



## Further Education College Clerk Development and Training Programme Resource Pack

### Module 2 Values and Ethical Framework

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

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# Introduction

Welcome to Module 2, which explores issues colleges and governors face concerning values and ethics. As the clerk you will need to have a firm grasp of the values and ethics to which the governing body must adhere. The governing body and the senior leadership team, as custodians of the college, should strive to maintain high standards, act with integrity and behave ethically at all times. The work of the Nolan Committee (which we will look at in Section 1) and other groups looking at public service bodies have raised awareness of these issues and many governing bodies have now adopted codes of conduct to ensure this happens.

In January 2013 Sir Christopher Kelly, Chair of the Committee on Standards in Public Life, presented the committee's report of its [review of best practice in promoting good behaviour in public life](#). It considers the key lessons that have been learnt since the Nolan Committee's 1995 report on how to improve ethical standards in public life, seeking: *"to stand back and reflect on what has been achieved and what still needs to be done"*.

The report argues that much of the basic infrastructure to improve standards is now in place. Statements of key principles and codes of conduct have been adopted by most public bodies; new regulators have been created or had their existing remits clarified; and awareness of principles such as integrity, accountability and openness has increased considerably. Further Education (FE) colleges are exempt charities and in 2013 the Secretary of State for Business Innovation and Skills became the regulator.

Ethical and moral values go hand-in-hand with the legal responsibilities of governing bodies, which are considered in Module 3: The Main Statutory Framework.

## Aims

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

- explain how the Nolan Committee's seven principles of public life and other principles impact on the activities of the governing body and your role as clerk, and be informed by the Committee on Standards in Public Life review/s of best practice in promoting good behaviour in public life;
- describe your role in relation to the governing body's code of conduct and conflicts of interest;
- describe your board's position in relation to agreeing a code of governance;
- set out the reasons for having a whistleblowing policy;
- explain the governing body's role in ensuring that the college promotes equal opportunities; and
- explain the governors' responsibilities in relation to whistleblowing, equal opportunities and human rights, and identify when specialist advice needs to be sought.

## Contents

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

To do	Done		
		Section 1	The Nolan Committee's seven principles of public life
		Section 2	The code of conduct, register of interests and codes

To do	Done		
			of governance
		Section 3	Whistleblowing
		Section 4	Equal opportunities
		Section 5	Human rights

## 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 activities in this module you will need a copy of the following documents:

- the governing body's Code of Conduct
- the English Colleges' Foundation Code of Governance (under review)
- the college's whistleblowing procedure
- the college's sexual harassment procedure
- the college's disability statement
- the college's equal opportunities policies and procedures

## Section 1. The Nolan Committee’s seven principles of public life

Public concern about the financial probity of members of parliament and other holders of public office led to the setting up in 1994 of the [Committee on Standards in Public Life](#) (CSPL), chaired first by Lord Nolan and later by Lord Neill. The Nolan Committee made important recommendations which affect the governance of FE colleges including:

- the appointment and training of governors
- openness
- codes of conduct
- conflicts of interest
- whistleblowing
- the limits of commercial confidentiality

At the heart of these recommendations is the notion that organisations are entrusted with public funds and so should demonstrate high standards in corporate governance and the conduct of public business. The Nolan Committee drew up seven principles of public life as a yardstick against which public service may be measured.

The seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership - continue to underpin ethical codes and standards in the public sector.

The CSPL has provided updated descriptors for the standards and recognises the importance of embedding the seven principles of public life into the culture and practice of public sector organisations:

<b>Principle</b>	<b>Revised Description<sup>1</sup></b>
<b>Selflessness</b>	Holders of public office should act solely in terms of the public interest.
<b>Integrity</b>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests or relationships.
<b>Objectivity</b>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<b>Accountability</b>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

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<sup>1</sup> Committee on Standards in Public Life (2013) *Standards Matter: A review of best practice in promoting good behaviour in public life*. Fourteenth Report.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228884/8519.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf). p24.

**Openness** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty** Holders of public office should be truthful.

**Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The CSPL [plan for 2014/2015](#) reflects their role as an advisory, oversight body, monitoring and promoting ethical standards across public life through an evidence-based, independent approach.

The [Relevant Authorities \(General Principles\) Order, 2001](#) added three additional principles to those identified by the Nolan Committee:

**Respect for others**

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

**Duty to uphold the law**

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

**Stewardship (using resources prudently)**

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

**Activity**

**Conflicts of interest**

The search committee wants to recommend the appointment of Mrs X as a business member of the governing body. She appears to have all the skills the governing body needs; her son attended the college and she knows it well; and her appointment would help redress the current gender and racial imbalance in the governing body. Mrs X works on a part-time basis for a law firm which the college instructs from time to time. She has never done any work for the college.

Are there any issues about this appointment which you would want to raise with the search committee?

## Viewpoint

The fact that Mrs X is employed by one of the college's professional advisers puts her in a position where she may have a conflict of interest. This may be addressed by her declaring an interest in any matter under discussion where the conflict is apparent, such as appointing or instructing legal advisers, or any matter where the governing body is considering legal advice given by her firm.

## Responsiveness

One aspect of openness and accountability is that governing bodies need to be responsive to key stakeholder groups such as students, staff, the local community, employers and local authorities. Note that responsiveness is not the same thing as accountability, which is considered in Module 3: The Main Statutory Framework. Concerns that colleges were too isolated from their local community led to the changes to the Instrument and Articles of Government in 1999 and their amendment in 2008. Below are some of the ways in which governing bodies have further increased their responsiveness, going beyond what is required of them in their Instrument of Government:

- holding an annual public meeting at which the organisation's annual report and accounts are presented;
- developing a process for self-evaluation (see Module 5: The Process of Effective Governance);
- placing a limit on the number of terms governors should normally serve;
- ensuring that decision-making is open and transparent; and
- conducting a systematic review of responsiveness and publishing the outcomes of the review in the annual report.

The Education Act 2011 made further amendments to the Instrument and Articles of Government but most colleges are still operating to the 2008 version.

## Committee on Standards in Public Life: ethics and best practice – what works

In May 2012, 17 years after the publication of the original Nolan report, [The Committee on Standards in Public Life](#) announced a review to examine what drives high standards of ethical behaviour, to look at the key characteristics of ethically healthy organisations, and to look at the role played by codes of conduct and other mechanisms for the promotion of standards.

You may find it helpful to consider the results of this review entitled *Standards Matter*, published in January 2013<sup>2</sup>, in relation to your own College Code of Conduct – see Section 2.

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<sup>2</sup> Ibid

## Section 2. The code of conduct, register of interests and codes of governance

*“A hallmark of good governance is the development of shared values, which become part of the organisation’s culture, underpinning policy and behaviour throughout the organisation, from the governing body to all staff. These are in addition to compliance with legal requirements...”<sup>3</sup>*

Standards Matters (2013) clearly states that ethical standards issues should be included as regular items on board agendas or formally delegated to audit and risk committees for referral to the board as appropriate. Risks associated with poor standards should be included in risk assessments, and, where appropriate, risk registers. Mitigating strategies should be developed and monitored. There may also be a case for periodic intrusive challenge of ethical standards in different parts of the organisation.

Best practice in promoting high ethical standards is illustrated in the report, highlighting that organisations need codes of conduct, tailored to their particular circumstances, to supplement their ethical principles. Codes, the report stresses, do not take precedence over principles; to be effective codes need to be relevant, proportionate and straightforward. Organisations also need the right culture, effective monitoring and strong leadership.

