*

So, again, having effective staff mechanisms in place and documented would be helpful in the event that a governing body wished to change its delivery model

## Whistleblowing procedure

The governing body should publish the arrangements for complaint and the whistleblowing procedure.

### Activity

Establish the following via your HR director or principal:

- Does the college have a Trade Union Recognition Agreement? If it does, when was it last reviewed?
- What unions does your college recognise? Does this need to be reviewed in the light of significant rising or falling union membership numbers?
- Does the college have a Dispute Resolution Procedure and, if so, does it specify the role of the governors and the appropriate timing of their required intervention?
- What communications procedures (face-to-face, team briefings, joint consultative committee, electronic and hard copy notices/briefings), exist and does the college have a staff/employee voice scheme?

## **Viewpoint**

The most commonly recognised unions in the FE and skills sector include: AMiE; ATL; GMB; UCU; UNISON and Unite – the Union. Those in sixth form colleges include: NUT, NASUWT and ATL.

Day-to-day employee relations are the province of management and not governance. It is imperative therefore that governors resist any attempts made to lobby them inappropriately with a view to bypassing the correct procedure, undermining the management and getting governors involved prematurely. If governors are later required to make an impartial judgement (e.g. as part of the disputes procedure, complaints procedure, grievance/disciplinary allegation against the principal, or dismissal appeal), and have no prior detailed knowledge of the matter, then their objectivity cannot be called into question.

Nevertheless, there may be occasions when there is an allegation/complaint against the principal that requires governors' investigation, in which case the matter should be referred to you as the clerk, so that you can advise on the appropriate procedure and individuals to deal with it.

A staff/employee voice scheme, staff attitude survey, or Investors in People assessment may prove useful as barometers for the governing body to get an overview on how its employees currently view the employment relationship.

Joint consultative committees comprising management and employee (usually trade union representatives in unionised environments like the FE Sector), although still common within the sector, are on the decline, and the emphasis has shifted to more direct communication with staff.

## Section 5. Disciplinary, dismissal, grievance and suspension procedures

### FE Commissioner

[Rigour and Responsiveness in Skills](#) (published jointly by BIS and DfE in April 2013) announced the establishment of the [FE Commissioner](#), who, along with his team of advisers, was charged: *“to deliver robust and rapid intervention in those FE colleges and FE institutions that have failed Ofsted inspection and/or minimum standards and/or have inadequate financial health or management.”*

In his letter of 24<sup>th</sup> February 2014 reporting on his first year of activities, Dr David Collins CBE, the FE Commissioner, said that: *“There is some evidence that college governors can be reluctant to take the difficult decisions when there is evidence of poor performance. I think there should be more guidance for governors on how to deal with underperformance.”*

### Definitions of discipline and grievance

*“Disciplinary and grievance procedures are frameworks which provide clear and transparent structures for dealing with difficulties which may arise as part of the working relationship from either the employer’s or employee’s perspective. These procedures are necessary to ensure that everybody is treated in the same way in similar circumstances, to deal with issues fairly and reasonably, and to ensure that employers are compliant with current legislation and follow the relevant ACAS Code of Practice.”*  
(CIPD Factsheet)

### Relevant legislation and code of practice

Relevant legislation to this area includes the [Employment Act 2008](#) and the [Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2008](#), as well as the [ACAS Code of Practice on Disciplinary and Grievance Procedures](#)

Governors are strongly advised to follow the ACAS Code, as employment tribunals will judge employers on this.

### Governors, the instrument of government, discipline, suspension, dismissal and grievances of senior post-holders, the clerk and other staff

After consulting with staff in accordance with their Instrument of Government and employee relations procedures, the corporation should approve disciplinary, dismissal, grievance and suspension procedures, distinguishing between SPHs and other staff where appropriate.

Unless the Instrument of Government has been changed after the Education Act 2011:

- Where the clerk is also a member of staff at the institution, the clerk is to be treated as a senior post-holder for the purposes of suspension, disciplinary matters or dismissal.
- Where the clerk is suspended or dismissed, under the above arrangements, that suspension or dismissal shall not affect the position of the clerk in his/her separate role of clerk to the corporation.
- The corporation shall not delegate the consideration of the case for dismissal or the power to determine an appeal in connection with the dismissal of the principal, the clerk or holder of a senior post, other than to a committee of members of the corporation.

