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The Effective Clerk: Creating Excellence in College Governance

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'This guide has been produced by the National Clerks Network and AoC Governance Unit, with guidance and support from Eversheds LLP, and acknowledges the contributors to the original Further Education Funding Council (FEFC) document entitled 'College Governance : A Guide for Clerks' (1996).

Chapter 1 introduction

- 1.1 The purpose of this guide is to:
 - provide a benchmark of recognised effective clerking practice;
 - encourage a commonality of understanding of the professional role of the clerk;
 - illustrate the many aspects of the role and how the clerk can enhance effective governance and strategic leadership.

- 1.2 Clerks, chairs, principals, governors and senior managers will find this guide informative and a valuable reference point, whether they are new to their responsibilities and seeking to find out more about the role, or whether they are in post and seeking to develop a better understanding of the role in enhancing effective governance and its development in their college. Government departments, as well as external bodies, will also find the guide a useful reference point.

- 1.3 National Clerks Network, supported by the AoC Governance Unit, have worked to ensure that effective strands of clerking support are in place to enable college boards to have the professional clerking support they require. This document is intended to provide a timely, respected, accessible, current, informative and sustainable guide and reference document on the clerking role. The guide outlines an expectation of practice against which a clerking service can be both evaluated and developed. Additionally, and alongside other reference materials, the guide will support the continuing professional development (CPD) currently in place for clerks, at both induction and beyond.

- 1.4 The sector recognises that good governance and strong college performance go hand in glove. The same can be said for effective clerking and good governance, as numerous audit and inspection reports have illustrated over the years and good practice has demonstrated. However, the strongest governance comes when the governors, senior leadership team and clerk are working closely together and demonstrate respect for the others' views. This guide seeks to provide information about the different strands of the clerking role, illustrating that a professional clerk provides many levels of support to a board, its chair, its principal and to others such as staff and student governors and senior managers. Whilst not an exhaustive list, the guide illustrates the following facets of the role with just some of the many example elements of each facet of the role under each heading:

Advisor

- provide guidance and information to the governing body, the principal and senior managers on the proper exercise of the governing body powers and the application of relevant laws and requirements, taking specialist opinion as appropriate to ensure its legal and other obligations are met

Challenger

- The clerk can act as the conscience of the governing body. This can require the clerk to challenge to governing body at times, both in terms of practice and compliance, but also in refreshing, developing and even changing its approach to governance itself. The clerk acting as challenger will:
 - propose areas of business for discussion with the governing body
 - highlight to the chair, committee chairs and governors when aspects of a paper may need more exploration

Leader

- enable and improve the effectiveness of the governing body, for the benefit of its stakeholders, through leading, proposing, developing and using appropriate and relevant strategies, frameworks and tools, with knowledge of best practice within and outside of the sector
- liaise with others, prepare an annual quality improvement plan for the governing body and monitor its implementation, aiming for the highest standards of governance and continuous improvement
- facilitate and /or deliver training to governors to achieve the above

Planner

- take account of the demands on governors and staff time, and with knowledge and awareness of local and national sector and political developments, propose a programme of meetings and an annual schedule of business that will deliver effective governance through a comprehensive and varied suite of reports and briefings
- review and adapt the programme regularly to meet emerging needs, and make governors aware of alternative and or additional elements e.g. webinars, as they arise during the year
- negotiate and monitor the governance budget for all governance expenditure, including the training and development of the governors and the clerk, and the recruitment and induction of new governors

Manager/Administrator

- summon meetings, ensure timely preparation and dispatch of agendas/papers
- brief the chair e.g. on arising governance issues
- advise on procedures and prepare minutes for agreement
- prepare and maintain governance policies and records, including membership
- manage other administrative staff working on governance matters.