The process of embedding principles starts with recruitment and induction and should continue with training, effective monitoring and rigorous self-assessment. It is important there are processes in place to allow staff and board members to raise and escalate concerns and to be supported when doing so. Robust ethical cultures need to be led from the top by leaders who model the right behaviours. Individuals at all levels of an organisation need to be prepared to speak up and challenge inappropriate behaviour when an institution’s integrity is at risk. Independent board members and governors have a particular responsibility in this regard.

The Nolan Committee recommended that all governing bodies should have a code of conduct. This sets out how the governing body and individual governors are expected to carry out their responsibilities.

A code of conduct might include the recognition that each governor should:

- work co-operatively with other governors;
- act as an individual and not as a delegate or representative;
- not use the position for personal benefit;
- take up opportunities for training and development; and
- seek to attend meetings of the governing body and committees.

The code of conduct might also set out the roles and responsibilities of governors, how governors should behave in meetings and the meaning of openness and confidentiality.

Governors have a collective responsibility for ensuring that high standards of conduct are kept and maintained. As part of this process, the clerk maintains a register of interests of governors and should make this available to anyone wishing to inspect it. The register must be regularly updated

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<sup>3</sup> The Independent Commission on Good Governance (2004) *The good governance standard for public services*. OPM and CIPFA. [http://www.cipfa.org/-/media/Files/Publications/Reports/governance\\_standard.pdf](http://www.cipfa.org/-/media/Files/Publications/Reports/governance_standard.pdf). p13.

and reviewed. If governors feel that their independence and judgement might be affected on any item, they should report this before the meeting to the clerk or the chair, or during the meeting to the chair. If the chair rules that there is a conflict of interest, the governor may be asked to take no further part in the discussion or to leave the meeting for that agenda item. When in doubt, a governor should always declare an interest.

Not all conflicts of interest are financial. For example, a governor may:

- know or be related to a candidate for a senior post holder's position or a person seeking membership of the governing body;
- be a member of a trade union seeking recognition in the organisation;
- be in a position as a local authority member or member of a business to use information as a governor to shape decisions affecting the organisation; or
- be related to someone who has an interest in a matter being discussed.

The next activity looks at a situation where you might be called on to give advice about the status of the code of conduct.

## **Activity**

### **Signing up to the code of conduct**

A member of staff is appointed to the governing body after a rather contentious election, with some strong views expressed by various candidates. The new staff governor is willing to sign the register of interests as she believes in openness and transparency in the business of the college. However she expresses reservations about one section in the code of conduct which states that governors must abide by the collective decisions taken by the governing body as a whole. She claims this would infringe her right to freedom of speech under the Human Rights Act 1998.

You are unsure of the implications of the Act for individual members of governing bodies. You know that a refusal to sign a code of conduct may be grounds for removing a governor but you are uncertain about how this might be done. You are aware that there will be very strong feelings amongst the staff if it appears that an elected staff member is being discriminated against.

- How could you check out the areas about which you feel uncertain?
- Is the refusal to sign the code of conduct grounds for removing the governor?
- What damage-limiting action could you take if the member of staff is removed or decides to resign?
- How could you prevent this kind of situation arising in future?

## Viewpoint

1. Governors need to ensure that appropriate legal advice is provided to the governing body. If they are unsure of the legal position then professional advice should be sought from the college's solicitors.
2. The college is legally required by statute to maintain a register of interests disclosed to the governing body but is not legally required to have a code of conduct (although it will usually be a code of conduct that determines what interests, other than financial interests, should be disclosed). The grounds for removing a governor from office are very limited (see Module 3: The Main Statutory Framework). Would refusing to sign up to the code of conduct render this staff governor 'unfit to serve'? The test is subjective (i.e. is the governing body satisfied that she is 'unfit to serve?') so this may be a difficult and controversial route to go down.
3. In the event that the staff member is removed or decides to resign, governors will need to consider the impact on staff. It will be important to communicate clearly to staff that the governing body is legally bound to maintain a register of interests and that they should also have a code of conduct.
4. In future, signing the code of conduct could be made a condition of appointment (i.e. if the selected governor refuses to sign, the appointment does not take effect). You could take steps to ensure that anyone wishing to join the governing body is aware of the requirement to sign the code of conduct and complete the register of interests. This would avoid embarrassment after the selection procedure is completed. When sending out information about vacancies, you might, as governors, usefully point out this requirement to potential governors. You could also advise the search committee to include a question on this when interviewing potential governors.

## Codes of governance

### Brief background leading to the development of a college code of governance.

Building on the Nolan principles and the additional three principles outlined in The Relevant Authorities (General Principles) Order 2001, the [Good Governance Standard for Public Services](#) (January 2005) sets out six core principles, illustrated in figure 1, that should underpin the governance arrangements of all public bodies.

#### **Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users**

- being clear about the organisation's purpose and its intended outcomes for citizens and service users;
- making sure that users receive a high quality service; and
- making sure that taxpayers receive value for money.

#### **Good governance means performing effectively in clearly-defined functions and roles**

- being clear about the functions of the governing body;
- being clear about the responsibilities of non-executives and the executive, and making sure that those responsibilities are carried out; and
- being clear about relationships between governors and the public.

#### **Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**

- putting organisational values into practice; and
- individual governors behaving in ways that uphold and exemplify effective governance.

**Good governance means taking informed, transparent decisions and managing risk**

- being rigorous and transparent about how decisions are made;
- having and using good quality information, advice and support; and
- making sure that an effective risk management system is in operation.

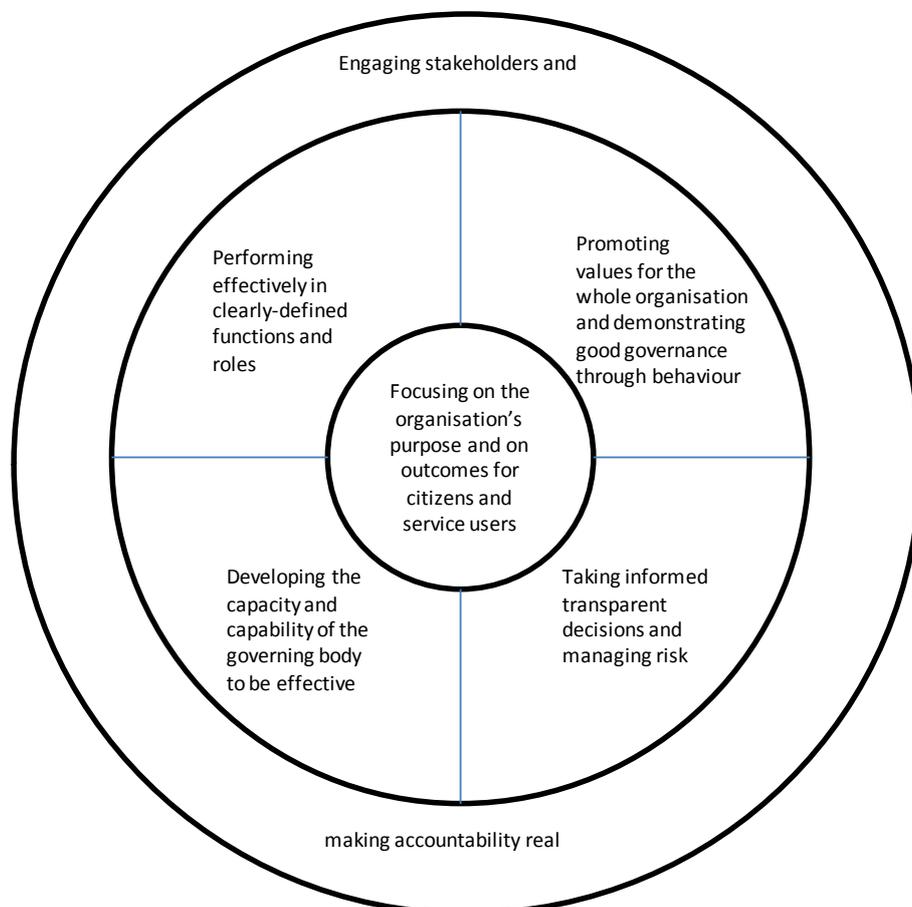
**Good governance means developing the capacity and capability of the governing body to be effective**