## **Disciplinary procedures**

Key characteristics of fair disciplinary and grievance procedures include the following:

- Issues should be raised and dealt with promptly.
- Treatment should be consistent.
- Investigations should be used to establish facts.
- Employers must inform the employee of the issue and allow them to respond.
- The employee should be given the opportunity to be accompanied at any formal disciplinary or grievance meeting.
- The employee should be allowed to appeal against any formal decision made.
- Actions should be compliant with all relevant codes of practice and the Instrument and Articles of Government.

### **Disciplinary action and dismissal**

Disciplinary action needs to be taken where an employee breaches the standards required in the staff code of conduct ('misconduct') or his/her terms and conditions of employment.

Procedural stages include: informing the employee of the problem; holding a meeting with the employee to discuss the problem; allowing the employee to be accompanied at the meeting if the outcome could be a formal warning; taking some other disciplinary action or confirming a warning or other disciplinary action at an appeal; deciding on an appropriate course of action; and giving the opportunity to appeal.

All employees have a statutory right to be accompanied by a colleague from the same college or a trade union representative when asked to attend a formal disciplinary meeting when they make a reasonable request to do so.

### **Senior post-holders' hearings and appeals**

Subject to any changes in the Instrument of Government after the Education Act 2011, formal disciplinary action against a senior post-holder or the clerk, short of dismissal, should be heard by a disciplinary panel comprising two or three governors unconnected with the issue, and any appeal against the decision heard by a separate appeals committee.

The dismissal of a senior post-holder or the clerk should be heard by a special committee comprising three governors (not previously involved) and any appeal heard by an appeals committee made up of governors not previously involved in the case and ideally led by the chair of governors.

All of these panels and committees should exclude staff and student governors. The original investigating officer cannot subsequently serve on the disciplinary panel, special committee or appeal committee.

## **Governors, discipline, dismissal and senior post-holders**

### **Senior post-holder investigations**

Allegations should be investigated by an individual nominated by the governing body, be they internal to the college (e.g. the principal, a governor) or an external investigator. Whilst the investigatory meeting itself is not a formal disciplinary hearing, should the governing body deem it appropriate after the investigation, one will be set up. An investigation may not be necessary in all cases, e.g. if both sides agree on the facts of the case.

**Note.** If the issue is with the clerk, another clerk should be appointed to fulfil his/her role in the proceedings and the clerk should be dealt with under the senior post-holder procedures.

### **Informal procedure**

Sometimes the nature of the issue means that the matter can be dealt with informally, e.g. with verbal advice, warning or reprimand, that is not recorded on the employee's file.

### **Senior post-holder formal procedure - verbal warning**

A note of this relatively low-level sanction will be placed on file for a time-limited period and then discarded if the required improvements are achieved.

### **Senior post-holder first written warning**

This is normally given by a disciplinary panel where the senior post-holder commits a serious act of misconduct, or fails to comply with a current verbal warning, or commits a further misconduct offence. The clerk will send a letter detailing the misconduct, improvements sought, the timeframe within which improvement is required, that a further misconduct within the life of the warning may result in a final written warning and the right of appeal.

### **Senior post-holder final written warning**

Governors may issue a final written warning to a senior post-holder where they fail to comply with the first written warning, where a further offence of misconduct is committed or work performance continues to be unsatisfactory, or where circumstances are considered not to merit a summary dismissal but sufficient to trigger a final warning. Misconduct cases require a clerk's letter specifying the misconduct committed, the improvements required and by when, and that a further offence within the time period specified may result in termination or employment.

### **Senior post-holder dismissal**

If the special committee concludes at the disciplinary meeting that dismissal is the only option (due to the senior post-holder's failure to comply with a final written warning or committing further offences of misconduct, or unsatisfactory work performance), the clerk will communicate the decision, reasons for the decision and right of appeal to the senior post-holder.

### **Senior post-holder gross misconduct and summary dismissal**

The governing body may summarily dismiss a senior post-holder without notice or with pay in lieu of notice, where, following an investigation and disciplinary meeting, the senior post-holder has been judged guilty of gross misconduct. This is defined by the corporation and documented in the contract of employment and the disciplinary procedures, and normally will cover: theft, deliberate falsification of the college's records, bribery, corruption, bullying, safe-guarding issues or a criminal offence. Normally the clerk, on behalf of the governing body, will write to the senior post-holder describing the alleged gross misconduct leading to the dismissal, the reasons they were deemed guilty and explain the right of appeal.