Communicator

- promote good governance practice consistently to the board, and to advise on emerging models and developments successfully used both within and outside of the sector
- communicate effectively with the chair, principal, committee chairs, other governors and senior managers on all aspects of the governing body's business to ensure governance business is understood and taken forward
- ensure openness and transparency of governance business by putting in place appropriate communication channels that are managed within the appropriate and legal boundaries of confidentiality

Diplomat

- recognise that conflict will exist within governance, and the benefits that robust discussions will bring to effective governance
- anticipate negative tensions between parties, where they may or do exist, and work to mitigate or remove them in the interests of good governance

1.5 The guide provides a comprehensive, detailed, up to date manual of the role of the clerk, for use by clerks, whether they are new to the post or experienced, including:

- the clerk's independence, the advisory role as well as leader, planner, communicator, diplomat, manager/administrator and challenger, the nature of the role, job requirements and the appointment and removal of the clerk;
- the relationship and communication with the chair, principal/CEO, college management and governors, including the handling of complaints, disciplinary and grievance issues;
- the planning and management of business including timetabling, managing committee business, agendas, papers, urgent business,

outstanding business, chair's actions, electronic governance and the college website;

- clerking of meetings, including minutes, approval, conduct of business, procedural matters determined by the Instrument of Government such as quorum, voting, resolutions, declarations of interest and public access, as well as matters for consideration by governors, such as appointment of governors, chair and vice chair, chair's actions and payment and expenses;
- self-assessment and skills audit, membership and appointments and procedures, disqualification and resignation, attendance, register of interests, governors' and clerks' training and governance budget;
- committees including clerking, legal requirements, structures, membership, terms of reference, conduct, special, audit and remuneration committees;
- propriety including administrative law, conduct, register of financial and personal interests, confidentiality, resolving difficulties and the Nolan Principles of Public Life;
- law and the governing body including the clerk's role, corporation seal, education law, charities act, company law, health and safety, employment law, equal opportunities, safeguarding, data protection and legal advice.

1.6 This guide therefore outlines and reinforces the many essential elements of the effective clerking role. Many colleges have recognised the scope of the role and have changed the job title from 'Clerk' to reflect its duties and responsibilities e.g. 'Director of Governance', 'Governance Advisor' and in some cases 'Company Secretary'. This guide illustrates just some of the benefits a professional clerk brings to a college board, both individually and collectively, to the quality and effectiveness of its governance practices, and to enable the governing body to strategically lead a college to deliver the right curriculum and outstanding teaching and learning for all stakeholders the college serves.

Chapter 2 The Role of the Clerk

Rationale

- 2.1 A governing body carries a significant range of responsibilities and is accountable under the law for their proper discharge. Business is conducted largely by discussion in formal meetings of the governing body or committees of the governing body established for particular purposes. Unless the governing body amends the 2008 Instrument and Articles, and 2009 Instrument for catholic sixth form colleges, agreements are made in meetings, or by any other means the governing body has approved, including any powers which it has specifically designated to its committees, the chair or the principal.
- 2.2 The legitimacy of a governing body's actions depends upon compliance with powers that are established in the instrument and articles of government and in the governing body's own standing orders (see paragraph 5.13). Every member of the governing body shares responsibility for the proper conduct of its business. To assist in this responsibility, governors are individually and collectively entitled to guidance on procedures. The governing body must also maintain an agreed record of its meetings and the decisions it has taken.

Independence

- 2.3 To be effective, the clerk requires an appropriate measure of independence, it follows that the clerk should not be a member of the governing body. The clerk is accountable to the governing body, and must in that capacity be able to preserve independence from the management of the college (see paragraph 2.25).
- 2.4 The appointment of the clerk must be made by the governing body (see paragraph 2.22) and the selection of the clerk will involve the chair or other members of the governing body. Notwithstanding any other role the person appointed as clerk may have in the college, in undertaking the duties of the clerk he or she remains directly accountable to the governing body and not to the principal or to any other member of the college's management. The clerk should be regarded as having the status of a senior manager.

Corporate Governance

- 2.5 Further education and sixth form governing bodies are corporate bodies. A corporate body is one which is usually made up of more than one individual and which is legally authorised to act as a single person with a

separate identity from that of its individual members. While the clerk needs to establish and maintain a close working partnership with the chair of the governing body and the chairs of its committees on a day-to-day basis, and from time to time to advise individual governors, his or her ultimate responsibility is to the corporate body of governors.