- making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;
- developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group; and
- striking a balance in the membership of the governing body, between continuity and renewal.

**Good governance means engaging stakeholders and making accountability real**

- understanding formal and informal accountability relationships;
- taking an active and planned approach to dialogue with and accountability to the public;
- taking an active and planned approach to responsibility to staff; and
- engaging effectively with institutional stakeholders.

**Figure 1: Principles underpinning governance**



Adrienne Fresko and Sue Rubenstein produced a paper, [Accountability, Authority and Leadership: A governance perspective](#), informed by the Good Governance Standard in Public Services, and in response to the Foster report of 2005<sup>4</sup>. The key points they raised were highlighted in the [Review of Governance and Strategic Leadership in English Further Education](#) published by the Learning and Skills Improvement Service (LSIS) and the Association of Colleges (AoC) in November 2009 and sometimes called the Schofield report. This included 15 recommendations for how governance and strategic leadership in FE might be enhanced.

The first recommendation was: “to develop a college Code of Governance for FE colleges to be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector”.

Alan Schofield, who was the main report editor, stated that, the recommendation for a code of governance in FE was: “not intended to increase regulatory compliance, and it needs to be considered in the context of other recommendations for increasing flexibility in governance... To simply introduce a code and then maintain all existing arrangements would not be desirable.”

In November 2011, the [English Colleges’ Foundation Code of Governance](#) was formally endorsed by the Minister for Further Education and Skills, John Hayes, on behalf of the Department for Business, Innovation and Skills (BIS) and the Department for Education (DfE). An [Audit and Accountability Annex](#) to the Foundation Code of Governance was published on 31 March 2013. The Foundation Code has now been in place for approaching three years and the Governors’ Council is currently undertaking a review.

You may also find it helpful to refer to the [UK Code on Corporate Governance](#), and consider how it may inform your views on the development and/or review of your organisation’s code. The UK Corporate Governance Code (formerly the Combined Code) sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders.

## Activity

Explore your own governing body’s approach to agreeing and sustaining a college code of governance. How does this compare with other organisations across the sector? How does it relate to your code of conduct for governors and your own prior experience (if appropriate) of corporate governance?

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<sup>4</sup> Sir Andrew Foster (2005) *Realising the Potential: A review of the future role of further education colleges*. <http://dera.ioe.ac.uk/5535/1/realising06.pdf>

## **Viewpoint**

John Hayes' endorsement of the Foundation Code of Governance and contribution of the foreword reflects the importance that the Government and its agencies place upon the code in the context of the freedoms and flexibilities being extended to colleges. There is no doubt that the major emphasis on freedom and responsibility, as expressed by the Government, will be much in evidence as a result of this, and governing bodies will need to address a range of new opportunities and associated risks.

The Code has been designed so that it does not conflict with the existing Instrument and Articles in force for any college that was incorporated under the 1992 Act, and as subsequently amended. Since this is a 'foundation' code, work will continue with BIS to progress strands of additional work, which will inform, guide and support the further development of the code.

In March 2013 the AoC published an [Audit and Accountability Annex](#) to the Foundation Code. Colleges that have adopted the annex are no longer required to comply with the UK Corporate Governance Code; for other colleges, the two codes continue to sit side by side.

The Foundation Code is being reviewed and will be replaced in 2015 by a set of values and principles based on the Code, which will complement the Nolan principles.

## Section 3. Whistleblowing

Whistleblowing in colleges takes different forms in different situations, and involves a current or former member of staff accusing another member of staff or management of a misdemeanour. The most frequent cases in colleges are to do with issues around perceived misuse of college funds, inappropriate relationships between staff and students, and releasing examination papers before time. Most of these accusations are reviewed and, if found to have the basis of truth, are taken forward by management through the college's disciplinary process.

As clerk, you may become involved if the accusations are against the principal or a governor, and you will need to advise the governors on what they have to do. It is good practice to have the procedure written down so everyone knows what should happen. You will need to be familiar with the college whistleblowing policy and procedures and be able to advise the chair and governors on its use.

The term '[whistleblowing](#)' describes a situation where an employee or ex-employee publicly discloses wrongdoings within an organisation such as fraud, financial mismanagement, breach of health and safety or environmental laws, or any other danger. This kind of public disclosure leaves the whistleblower extremely exposed because it is likely to breach obligations that are implied in all employment contracts (for example fidelity, trust, and, most importantly, the duty not to use or disclose the employer's trade secrets or confidential information). Until recently, it was common for colleges to extend these implied duties by explicitly adding confidentiality requirements or 'gagging clauses' to their contracts of employment. A breach of these conditions is often classed as gross misconduct justifying summary dismissal. Both the Public Accounts Committee and the second report of the Nolan Committee opposed the use of these clauses to inhibit the disclosure of maladministration or the misuse of public funds.

The key piece of whistleblowing legislation is the [Public Interest Disclosure Act 1998](#) (PIDA), which applies to almost all workers and employees who ordinarily work in Great Britain, and recognises the need to protect whistleblowers from victimisation. The PIDA is intended to encourage all employers to adopt procedures which promote openness and communication, and which provide members of staff with clearly defined routes for making internal and external disclosures.

### What a whistleblowing policy should contain

Employers should make clear to employees what to do if they come across malpractice in the workplace. This should encourage employees to inform someone with the ability to do something about the problem. Guidance will need to reflect the circumstances of individual employers, but should make the following clear:

- the kinds of action targeted by the legislation are unacceptable and the employer attaches importance to identifying and remedying malpractice. Specific examples of unacceptable behaviour should usually be included;
- employees should inform their line manager immediately if they become aware that any of the specified actions are happening (or have happened, or are likely to happen);
- in more serious cases (for example, if the allegation is about the actions of their line manager), the employee should feel able to raise the issue with a more senior manager, bypassing lower levels of management;
- whistleblowers can ask for their concerns to be treated in confidence and such wishes will be respected; and

- employees will not be penalised for informing management about any of the specified actions.

## Implementing the policy

A procedure is useful only insofar as it is followed. One problem is the reluctance many employees feel to ‘snitch’ on colleagues. Despite often showing great courage and determination, whistleblowers are not necessarily popular with their colleagues, particularly where the disclosure threatens people’s jobs. HR managers have a duty to support whistleblowers who act in good faith and it is in the long-term interests of the college that they should do so.