### **Senior post-holder appeal**

A senior post-holder's appeal should be heard by an appeal committee of the governing body, excluding those involved in the process, the principal, staff and student governors. The disciplinary penalty will be reviewed and the outcome notified in writing. Where possible, the chair of governors should not be a member of the disciplinary panel and special committee in order to be able to serve on the appeal committee.

## **AoC model procedures**

AoC have produced:

'Disciplinary Procedures for Senior Post-holders': general principles; investigations; suspension pending a disciplinary meeting; informal procedure; formal procedure for disciplinary meetings; disciplinary action – Stage 1. verbal warning, Stage 2. first written warning, Stage 3. final written warning, Stage 4. dismissal; gross misconduct/summary dismissal and appeal.

'Grievance procedure for senior post-holders': scope and purpose; general principles; Stage 1. informal procedure, Stage 2. formal procedure, Stage 3. Appeal.

## **Grievance**

### **Definition**

ACAS defines grievances as: *"concerns, problems or complaints that employees raise with their employers."*

And collective grievances as occurring: *"where grievances are raised on behalf of two or more employees by a representative of a recognised trade union and should be handled under the college's collective grievance procedure."*

Procedural stages include the following:

- employee to try and resolve the matter informally;
- if that fails, employee to let the employer know the nature of the grievance;
- hold a meeting with the employee to discuss the grievance;
- allow the employee to be accompanied at the meeting;
- decide on appropriate action; and
- allow the employee to take the grievance further if not resolved, i.e. to appeal.

### **Governors, grievances and senior post-holders**

Governors need to give thought to who the most appropriate person/people might be to investigate grievances against its principal and other senior post-holders (excluding staff and student governors). It may want an external investigator if the nature of the grievance warrants this.

In the event of a grievance being brought against a senior post-holder by another employee, once the grievance reaches the formal stage then the written grievance should be sent to the clerk who should ensure that the matter is investigated promptly. The clerk should: seek advice from the HR director; take steps to maintain confidentiality; organise meetings and be present to take notes; provide relevant advice; witness proceedings, and convey the outcomes.

### **Suspension of staff**

Occasionally a suspension from duty may prove necessary, e.g. during an investigation pending the formal disciplinary hearing. However, an individual should only be suspended if there is a strong likelihood that his/her continued presence on site would be likely to endanger the safety of individuals, property or equipment, or that evidence might be removed, destroyed, or otherwise tampered with, or witnesses intimidated.

The decision to suspend a senior post-holder is ultimately the responsibility of the governing body, but may be exercised by the chair or vice-chair or the principal where delegated.

A suspension is not to be entered into lightly. It should be: notified to the individual; for a fixed period; kept under review; on full pay (unless the contract of employment or procedure expressly states the circumstances where it should be without pay); made clear that it is not in itself a disciplinary action.

Where somebody is suspended, they should have the suspension and reasons for it confirmed in writing without delay.

## Activity

Check whether your college has in place procedures for SPHs. If not, talk to the chair and principal about putting them in place.

Following the Dispute Resolution Review (DRR), when the Government changed the way that problems at work were dealt with, ACAS created the '[Code of Practice 1 – Disciplinary and Grievance Procedures](#)' (April 2009) that give authoritative advice on this area, are approved by Parliament and referred to by Employment Tribunals. To accompany this Code, ACAS produced a non-statutory guide giving information on handling disciplinary and grievances at work.

Read the following brief scenarios and then answer (either alone or with others) the question immediately below the scenario.

The Director of Finance, a senior post-holder, has been accused of fraud following an audit report.

- What actions should be taken, by whom and under what procedures?

The principal has been accused by his deputy (a senior post-holder) of having an 'over-bearing management style'. She cites, in her letter of complaint to the clerk, the principal's 'unreasonable' behaviour, e.g. continually telephoning her outside working hours, sending critical emails and copying others in, undermining her authority in front of other colleagues by dismissing ideas expressed at management meetings, and failing to undertake her appraisal.

- What action should the clerk and governing body take?
- Which governors would not be suitable to hear the grievance?