- 2.6 The role of clerk and the relationship with the governors is analogous to that of a company secretary and the board of directors of a company except that a company secretary may also be a member of the board and this is not the case in colleges. The Code of Practice recommended by the Cadbury Committee in its report *The Financial Aspects of Corporate Governance (1992)* states that:

All directors should have access to the advice and services of the company secretary who is responsible to the board for ensuring that board procedures are followed and that the applicable rules and regulations are complied with.

- 2.7 The question can arise as to whether any governing body business should be confidential from the clerk. The central issues are those of propriety, public confidence, and the trust between the governors and the clerk. The clerk would not be excluded from a meeting unless the clerk is the subject of the discussion.
- 2.8 Central to the clerk's role is to advise the governing body and its committees on whether the college has the power to do what may be proposed, and whether the proposed action is proper for a public body. If a clerk is excluded from any aspect of business, this advice cannot be given, and the governing body may inadvertently act unlawfully or wrongly.
- 2.9 Another critical aspect of the clerk's role is the need for the clerk to have a sound grasp and understanding of the strategic and political issues affecting their sector and the potential impact on their college/s. This informs their support, guidance and advice to governors as well as enabling them to provide effective business planning.
- 2.10 Additionally, a question of public confidence could arise from the suggestion that governors, or a committee of governors, are meeting secretly. If a decision were to be made without the clerk, or a person designated by the clerk, being present, the governors might be open to claims of wrongdoing. Such claims are more easily refuted if the process can be seen to have involved the clerk and if decisions are properly minuted. Different considerations may arise where the issue involves an allegation of misconduct by, or other matter personal to, the clerk. The

governing body may wish to consider making special arrangements for independent clerking of that meeting.

- 2.11 For the clerk to be able to exercise his or her role properly, a relationship of trust should exist between the governors and the clerk. The governors should be able to trust the clerk not to disclose confidential matters or to discuss publicly any disagreements or difficulties which arise during the discussion of governing body business. Equally, the clerk may on occasion need to offer advice and prompt areas to be explored. The governors should trust that such advice is properly considered and offered in their and the college's best interests. If that trust is not in evidence, then the issue of how trust may be established or regained will need to be addressed.

The Clerk

- 2.12 The role of the clerk is multifaceted. They are an advisor, a leader, a planner, a communicator, a diplomat, a manager/administrator and a challenger. Crucial to the role is the requirement for the clerk to work with the governing body in developing them to improve their effectiveness and to monitor their performance.
- 2.13 The clerk leads, advises and supports the work of the governing body in a variety of ways. On the one hand, as in the case of the company secretary, the clerk requires a grasp of the procedures appropriate to a public body, and the tact and judgement to guarantee as far as possible that the governing body operates within its powers and abides by those procedures. In addition, his or her role will include planning governing body business, reporting progress on the implementation of the governing body's decisions, as well as leading, developing and implementing improvements or changes in governance practice
- 2.14 The clerk's role also involves routine but essential administrative support for the governing body's work. Governors act in a voluntary and unpaid capacity. Most have significant commitments and responsibilities elsewhere. It is an essential part of the clerk's role to provide, or arrange for, the level of detailed administrative support that will enable the governing body to function effectively without making unreasonable demands on the time of individual governors. The timetabling of, and preparation for, meetings; the commissioning and assembling of papers; the circulation of agendas and minutes; and the administration of matters concerned with the membership of the governing body, are all areas where effective support can be crucial in ensuring the efficient conduct of business.

- 2.15 Not all these administrative tasks require the clerk's personal attention. Each college needs to identify the resources available to support the work of the governing body and for the relevant budget to be managed by the clerk. An additional post providing minuting and/or clerical support may be appropriate. However, the coherence of support to the governing body is most likely to be assured when key administrative functions, if delegated for instance to the college's general office, remain accountable to, and under the supervision of the clerk, and are subject to the appointment and approval of the governing body. The general principle should be that all arrangements for clerking meetings and providing other administrative support to the governing body should be managed by the clerk, who remains accountable for the effectiveness of those arrangements.
- 2.16 To be effective, the clerk should:
- keep themselves apprised of developments within the sector on governance practice, policy and structures, including effectiveness, and the monitoring of teaching and learning
 - keep the governing body advised of such developments
 - regularly review the governance structure and governance documents of the college
 - make proposals for, and lead developments or changes in, practice through to effective implementation
 - communicate effectively with all stakeholders.