Managers may need training to ensure that matters brought to their attention are resolved in line with the policy and in a way that will cause least damage to the college. Policies need to have the full support of the senior leadership and senior managers and be communicated to all employees.

College managers or governors notified of a concern:

- have a responsibility to ensure that concerns raised are taken seriously;
- should, where appropriate, investigate properly and make an objective assessment of the concern;
- should keep the employee advised of progress; and
- have a responsibility to ensure that the action necessary to resolve a concern is taken.

Colleges may wish to specify alternative means for employees to register concerns within the organisation where they do not wish to approach their line manager. This could be, for example, a telephone ‘hotline’ and/or a designated manager or officer reporting to the most senior person in the organisation.

Confidentiality clauses, which are often found in the contract of employment or staff handbook, may need to be qualified to take into account workers’ rights under the Act. There has been an increase in anonymous reporting hotlines for employees. The European Commission has recommended that companies should not encourage anonymous reporting since whistleblowing schemes require the processing of personal data and are subject to data protection rules.

It is preferable to deal with whistleblowing separately rather than as an extension to or part of an existing grievance procedure, while cross-referencing procedures on discipline and grievances. This is partly because the scale of risk to the organisation and to the employee will generally be significantly greater in whistleblowing cases than in other matters. In addition, the whistleblower may have no grievance in relation to their terms and conditions or indeed in relation to the employer (it may, for example, relate to the conduct of a contractor).

In summary, the PIDA protects a worker who discloses certain types of information within certain circumstances. The term ‘worker’ covers people who are self-employed as well as employees who work under a contract of employment or apprenticeship. To qualify for protection the worker making the disclosure must reasonably believe that one of the following qualifying grounds applies:

- that a criminal offence is being or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with a legal obligation;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual is likely to be in danger or that the environment has been, is being or is likely to be damaged; or

- that information about a matter in one of the categories above has been, is being or is likely to be deliberately concealed.

If the disclosure fits these qualifying grounds, it is a protected disclosure provided that the worker has made it in good faith to a person or body specified in the PIDA, including:

- the employer;
- some other responsible person if the worker believes that the relevant failure relates solely or mainly to the conduct of that person or to any other matter for which that person has legal responsibility (for example, where a member of staff is concerned that health and safety requirements are being breached by a placement provider and that the safety of students may be at risk, he may want to raise his concerns with the placement provider);
- another person indicated in the procedure authorised by the employer; or
- a legal adviser in the course of obtaining legal advice.

Where the disclosure is made externally, for example to the funding body, government department, other public authority or the media, there are additional burdens placed on the whistleblower. These include showing reasonable grounds for believing the disclosure was substantially true, that it was not made for personal gain and that the disclosure was reasonable in all the circumstances. The additional requirements increase depending on whether the disclosure is made to a person or regulatory body as prescribed by the Secretary of State (such as the Inland Revenue, Data Protection Registrar or the Health and Safety Executive), and on whether it relates to some exceptionally serious failure, or is a general external disclosure.

The Nolan Committee recommended that further and higher education corporations should institute codes of practice on whistleblowing and this was endorsed by the report of the National Committee of Enquiry into Higher Education. A code of practice should encourage members of staff to raise genuine concerns about malpractice internally, without fear of adverse treatment. The procedure should balance safeguards for members of staff who raise genuine concerns about malpractice against the need to protect staff, the governing body, students and the organisation itself from unfounded allegations.

## Activity

### Reviewing your whistleblowing procedure

Does your organisation have a whistleblowing procedure in place? Familiarise yourself with it:

- Find out who are the members of staff designated to act as an accessible first point of contact for those members of staff with concerns.
- Does the procedure ensure those concerned with the complaint are interviewed? The member of staff raising the concerns can be accompanied at all interviews by a local trade union representative or a work colleague if they so wish.
- The college procedure should be followed and it is likely to include the following:
- the designated staff members should make recommendations to the principal on a confidential basis; the principal should decide what further action, if any, to take and the member of staff who first raised the concerns should be notified of the decision; the procedure should remain confidential at all times; where the allegations concern one of the designated members of staff or the principal, there should be arrangements within the procedure for discussing the matter with, or having it considered by someone else;
- no disciplinary action should be taken against the member of staff because of a disclosure made by them in accordance with the procedure, nor should the staff member be victimised because of their actions; and
- there should be a procedure for the clerk to refer unresolved concerns to the funding provider, government department or appropriate public body.

## Viewpoint

This activity may have suggested ways in which you might further develop or support the governing body in its oversight of the whistleblowing procedure. If there is no procedure in place, this should be something the governing body should discuss with the principal and chair. Having an appropriate procedure will help to ensure that the college's response to a whistleblowing situation complies with the law and adequately protects the people involved.

The next activity gives you an opportunity to consider how you would apply the whistleblowing procedure to a specific situation.

## Activity

### Whistleblowing case study

Your chair of governors has just received an anonymous letter at his home telling him that the principal of Learnwell College (who is currently on holiday in Mauritius) has been fiddling his expenses. In particular, the letter claims that the cost of his current trip has been paid for by the college. Attached to the letter is a copy of an expenses claim form in the sum of £5,232 for travel to Mauritius for the purpose of interviewing a new personnel manager and a copy of a letter from AWOL Travel to the principal confirming reservations for a holiday for two in Mauritius at a cost of £5,232.

The chair's view is that: "If someone is not prepared to stand by these allegations and put their name to them then I do not believe it warrants any investigation. I have worked with the principal now for six years and trust him implicitly. The best place for this letter is the bin. We don't want this sort of person working at the college." A whistleblowing procedure has been on the governing body's list of outstanding matters for a long time but has not yet been drafted and agreed.

- What is your role and what advice would you give?
- What procedures(s) do you think should be used?
- What practical steps do you think should be taken in response to the letter?
- What would you do if there appeared to be some truth in the allegations?
- What would you do if you or someone else on the governing body found out who wrote the letter?

## Viewpoint

Compare your own ideas with the suggestions below.

- You must make it clear that the chair cannot simply ignore this matter and hush it up. The allegation concerns a potentially serious misuse of public funds and the college as custodian of these funds needs to investigate fully. If it is ignored, the sender of the letter may raise these concerns elsewhere – with the funding provider, the local MP, or possibly the press.
- As a first response, discussions should be held with the chair about following the whistleblowing procedures and the Disciplinary Complaint against Principal procedure. This should include making urgent preliminary investigations to establish whether the letter is a hoax or whether there is some truth in it. This could be done by checking the original expenses claim and speaking to the relevant travel company. These investigations should be in line with the procedure and could be made by the chair with the help, for example, of the clerk or other designated governors.
- If there appears to be some truth in the disclosure, it must be properly investigated. Depending on the facts that come out in the preliminary enquiry, it may be something which can be dealt with internally, perhaps under the leadership of the chair, or it may be necessary to instruct the external auditors to prepare a report. The clerk may decide it is appropriate to inform the college's legal advisers and, after investigation, the full governing body and possibly the funding provider.
- Depending on the circumstances it may be necessary to suspend the principal and to take disciplinary action against him/her.
- If, during the course of the investigation, the identity of the sender is revealed, the sender may be protected under PIDA. If the sender had a reasonable belief that the principal was defrauding the college it would count as a qualifying disclosure, provided it was not made for an ulterior motive. Disclosing the information to the chair (in the absence of a policy stating otherwise) would count as a protected disclosure. Dismissing someone who makes a protected disclosure would be automatically unfair. The member of staff may also assert his or her right to freedom of speech. Care should therefore be taken before instigating any disciplinary action. If the letter is a hoax and sent as such then disciplinary action may be appropriate.