## Viewpoint

- Governors may wish to deal with matters of bullying, harassment or Public Information Disclosure Act ('whistle-blowing') under separate procedures.
- Disciplinary matters and capability are different issues and hence governors should consider having two separate policies and procedures for these issues.
- Where there is a disciplinary issue, or a grievance raised against a worker other than an employee (e.g. an agency worker), the matter must be referred to the supplier (agency) for action.
- Where an employee has been charged/convicted of a criminal offence, consideration should be given to the nature of the offence, how it impacts on their continued suitability to do the job, and their relationship with the employer, colleagues and service-users (including the reputation of the college), rather than automatically triggering a disciplinary action,
- If, after a proper investigation, the individual concerned is found not to have been in the wrong, they may nevertheless perceive that the suspension was a punishment and might be viewed by others as such, and may consider their reputation to be tarnished. Their return to work should therefore be handled carefully by the management and HR staff involved.
- Disciplinary issues, dismissal, grievance and suspension involving the CEO and corporation can be complex and difficult, in which cases, governors would be advised to seek external advice, e.g. from solicitors.
- Governors should ensure that their disciplinary and grievance procedures reflect the requirements of the Articles of Government, current employment law and the ACAS Code of Practice.
- In the event of a 'negotiated exit' and a payment, it is imperative to remember the need to secure value for money. Ask yourself:
  - Is the payment appropriate?
  - Are the governors complying with the expectations placed on them as people entrusted with public money?
  - Are they complying with the requirements of the: Charities Act 2011; internal and external audit; funding agency's financial memorandum?
  - Are they spending funds on settlements where disciplinary action would have been more appropriate?
  - Where the corporation is considering entering into an agreement to settle any employment claims brought by a senior post-holder, has it taken appropriate professional advice?
  - Has the settlement been brought to the attention of the corporation's financial statements auditors?'
- Remember the need for accurate record keeping (minutes, emails, letters, notes of telephone conversations, etc.) and that written communications may be disclosed at an Employment Tribunal.

The following AoC guidance documents may assist:

- Guidance on dealing with grievances by employees that involve complaints against senior post-holders, September 2008.
- Model grievance procedure for senior post-holders when handling grievance brought by an employee who is him/herself a senior post-holder.
- Disciplinary procedures for senior post-holders.

## Module review

After working through this module you should now understand and feel comfortable with:

- outlining the governing body's main legal responsibilities towards the staff it employs directly, other workers whose services it engages and responsibilities it delegates to the principal;
- explaining the strategic role of governors in establishing and keeping under review the terms and conditions of employment for staff;
- stating the difference between governors' responsibilities for senior post-holders and for other staff;
- outlining the governing body's responsibilities for staff learning, development, performance management and appraisals;
- describing the college's employee relations and how it deals with trade union representatives and officers;
- explaining the role of governors in disciplinary, grievance and suspension procedures.

More questions? Why not re-read anything that particularly interested you, seek assistance from the college's finance director, human resource director or pursue a theme through the further reading list below?

### Summary of key learning points

- In this module you have looked at a range of matters relating to human resources, including: recruitment, disciplinary matters, grievance, suspension, dismissal, equality, employer relations, reward management, performance management and appraisal. As clerk, you will have looked at your responsibilities in terms of supporting the governing body to meet its responsibilities.
- You will have noted that the governing body is the employer, that it has a different level of responsibility and role to play in relation to its direct employees, senior post-holder employees and other workers whose services it may engage indirectly.
- You will understand what the distinct roles of the governing body, the principal and clerk are, that they are all vital but different, and understand the need to respect the boundaries between the roles. Employment law is complex and changes frequently. We have therefore looked at internal and external sources of advice that the governing body may utilise in order to help it to meet its responsibilities as an employer.
- Readers will be acutely aware of the need to have financial considerations in mind when acting as the employer - for example when determining how workforce reward will be managed.

### 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. The 'Action Planner' contains a section where you can note down any questions or action points that you want to follow up within your own college.

## Further reading

The [Association of Colleges](#) website has a great deal of useful HR and governance-related information. In order to access the members' area, including some of the information specifically for governors and clerks, you have to apply for access. The type of information available includes Employment Briefings.

The employment policy and advice area lists the employment team and how to contact them: tel: 020 7034 9900; email [employment@aoc.co.uk](mailto:employment@aoc.co.uk); information and guidance on national pay negotiations; resource and document library - model contract of employment for senior post-holders, model contract of employment for principal and chief executive; model disciplinary procedures for senior post-holders; model grievance procedure for senior post-holders; guidance on dealing with grievances that involve complaints against senior post-holders; workforce benchmarking data, including staff turnover and sickness absence rates; child protection and safeguarding 'mini-site'; AoC equality and diversity 'mini site'; A-Z of employment topics (provides links to various guides and model documents for managing employment law matters such as 'Whistleblowing – Model Policy and Procedures' Sept 2013; 'Guidance for Colleges: Whistleblowing' Sept 2013).