Nature of the Post

- 2.17 Different clerking models exist within colleges. In some cases clerks have other college duties. Among those models adopted by colleges are:
- full or part-time appointment of someone who is not otherwise employed by the college
 - the purchase of a clerking service from another agency
 - a combined role/appointment within the college.
- 2.18 There are advantages and disadvantages with each of these models. Each governing body should weigh these up carefully in deciding how the chosen model would protect the trust of the governing body and protect the independence of the clerking role. In considering this, it may be helpful to bear the following points in mind, whilst recognising that it may not be possible to accommodate all of them:

- it is essential that the clerk should have the knowledge, self confidence and status within the college to enable him or her to act independently and for that to be respected by all parties
- arrangements may be required to resolve any conflicts of interest that might arise from other responsibilities held within the college, or from the clerk's line management relationship with the principal or other senior colleagues in connection with those other responsibilities. The clerk and the principal should be aware of the possible conflicts of interest. Such conflicts should, where possible, be avoided, but if they arise the clerk should discuss them openly with the chair
- the clerk will need access to independent legal advice
- the clerk will need ready access to the principal and the chair, chairs of committees, governors and senior managers, and they to the clerk. It is recognised that effective governance is most commonly achieved when there is a strong working relationship between the chair, principal and clerk.

2.19 Clerks may carry responsibilities that require them to present reports to and/or answer questions at meetings of the governing body or its committees. It should be recognised that this may necessitate the declaration of interest and the delegation of the minuting of that part of the meeting if the clerk has other responsibilities beyond that of clerk.

Job Requirements

- 2.20 A clerk to the governing body should be recognised as a professional advisory role which has some specialist aspects. A clerk's qualification provides a recognised, valuable and desirable standard. Each governing body is advised to consider carefully the role it expects its clerk to fulfil and the level of service it requires. The skills and experience which will enable a clerk to provide effective professional advice will normally include the following:
- an understanding of the legal framework within which college governing bodies function and an appreciation of the need to work in that framework at a strategic level
 - an appreciation of the ethical issues relating to the conduct of those in public life, and of college governors in particular
 - knowledge of the education sector and, in particular, further education, and the basis of its funding

- strong interpersonal and communication skills that enable effective engagement at all levels, including the ability to manage tensions between parties.
 - familiarity with committee work and procedures either as a committee member or as a clerk to a committee
 - organisational ability
 - the ability to write accurately and succinctly.
- 2.21 Governing bodies should encourage and enable the person appointed as clerk to seek further training and development in order to enhance their own continuing professional development (CPD), and the professional expertise and advice they can offer the governing body. .

Appointment and Removal of the Clerk

- 2.22 Whether or not the post is combined with other duties, the appointment of the clerk must be a decision of the governing body, which should also agree the job description and contract, the wording of the advertisement and the level of remuneration, the hours and support to be offered.
- 2.23 Where the appointment is combined with other duties in the college, it is essential for the two roles, of clerk and member of college staff, to be clearly differentiated. Each aspect should be the subject of a specific and separate job description or separately identified in a combined job description. The details should include a broad estimate of the proportion of the clerk's time that will be spent on each aspect of his or her duties. Lines of accountability should be clearly separated for each role. Governing bodies should give similar consideration to the separation of the descriptions and accountabilities for those supporting the clerk, e.g. a deputy clerk.
- 2.24 It will be for the governing body to decide how it proposes to select a candidate, but it may be appropriate to delegate the task to a selection panel. This might, for instance, consist of the chair of the governing body, chair of committees and the principal, all of whom will have to work closely with the successful applicant.
- 2.25 Governing bodies should consider, when appointing a clerk who will have other responsibilities, how to ensure independence from the management of the college. If necessary, this can be achieved by appointment on a separate contract of employment, perhaps on a fixed term.

- 2.26 Any question of the performance review, remuneration, changes of terms and conditions, disciplining or dismissal of the clerk should be a matter for the governing body (see also paragraphs 7.26 and 7.27).