This situation shows how important it is to have a whistleblowing procedure in place. Such a procedure gives both the whistleblower and the college clear guidelines on the right course of action.

## Anti-bribery policy and procedures

The Bribery Act 2010 came into force in July 2011 and has significant implications for schools, colleges and employers. From 1 July 2011, all businesses and organisations are accountable for ensuring the actions of their employees do not breach this legislation. Whilst most schools, colleges and other sector organisations would probably not expect to have to review their business practices in light of the legislation, the Bribery Act creates offences which can impact as heavily on education providers as they can on other businesses.

The AoC have produced a sample Anti-Bribery Policy Statement, which is included as an appendix to the document: [Summary of Statutory and Regulatory Requirements Relevant to College Governing Bodies September 2013](#).

Under the Act, organisations need to have in place adequate procedures to prevent bribery occurring if they are to avail themselves of the 'adequate procedures' defence. The Ministry of Justice has published its guidance, [The Bribery Act – Guidance about Procedures, March 2011](#), which sets out six principles for organisations to follow to ensure compliance with the Act.

### **Summary of the main provisions of the Bribery Act 2010**

The Act sets out four offences:

- offences of bribing another person - offering, promising or giving a bribe (Section 1);
- offences relating to being bribed - requesting, agreeing to receive or accepting a bribe (Section 2);
- bribery of foreign public officials - offering, promising or giving a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her official functions (Section 6); and
- failure of commercial organisations to prevent bribery - a commercial organisation is liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation (Section 7). For the purposes of Section 7, a person is associated with an organisation if they perform services for or on behalf of the organisation. This would include the organisation's employees, agents or subsidiaries and would be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between the organisation and the associated party.

There are steps that colleges and other sector organisations can take as employers to ensure that they have 'adequate procedures' in place, including:

- a statement of values
- a code of conduct
- detailed policies and procedures, including, for example, policies on gifts, hospitality, facilitation payments, vetting outside agents and advisers, lobbying and political contributions
- risk management procedures, for example, regular auditing of the employer's compliance function
- training and guidance
- whistleblowing procedures

## Section 4. Equal opportunities

The promotion of equality should be at the heart of everything a college or other sector organisation does, from appointing members of the governing body to the relationships between the organisation and its staff, its students and the wider community. It is fundamental to the drive for social inclusion and the raising of standards in education. It is important that everyone, regardless of gender, race, background or disability, has access to further education.

Equal opportunities in themselves are not a legal concept but they have been supported by a raft of legislation of which the most important references are:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995
- The Human Rights Act 1998
- The Learning and Skills Act 2000
- The Special Educational Needs and Disability Act 2001
- The Race Relations (Amendment) Act 2001
- The Equality Act 2010

The law in this area is complex and you will certainly not be expected to be an expert on it. This section summarises some of the main legal provisions before looking at what the organisation should be doing to promote equal opportunities generally.

The Equality and Human Rights Commission (EHRC) was established in October 2007. The Commission brought together the work of the three previous equality commissions (the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission). It also took on responsibility for the other aspects of equality - age, sexual orientation and religion or belief - and has a mandate to promote understanding of the Human Rights Act.

The [Equality Act 2010](#) provides a new legislative framework to: protect the rights of individuals and advance equality of opportunity for all; update, simplify and strengthen the previous legislation; and deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The provisions of the Equality Act were brought into force at different times to allow time for the people and organisations affected by the new laws to prepare for them. Most of the provisions came into force on 1 October 2010.

On 5 April 2011 the new public sector Equality Duty came into force. The Equality Duty replaced the three previous duties on race, disability and gender, bringing them together into a single duty, and extended it to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment. The aim of the Equality Duty is for public bodies to consider the needs of all individuals in their day-to-day work, in developing policy, in delivering services, and in relation to their own employees.

The new EHRC codes of practice on employment, services and equal pay, reflecting the Equality Act 2010. They replaced five existing codes issued by the predecessor bodies to the EHRC. The new codes are aimed primarily at the specialist reader: courts or employment tribunals; lawyers; HR specialists. For the non-specialist reader, there is a range of guidance available from the EHRC and in

the form of summary and quick-start guides produced by the [Government Equalities Office](#). The codes are admissible in evidence in civil proceedings.

For further information see the briefing paper '[The new Equality Act 2010: what does it mean for the FE and skills sector?](#)' which outlines the key changes that the Act introduced for the sector. It should be read in conjunction with statutory and non-statutory guidance issued by the EHRC.

## **A new extended public sector equality duty**

Public sector duties to promote race, disability and gender equality were replaced in 2010 and extended in the Act by a new [public sector Equality Duty](#).

The equality duty requires organisations to give due regard to:

- eliminating discrimination, harassment and victimisation;
- advancing equality of opportunity;
- fostering good relations; and
- encouraging persons with a protected characteristic to participate in public life or any other activities where participation is disproportionately low.

### **Specific duties regulations**

As with previous public sector duties, the general duty is underpinned by specific duties to assist organisations to meet the general duty more effectively. Two new specific duties were introduced in the 2010 Act:

- to publish information; and
- to set and publish equality objectives.

### **Activity**

#### **Equality objectives**

Colleges will now need to develop and publish their equality objectives at least every four years, alongside evidence of engagement activities. Consider your college's approach to agreeing its equality objectives. What steps are being taken to meet the requirements of the 2010 Act?

## Viewpoint

[Research conducted by Dr Christine Rose](#) on behalf of the EHRC explored practice in the public sector in setting equality objectives. These were some of the key messages:

- Develop a sound evidence base before identifying, devising and prioritising equality objectives. This ensures an organisation focuses on genuine issues within its own context.
- Ensure evidence includes qualitative and quantitative information for workforce and service delivery.
- Provide transparency and clarity about the outcomes of information-gathering activities, to demonstrate publicly the reasons for choosing objectives.
- Consider how to capture the voice of people whose opinions are rarely identified, for example people with mental health difficulties, gypsies and travellers, and people with learning difficulties, caring responsibilities or on a low income.
- Avoid equality objectives that are little more than overarching aims, top-level commitments, or maintenance of current practice. Instead, devise specific objectives that clearly demonstrate how successful implementation might lead to tangible and measurable improvements in equality.
- Prioritise objectives to focus on the most significant issues for the organisation's remit.
- Ensure people who have participated in consultation activities have an opportunity to refine equality objectives.
- Recognise that successful engagement is transparent and influential; this means making clear to all involved who participate in engagement activities how people's views influence the choice of objectives, and how people have been involved in early and final decisions on setting and prioritising equality objectives.
- Cross-reference each equality objective with the aim or aims of the equality duty that the objective is attempting to meet. This ensures that all aspects of the duty have been considered.
- Evidence the link between the equality objective and the organisation's strategic or corporate objectives.

As the Equality Act 2010 harmonised the previous equality legislation, it is important to recognise that much of what is required of FE providers is already being carried out by them.

For further information check the EHRC website, specifically for the guidance: [What equality law means for you as an education provider- further and higher education](#).