[The AoC Governance webpages](#) currently cover:

- Representation: Governors' Council; National Clerks Network (NCN) National Committee;
- Support for Governors;
- Recruitment of Governors; Induction of Governors; Governance Library - Guidance notes (e.g. Recruitment of Principal and Senior Team); Governance templates; Governance repository, Governance Briefings) and
- How to contact the Governance delivery Unit ([governance@aoc.co.uk](mailto:governance@aoc.co.uk) or telephone - Director of Governance, 020 7034 9957; Governance Information Manager, 020 7034 9948; Governance Administrator, 020 7034 9958).

The Sixth Form College Association [SFCA](#) (tel: 020 7187 7349, email: [info@sixthformcolleges.org](mailto:info@sixthformcolleges.org)) also offer:

- Advice and support on employment issues;
- Regular news updates and circulars on employment law etc.

The Association is the custodian and primary source of advice on all matters relating to the Conditions of Service handbook for teaching staff (The Red Book) and for support staff (The Lilac Book) in sixth form colleges. The Association also conducts national negotiations with the recognised trade unions on pay and conditions for staff through its Teaching and Support Staff employers' committees. The Association employs a dedicated Employment Issues Advisor who provides practical solutions to employment questions via telephone and email.

[BIS Employment Matters](#): this website covers a variety of areas including: employment agencies; employment consultations; employment policy and legislation; employment relations research and papers; pay; resolving disputes; trade unions and collective rights; work and families; work-life balance.

BIS [Further Education Initial Teacher Training Bursary Guide Academic year 2014-2015](#)

[Chartered Institute of Personnel and Development](#): the CIPD offers organisations support to build their HR and leadership capabilities and is a source of training and resources in the HR and development field.

[Chartered Management Institute](#): a source of practical management support, advice, training, qualifications and research.

[Consulting employees on health and safety](#), HSE Guidance Document 2008 (INDG232): a brief guide to the law on H&S for employers.

[Discipline and grievances at work](#): The ACAS guide, 2011 (ACAS/H02): a good practice guide for dealing with discipline and grievance in the workplace.

[Disclosure of Information to Trade Unions](#), updated 2003 (ACAS/CP02): outlines the code of practice with relation to collective bargaining.

[Equality and Human Rights Commission](#): promotes and monitors human rights.

[Equality Act Codes of Practice, 2011](#): codes of practice on equal pay and employment.

[Equality Act Advice and Guidance](#): guidance and good practice.

[FAQs on the equality duty](#)

[Equality Challenge Unit](#): advancing equality and diversity in colleges.

[The Further Education Teachers Qualifications](#) (England) Regulations 2007.

Health and Safety at Work, An Essential Guide for Managers, Jeremy Stranks, 2010 ISBN 9780 7494 5148.

[HR Law Live](#): Mills & Reeve LLP Solicitors provide an HR blog which is accessible to all with the option to sign up to automatic alerts/feeds.

[Leading health and safety at work: Leadership actions for directors and board members](#), HSE and Institute of Directors, 2011(INDG417)

[People Management](#): a source of current thinking and practice in HR. Contains a searchable database of archive, analysis, legal news, case studies, and reviews on HR matters.

[DBS Update Service: Employer Guide](#)

‘Equality Act 2010 Specific Duties – What Colleges need to Know’ AoC Employment Policy & Services – Factsheet 2013

Equality Act 2010: Specific Duties to support the Equality Duty - What do I need to know? A quick start guide for public sector colleges published by the Government Equalities Office (GEO)

[Personnel Today](#): a source of current thinking and practice in HR. Specialist services include salary surveys, HR health checks and benchmarking.

[Teacher and Training Qualifications for the Further Education and Skills Sector in England \(2013\) Guidance for employers and practitioners \(Update July 2013\)](#)

[ACAS Code of Practice - Time Off for Trade Union Duties and Activities](#)

[Trades Union Congress \(TUC\)](#): provides governors with a useful source on current employee relations thinking, publications, events and workers’ rights.

[The National Minimum Wage](#) (Amendment) (no. 2) Regulations, 2011; rates of minimum wage (2013).

## Acknowledgements

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