Chapter 3 Relationships and Communications

Introduction

- 3.1 Effective clerking of the governing body will depend heavily on a sound working relationship and good communications between the clerk, the chair of the governing body and the principal of the college. It is in the interests of all three that the business of the governing body is well managed. The clerk can make an important contribution through the quality of support and advice given to the chair.
- 3.2 The clerk should expect to be proactive in managing change and enhancing the understanding of governance of new chairs, committee chairs, governors, principals and senior managers

The Chair

- 3.3 The clerk is a resource provided specifically to assist the governing body in its work. In practice, much of that work falls to the chair (and to the chairs of committees). It is the clerk's function to provide governance advice as well as manage administration for that work as well as for the cycle of meetings themselves. Chairs will have different requirements of clerks, depending for instance on the extent of their personal and work commitments, the availability of administrative support in their workplace and on their own working style. The clerk should establish with incoming chairs, or at the time of his or her own appointment, what personal support they expect.
- 3.4 It is also helpful to agree a routine for regular communication between clerk and chairs. This might be timed to coincide with the chair's regular meetings with the principal and in practice much of the communication between the chair and the clerk will take place in three-way meetings with the principal. Not only does this make more economical use of the chair's time, but it can facilitate communication between chair, principal and clerk on current matters that affect governors' business. An essential part of that regular communication is the clearance of agendas for forthcoming meetings. The clerk will know well in advance what the deadline is for despatch of agenda and papers. It is the clerk's responsibility to approach both principal and chairs early enough to ensure that agendas are agreed and papers are prepared and sent on time.
- 3.5 The clerk should also be prepared to deal with the chair's correspondence if asked to do so. The clerk should agree with the chair how he or she wants correspondence to be handled, including electronic.

The Principal / Chief Executive Officer (CEO)

- 3.6 In most colleges the principal is also the college's chief executive officer (CEO). There may, in some colleges, be a separate CEO and principal, and this guide should be read with that in mind.
- 3.7 Much of what has already been said about good communication between clerk and chair applies to the nature of communications between clerk and principal. The clerk is an important conduit for communication between principal and chair. It is essential to the smooth running of the college that the executive and the governing body are aware of each other's needs and concerns. The position should not normally arise where a matter appears on a governing body agenda without the prior knowledge of the principal.
- 3.8 If it is important to the college for an issue to be decided by a particular date, the chair needs to be aware of this. If governors are expecting information, or a report on an issue from the principal or another member of staff to be ready for a particular meeting, the principal needs to be made aware of this. In most instances, exchange of information of this kind will be an important element in regular discussions between principal and chair. The clerk however has a key role not only in keeping abreast of such matters, but also of reminding the principal, senior college staff and the chair as appropriate, of approaching deadlines.
- 3.9 The clerk will play a central role in drawing together a meeting schedule for the year, liaising with the chair, principal and senior managers. (See paragraph 4.2).
- 3.10 The clerk will need to have regular communication with the chair and principal in the lead-up to meetings, and will need to talk to other members of the college management team regularly about progress on forthcoming matters and the action required following the governors' decisions.
- 3.11 Certain decisions, particularly relating to contracts and bank loans, will require specific wording in the resolution and the clerk should explore the legal requirements of such decisions with the principal and chair prior to the meeting.

College Management

- 3.12 The college management team has a responsibility for ensuring that the governing body and its committees are fully aware of relevant developments, of decisions they may be asked to take and of progress in

responding to requests made by governors for reports or information. Depending on the nature of the business, this will be achieved through discussions between the chair and the principal, or between senior managers and the chairs of the committees to which their area of responsibility relates, or between senior managers and the clerk.