This [guide](#) is one of a series produced by the Equality and Human Rights Commission which explains rights to equality from further and higher education providers under the Equality Act 2010. This Act combines established rights with new rights and makes equality law easier to understand.

## Disability discrimination

The Disability Rights Commission closed on 28 September 2007 and its responsibility for helping secure civil rights for disabled people transferred to the new [EHRC](#).

The EHRC is required by law to have a disability committee. This was considered necessary by the Government because of the highly distinctive nature of disability equality law, in particular the duties to make reasonable adjustments, and the complex technical and ethical issues associated

with promoting disability equality. The disability committee has decision-making powers in relation to those matters which solely concern disability, and the Commission must seek the advice of the disability committee on all matters which relate to disability in a significant way. Information about the Commission's work on disability equality can be found via [their website](#).

## Activity

### Reviewing your organisation's disability statement

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA). However, the Disability Equality Duty in the DDA continues to apply.

Review your organisation's disability statement to make sure it complies with current regulations. Check that it covers the following points:

- your organisation's policies on the provision of facilities for education;
- the name of staff members with special responsibility for admission arrangements for students with disabilities;
- educational facilities and support arrangements for handling complaints and appeals;
- additional support or special arrangements during examinations and assessments;
- counselling and welfare arrangements; and
- physical access to educational and other facilities.

## Viewpoint

If this review suggests that there are gaps in the scope of your organisation's disability statement, you may want to note down the areas for action in the 'Action Planner', and discuss them with the principal or chair of governors.

In September 2011, the EHRC published '[Hidden in Plain Sight](#)', the inquiry's final report into disability-related harassment and how well this is currently being addressed by public authorities.

## What does equality mean in practice for governors and you as a clerk?

To consider what this means, we need to look at the governing body's role in promoting equality. The governing body needs to consider how the organisation and its management are responding to the following responsibilities:

- ensuring there is no unlawful discrimination;
- acting positively where appropriate;
- ensuring awareness of diversity issues;
- promoting the college's ability to respond to a diverse student body and community at large; and
- publishing information and setting and publishing equality objectives to demonstrate compliance with the general public sector equality duty.

To avoid unlawful discrimination, the governing body needs to ensure that the job descriptions of key staff include a requirement to be aware of discrimination issues as they affect particular areas of the organisation's activity. The governing body also needs to ensure that all the relevant equality policies and procedures are in place, that staff and students are aware of them, and that key staff are trained in their importance. Such policies should be kept under review.

To make sure an equality policy is put into practice in an organisation, the [EHRC](#) states that there should be:

- a demonstrable commitment to the policy from the very top of the organisation;
- the agreement, understanding and support of all staff and stakeholders (such as trade unions) for the policy's implementation;
- involvement of learners, staff and stakeholders in the drafting of the policy;
- extensive promotion of the policy both within the organisation and to potential workers, contractors and suppliers;
- training provided to all staff to explain what the equality policy says and what it means to them;
- incorporation of the policy into the organisation's business strategy;
- an explicit willingness to challenge and, if necessary, discipline anyone not following the policy;
- reference made to the equality policy in other policies within the organisation; and
- an action plan in place which includes a commitment to a regular policy review. The review should examine progress in delivering the action plan and ensure that this information is shared.

The EHRC published a consultation in October 2011 to help it develop its strategic plan for 2012-2015. The plan covers the commission's goals and priorities and was laid before parliament in April 2012.

## Section 5. Human rights

This section looks at the college's legal responsibilities for ensuring the individual freedoms set out in the Human Rights Act, and at its specific responsibilities for academic freedom and freedom of speech.

### The Human Rights Act

The EHRC published updated guidance (May 2014) to help public bodies understand how the Human Rights Act could help them improve public services for everyone. The guide, '[Human Rights: Human Lives](#)', is aimed at people who provide services directly to the public or are involved in developing new policies and procedures. It is based on the handbook for public authorities – also called 'Human Rights: Human Lives' - published by the Ministry of Justice in 2006.

The Human Rights Act 1998 (also known as the HRA) came into force in the United Kingdom in October 2000. It comprises a series of sections that have the effect of codifying the protections in the European Convention on Human Rights into UK law. All public bodies (such as courts, police, local governments, hospitals, publicly-funded schools) and other bodies carrying out public functions have to comply with the Convention.

The rights guaranteed by the Convention are now directly enforceable in the UK courts. The HRA has important implications for colleges and other sector organisations but the extent of those implications will only emerge as the law is tested.

- The Human Rights Act makes it unlawful for a public authority to act in a way which is incompatible with Convention rights (see below); it creates a new cause of legal action against public authorities in the UK courts.
- It requires all legislation to be interpreted so as to be compatible with the HRA wherever possible. Where it is not possible to do this, the courts generally have the power to quash subordinate legislation such as statutory Instruments. The courts cannot set aside primary legislation but they can make a 'declaration of incompatibility' in order to prompt government action to amend the legislation.
- It requires UK courts and tribunals to take into account the case law of the European Court in Strasbourg.

### The Convention rights

The Convention guarantees a number of rights and freedoms. These include the right to:

- not suffer degrading or inhuman treatment – Article 3;
- a fair trial – Article 6 (see below for further detail);
- respect for private and family life, home and correspondence – Article 8;
- freedom of thought, conscience and religion – Article 9;
- freedom of expression – Article 10;
- freedom of assembly and association – Article 11;
- prohibition of discrimination in the enjoyment of Convention rights – Article 14;
- peaceful enjoyment of possessions and protection of property – Article 1 of First Protocol; and
- access to education – Article 2 of First Protocol.

With the exception of Article 6, the rights set out above are ‘qualified rights’. Interference with them is permissible only so long as what is done:

- has its basis in law;
- is necessary in a democratic society, i.e. it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued (an important concept known as ‘the principle of proportionality’); and
- is related to one of the permissible aims set out in the relevant article (e.g. for the protection of public health and order or for the protection of the rights and freedoms of others).

This means that at times a balance has to be struck between competing interests such as the rights of a particular student or member of staff against the rights of others in the college and the public interest.

### **Are colleges public authorities?**

The HRA does not define what a public authority is. Some bodies are clearly public authorities, such as local authorities, courts, the DfE, Ofsted, and maintained schools. Such public authorities must comply with the HRA in all their activities. Although colleges may be excluded from this designation this is very unlikely to make any difference to their responsibilities under the HRA. The situation under the HRA should not therefore be confused with the decision of the Office for National Statistics, following the passage of the Education Act 2011, to reclassify FE colleges and sixth form colleges as part of the non-profit institutions serving households (NPISH) sector rather than part of the general government sector. This decision serves only to reflect the greater freedoms colleges now have to run their own affairs.

The HRA also covers private organisations that carry out functions of a public nature, but only in respect of their public functions, not their private functions.

For the purposes of the HRA there has been some debate as to whether colleges are public authorities or whether they fall into the hybrid category. There is a strong argument that FE corporations, as they are statutory, are public authorities, but some commentators regard them as hybrids. Colleges with different legal structures are likely to be regarded as hybrid public authorities. The significance is that if the college is regarded as a hybrid, the HRA will cover the college’s relationship with students (i.e. the provision of education) which will be regarded as a public function but not the college’s activities as an employer which will be seen as private. However, until the matter is decided by the courts it is safest to err on the side of caution and ensure that your college complies with the HRA in all its activities. See [The Meaning of Public Authority under the Human Rights Act](#) for more discussion on this [issue](#).