- 3.13 The clerk plays an important and pro-active role in assisting the progress of college business and needs to be kept in the picture on matters that involve, or will involve, the governors. This can be achieved by including the clerk in relevant circulation lists and, when appropriate, inviting him or her to join briefing meetings with chairs. Some colleges find it beneficial for all to include the clerk in the senior management team meetings. Some formally recognise the clerk as a member of the senior management team.
- 3.14 The clerk should also be seen by college managers, who are preparing matters for governors' consideration, as a source of advice on procedure, presentation and timing. Thus anyone preparing a paper for the governors can take advice from the clerk on the level of information to include and the wording of recommendations; any need for prior consideration at draft stage with the chair; on whether the matter falls within the remit of a committee or of the full governing body; and on other matters as appropriate.
- 3.15 The clerk should ensure that they have a working relationship with the college's financial director or chief financial officer. This is because the governing body has specific legal duties for solvency and safeguarding the assets of the college, also because of the requirement to have an audit committee and because (in practice) the financial director will supply many papers for the governing body and its sub-committees.

Governors

- 3.16 The clerk is appointed to serve the whole governing body. Much of the clerk's time will be devoted to working with the chair of the governing body, the chairs of its committees and the principal, the clerk is appointed to serve the whole governing body. Any member of the governing body can seek assistance or advice direct from the clerk about any aspect of their responsibilities.
- 3.17 It is important that all governors are kept up to date and well informed. The chair, principal and clerk all play a critical role in ensuring this takes place. This can include the planning of briefings, internal and external speakers, specific training sessions and other methods, all of which can be planned in a timely fashion in the governing body's calendar of business. If

the clerk feels that governors are not being kept in the picture on particular topics and that this might lead to difficulties, then this should be raised with the chair and principal.

Wider Access

- 3.18 The clerk to the governors will often act as the correspondent of the governing body, undertaking correspondence on the governors' behalf but also receiving written or other communications from staff, students or members of the public. To facilitate this, it is helpful for the clerk's contact details and email address to be published on the college website and other appropriate documents.
- 3.19 The clerk should exercise his or her judgement on matters raised in this way and decide whether they fall within the remit of the governors, or whether the matter should be referred to the principal or elsewhere. In all cases of referral, an acknowledgement should be sent. Where a matter of substance is raised which comes within the governors' remit, any response should normally be discussed with the chair.

Complaints, Disciplinary and Grievance Issues

- 3.20 From time to time, complaints about the college will be made direct to the governors, usually via the chair or clerk. Every college is expected to have a formal complaints procedure with which the clerk should be familiar. Complaints should be acknowledged and then referred to the person responsible for investigating complaints under the college's procedure. Governors should not seek to investigate and respond themselves unless and until the procedure requires them to become involved. This is usually when complainants have not been satisfied by the response given at all levels by college staff.
- 3.21 If a complaint is made specifically about some aspect of the governance of the college, it should be referred to the chair of governors, unless they are the specific subject of the complaint. It may not be appropriate to use the college's complaints system, which is essentially for responding to complaints about operational matters, and governing bodies may therefore want to adopt their own procedure for considering governance complaints
- 3.22 Clerks should also be alert to the need to refer other matters to the principal for reply when, for instance, matters are raised directly with governors by staff representatives on conditions of service issues or by local employers about some aspect of the college's course provision. It would normally be for the principal to decide whether such matters need

to be brought to the attention of the governors, in accordance with college policy. The clerk should have a clear understanding of the college policy on such matters and at what stage the governors should be told that a complaint or representation has been received.

- 3.23 Clerks should always be mindful when dealing with complaints of the college's policies such as disciplinary and grievance procedures, including senior postholders if in position. This may include potential implications of that grievance on other college policies. The clerk must be mindful of the level of information that can be reported to governors on such matters, in order to facilitate potential appeal procedures if required. If the clerk is in any doubt they should seek legal advice.

Chapter 4 Planning and Management of Business

The Clerk's Role

- 4.1 The management of its business is ultimately a matter for the whole governing body. However, the chair will look to the clerk for advice and support in the planning and management of business and to liaise with the principal and senior management. Chairs should expect the clerk to take a leading role in the management of business, drawing up programmes for their approval. Whatever part the clerk has in this process, the aim should be to help co-ordinate the management and governance needs of the college.