### **Article 6: the right to a fair trial**

This states that everyone in the determination of their ‘civil rights or obligations’ is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. How does this affect colleges? The requirements of Article 6 may be satisfied if there is a right of appeal to a judicial body which in itself complies with the requirements of Article 6. This is the case where a member of staff who is dismissed has the right to bring a claim before an industrial tribunal.

In the case of an excluded student, however, sometimes the only legal action they can bring is one of judicial review. This is only a limited review and does not itself satisfy the requirements of Article 6. Therefore if a student is excluded following a disciplinary procedure that does not comply with the requirements of Article 6, the college may have infringed this right. Nobody can say with certainty how the HRA will impact on the relationship between the governing body and college staff and

students until there is a body of case law which tells us how the courts interpret the Act. Some Articles, however, are likely to be more relevant than others. The following activity gives you a chance to think about aspects of college functions that might be affected.

## Activity

### Human rights

Which rights or freedoms could potentially be infringed in the following situations? Look back at the table of Convention rights and decide which articles, if any, you think might apply to the following activities:

- monitoring staff email communications;
- asking staff to undergo medical checks;
- disciplining a whistleblower for disclosing information to a local councillor;
- declining to allow Muslim and Jewish staff time off for major religious holidays;
- refusing a place to a student applicant;
- excluding a student after exam failure;
- holding exams on a religious holiday observed by ethnic minority students.

## Viewpoint

Clerks are not expected to be experts on the HRA. However, governors may want to know that someone in the college's leadership team is keeping abreast of the issues. This activity is intended to alert you to the possible implications of some of your college's activities. We suggest you compare your own thoughts with the discussion and further explanation below, bearing in mind that no-one yet knows what case law will decide in the future.

### Rights of staff

If colleges are hybrid public authorities, their employment activities may not be covered by the HRA. The dividing line between public and private activities, however, may not always be clear and colleges should bring a respect for human rights to the forefront of all they do.

- **Article 3** – the right not to suffer degrading or inhuman treatment - could be breached in instances of serious sex and race discrimination which cause humiliation and mental distress.
- **Article 8** – the right to respect for private and family life - could be infringed by a number of common activities including:
  - CCTV surveillance;
  - monitoring email communications;
  - recording staff phone calls; and
  - medical checks or compulsory or random drug testing.

These are, however, qualified rights and can be overridden where there is lawful justification. For example monitoring of emails may be justified if its purpose is to ensure that offensive or abusive emails are not sent, thereby protecting the rights and freedom of others. It is also worth noting that

the Telecommunications (Lawful Business Practice) (Interception of Telecommunications) Regulations 2000 give employers quite wide powers to intercept communications.

- **Article 9** – freedom of religion - could be breached where an employee is not able to practise their religion, for instance people of minority faiths not being allowed time off for religious holidays.
- **Article 10** – freedom of expression. The Public Interest Disclosure Act (PIDA) may be subject to a challenge of compatibility because only a limited number of disclosures are protected and these must be to certain 'designated' persons. The restrictions might compromise the right of freedom of speech. See the information below on academic freedom and freedom of speech.

### **Rights of students**

Students are able to rely on the rights of privacy and family life, religion and freedom of expression just as staff are able to do.

- **Article 9:** where the institution has significant numbers of students with religious faiths whose major festivals occur during term-time, reasonable attempts should be made to avoid holding exams on those days.
- Students may wish to rely on the right to education set out in **Article 1 of the First Protocol** to the Convention, for example in trying to dispute a refusal of a place or to challenge exclusion after exam failure. However, it is unclear whether the right to education extends beyond compulsory school age. The Court of Human Rights has held that universities are entitled to insist that an applicant has the ability to pass the course and this is likely to apply to many courses offered by FE colleges.
- However, once a student is on a course they will have contractual rights against the college, which are likely to be civil rights. When an organisation makes a decision affecting these rights they will have to respect the right to a fair trial set out in **Article 6**.

We hope this exploratory discussion of the HRA has shown how important it is that the college reviews its internal procedures, and keeps them under review to make sure that they are compliant with the HRA. If the college wishes to do something which may infringe the rights of students or staff, it is important that such action is the subject of a clear policy statement so that students and staff are aware of what the college is doing, that it can justify the action under the provisions of the HRA, and that the interference with rights and freedoms is kept to an absolute minimum.

### **Academic freedom and freedom of speech**

Article 10 of the Convention reinforces the importance of the principles of academic freedom and freedom of speech, which are closely related. These principles have long been regarded as of vital significance by the education sector and were already enshrined in our legislation.

The principle of academic freedom is embedded in the Articles of Government of FE corporations, and often repeated in the contracts of employment of academic staff and in staff disciplinary procedures. This right is linked to intellectual property rights and the use of the internet to disseminate materials. It reflects the importance which society attaches to the right of individuals to pursue lines of teaching or research which may be unpopular or controversial. One of the effects of Article 10 may be to extend the right of academic freedom to all staff, not just academics.

Under the provisions of the [Education Act \(No. 2\) 1986](#), the governing body of a college is required to take such steps as are reasonably practicable to ensure freedom of speech within the law for

students, members of staff and for visiting speakers. Governing bodies are also required to ensure that no one is denied the use of the college's premises on the grounds of his or her beliefs, views, policies or objectives. A code of practice setting out the procedures for meetings held on the premises and the conduct expected of those attending should be maintained.

## Module review

This module has looked at the ethical and moral values which govern and influence your work as a clerk. If you have worked through this module you should be able to:

- explain how the Nolan Committee's seven principles of public life impact on the activities of the governing body and your role as a clerk;
- comment on the Committee on Standards in Public Life review/s of best practice in promoting good behaviour in public life;
- describe governors' responsibilities in relation to the governing body's code of conduct and conflicts of interest;
- set out the reasons for having a whistleblowing policy;
- explain the governing body's role in ensuring that the organisation promotes equal opportunities; and
- explain the governors' responsibilities in relation to whistleblowing, equality and human rights and identify when specialist advice needs to be sought.

### Summary of key learning points

- The recommendations of the Nolan Committee and its seven principles of public life have had an important impact on the governance of FE colleges and on the role of the clerk.
- The seven principles of public life originally identified by the Nolan Committee in 1995 – selflessness, integrity, objectivity, accountability, openness, honesty and leadership - continue to underpin ethical codes and standards in the public sector.
- Governing bodies need to consider ways of becoming more responsive to their key stakeholder groups.
- Every governing body should have an agreed code of conduct as well as a register of governors' financial and other interests.
- A whistleblowing procedure is important to provide guidelines for staff wishing to raise concerns about wrongdoings within the college (e.g. fraud, financial mismanagement or health and safety issues) and guidance to the organisation on how to deal with such disclosures.
- Whistleblowers are protected by the Public Interest Disclosure Act from dismissal or victimisation provided the disclosure meets the criteria set out in the Act.
- It is unlawful to discriminate against students and staff on the grounds of sex, marital status, sexual orientation, colour, race, nationality or ethnic or national origins.
- It is unlawful to discriminate against staff for reasons relating to their disability or to fail to make reasonable adjustments to accommodate the requirements of staff or job applicants. This includes modifying equipment, altering working practices and making physical alterations to premises.
- Every college is required to publish a disability statement annually. This should be approved by the governing body.
- The governing body should start with itself in the promotion of equal opportunities within the organisation and thus lead by example.
- The full implications of the Human Rights Act 1998 for colleges and other sector organisations are as yet uncertain but it will continue to have an impact upon a number of the organisation's activities.

- Academic freedom and freedom of speech are fundamental to the activities in a college; they reflect the importance which society attaches to the right to express views or pursue lines of teaching or research which may be unpopular or controversial.
- The law on whistleblowing, equality and human rights is complex. You need not be an expert on these legal areas but you need sufficient awareness of the law to know the responsibilities of the governing body and to know when legal advice should be sought.
- The values discussed in this module cannot be looked at in isolation. They impact on all the issues looked at in the other modules. They should underpin all the activities of the governing body and reinforce the importance of ongoing training and development. Whilst the passage of the Education Act 2011 has given colleges much greater freedom in the ways in which they are governed, it could be argued that the values and ethical framework in which they operate has become even more important than before.

### **Where next?**

You have now completed work on Module 4: Working Relationships. Take a look at the further reading for each section. Note down what further information, support or guidance you would like.

### **Putting it into action**

We hope that working through this module has raised useful questions, increased your awareness of issues and given you ideas for practical action that you would like to follow up. The 'Action Planner' in 'Using the Materials' 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

### Section 1: The Nolan Committee's seven principles of public life

[The Committee on Standards in Public Life](#) website.

[The Second Report of the Committee on Standards in Public Life](#), May 1996 Volume 1: Report (Cm 3270-I) published by The Stationery Office, or you can access the full text, abstract or summary online.

[The Fourth Report of the Committee on Standards in Public Life: Review of Standards of conduct in executive NDPBs, NHS Trusts and local public spending bodies](#), November 1997 is available online as an abstract or summary.

[The Relevant Authorities \(General Principles\) Order, 2001](#)

[Policy on improving the quality of further education and skills training](#) (published by BIS and DfE)

[A dynamic nucleus. Colleges at the heart of local communities – The Final Report of the Independent Commission on Colleges in their Communities, November 2011](#) – Baroness Sharp of Guildford.

[Thinking Outside the College: Planning and Delivering Local Accountability](#) – An Action Framework for Colleges in the Further Education Sector (published in 2011 by AoC and LSIS). The aim of this study is to research effective practice for how colleges develop accountability to their communities: approaches to identifying and meeting the needs of local communities, and how they engage effectively with strategic partners in their localities to achieve civic and community priorities, both economic and social. Also explored is how colleges contribute to local social renewal.

[Professionalism in Further Education](#) Final Report of the Independent Review Panel October 2012, established by the Minister of State for Further Education, Skills and Lifelong Learning.

[14-16 Enrolment in colleges - FAQs](#) published by DfE.

### Section 2: The code of conduct, register of interests and codes of governance

[A Review of Governance and Strategic Leadership in English Further Education](#), Allan Schofield, Jo Matthews, Simon Shaw, LSIS, 2009

Report of [the Committee on the Financial Aspects of Corporate Governance](#) (Chairman: Adrian Cadbury) – published in 1992.

[Good Governance Standards for Public Services](#), the Independent Commission on Good Governance in Public Services, chaired by Sir Alan Langlands, 2004

[Accountability, Authority and Leadership: a Governance Perspective](#), Fresko A and Rubenstein S, Foresight Partnership, 2005

[The UK Corporate Governance Code 2010](#) and associated guidance

[Corporate governance publications \(CIPFA\)](#)

[Local Government - Taking the lead: self regulation in local government](#), February 2011

[The new world we're in 2011...Strategic implications](#), LSIS, February 2011.

Pulling together the policy analysis, key propositions and challenges emerging from the LSIS national policy seminars held in the summer of 2010, from regional policy seminars held in the autumn 2010 and from discussions with the LSIS Board and Council during that period.

[Public Value: The Next Steps to Public Service Reform](#), The Work Foundation, 2009.

[Ethical Breakdowns: Good People Often Let Bad Things Happen. Why?](#), Max H Bazerman and Ann E Tenbrunsel, Harvard Business Review, April 2011

## Section 3: Whistleblowing

[CIPD factsheet](#)

Whistleblowing: law and practice, Bowers J., Fodder M. and Lewis J., Oxford University Press, 2007

[PAS 1998:2008 Whistleblowing arrangements: Code of practice](#), BIS, 2008. This publicly available specification (PAS) has been developed by Public Concern at Work in collaboration with the British Standards Institution (BSI). Complete a short form to get your free copy.

Advice on whistleblowing can be obtained from:

[Whistleblowing](#), a guide from GOV.UK

Find out what whistleblowing in the work place is, and how workers are protected if they blow the whistle about workplace wrongdoing.

[Public Concern at Work](#)

Public Concern at Work (PCaW) is the independent authority on public interest whistleblowing. Established as a charity in 1993, PCaW has played a leading role in putting whistleblowing on the governance agenda and in developing legislation in the UK and abroad.

[Bribery Act 2010](#) - recommendations for governors are listed in the [Summary of Statutory and Regulatory Requirements relevant to College Governing Bodies](#) paragraph 4.2 pages 26/27

## Section 4: Equal opportunities

[The new Equality Act 2010 – What does it mean for the FE and skill sector?](#), LSIS, 2011.

This briefing sets out for providers some of the key changes the Act will bring. These include a new extended Public Sector Equality Duty, revisions to definitions of discrimination and a widening of the scope of positive action. It should be read in conjunction with statutory and non-statutory guidance issued by the Equality and Human Rights Commission.

[Government Equalities Office](#)

[Equality Act 2010](#)

The Equality and Human Rights Commission is producing statutory [Codes of Practice on the Equality Act 2010](#).

[Engagement and the equality duty](#): A guide for public authorities, Equality and Human Rights Commission, January 2011.

[Resources on the protected characteristics](#), Equality and Human Rights Commission

[The Equality Act – what’s new for employers?](#) ACAS, 2011.

[TUC Guide to Equality Law 2011](#)

[The Equality Challenge Unit](#)

LSIS [Equality and Diversity Specific Duties: Guidance for meeting legal requirements to publish equality information and objectives](#) - Revised edition Feb 2013

## Section 5: Human rights

The [Home Office website](#) has some useful information on the Equality and Human Rights Commission (EHRC).

The [Equality and Human Rights Commission](#) has a statutory remit to promote and monitor human rights and to protect, enforce and promote equality across the nine ‘protected’ grounds: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

[Find out more about human rights.](#)

'Everybody - we are all born free' is a short video produced by [Amnesty](#), which brings the Declaration to life.

[EHRC guidance and good practice publications for employers](#)

Human Rights publications can be found [here](#), including:

Ours to own - understanding human rights, 2008

This guide looks at what human rights mean in the context of everyday life, how they have affected real people and why they are therefore so important.

Human Rights Inquiry - full report, 2009

Report on research into the Human Rights Act’s first ten years which makes a number of recommendations to help embed human rights in the public sector.

Human Rights Inquiry report - executive summary, 2009

Summary version of the Human Rights Inquiry report setting out the Inquiry’s findings and the Commission’s recommendations.

An employer’s guide to... Creating an inclusive workplace, 2010

This guide contains a range of ideas to help you use human rights principles to create an inclusive workplace.

[British Institute of Human Rights](#)

School of Law, Queen Mary University of London, Mile End Road, London, E1 4NS BIHR is an independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK, and may provide some helpful resources.

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