Timetabling

- 4.2 The clerk is responsible for making sure that there is a forward timetable of governors' meetings and schedule of business. Under the 2008 Instrument, and 2009 Instrument for catholic sixth form colleges, unless amended by the governing body, the governing body must meet at least once each term although in practice most governing bodies meet more frequently. The forward planning of meetings of the full governing body is essential in order to:
- ensure that the sequence of meetings will allow the governors to take key decisions at the appropriate time (see paragraph 4.4)
 - allow the college's senior management to plan the preparation of papers for the governing body's consideration
 - provide a framework of dates for fixing committee meetings
 - give members of the governing body adequate notice of when meetings will be held.
- 4.3 It is helpful to governors to plan dates on a college year basis and to do this 15 to 18 months in advance. Thus the dates for meetings of the governing body for the following college year might be agreed at the first meeting in the spring term. The clerk should clear the proposed timetable with the chair and the principal before putting it to the governing body. Similar procedures can be useful for fixing dates of committee meetings (see also paragraph 4.6). Once set, dates would as a rule only be changed due to urgent circumstances. If so, the same principle of adequate prior consultation should apply.

Key tasks

- 4.4 Effective forward planning of business will include making sure that the key elements of the annual cycle of decision making and monitoring are identified and scheduled for particular meetings. These will include:
- approval of key college policies and procedures, unless delegated to committees or senior management
 - review of the college's progress in improving the quality of teaching and learning in the light of relevant inspection reports and sector benchmarking information
 - strategic academic decisions
 - the setting of performance targets for the college and the principal
 - monitoring of the quality of teaching, learning and assessment
 - monitoring of academic performance targets to completion
 - other strategic decisions e.g. capital projects
 - approval of strategic plans
 - approval of the annual budget and financial forecasts
 - approval of the annual accounts
 - periodic monitoring of expenditure, income and financial forecasts
 - receipt of audit reports
 - review of effectiveness of the governing body and how it can be improved further
 - other issues need to be scheduled but not necessarily annually, e.g. appointment of auditor, appointment of committee members, policy reviews.
- 4.5 The clerk should ensure that he or she is fully conversant with the current needs and expectations of both the governing body and the principal for regular reports. Situations within colleges can change and the clerk must ensure that the governing body's schedule of business reflects these changes and the changing sector environment. It is generally helpful if the

governing body and its committees are asked to determine, and from time to time to review, the nature and frequency of their requirements for management and financial information. This is helpful in:

- ensuring that over the course of the year governors have an appropriate overview of college business
- regulating and rationalising the overall demands made on senior management for information, and reducing the number of ad hoc requests for data
- facilitating the forward planning of agendas.

Overall, the clerk should ensure that the business plan has a balance of governance time spent between strategy, scrutiny and other governance matters.

Managing Committee Business

4.6 It is important that there should also be systematic forward planning of business at committee level. In this, the clerk will need to work with the appropriate committee chairs.

4.7 Particular points to be borne in mind when planning committee timetables include following:

- some committee recommendations must be endorsed by the full governing body and the clerk must be mindful of the governing body's scheme of delegation
- the full governing body should be kept apprised of the work of the committees
- clashes of meetings, particularly where governors serve on more than one committee, should be avoided
- some items of business have to be considered by more than one committee in a particular sequence. For instance, a finance committee may wish to consider the budget in the light of the comments of another committee before making its recommendations to the governing body. This requires careful planning of dates.

Some of these matters will depend on the individual governing body's arrangements and the extent to which it has delegated decision-making to its committees (see paragraphs 7.10 to 7.15).

- 4.8 The overall aim should be to ensure that decisions are taken in good time and at the appropriate level. Situations can arise where lack of time rather than planned delegation means the whole governing body is effectively excluded from consideration of an important matter and where the decision is made by a particular committee involving only a minority of governors. This is undesirable and where it occurs frequently is generally as a result of inadequate forward planning.

Agenda

- 4.9 The effectiveness with which the business of a meeting is managed will depend largely on the agenda. The draft agenda for a meeting of the governing body or one of its committees is normally drawn up by the clerk for clearance with the chair after discussion with the principal.
- 4.10 The clerk's role in drawing up the agenda is to ease communication and ensure that all relevant business appears on the agenda and this will include highlighting initiatives for discussion. This also ensures that there has been adequate prior consultation before an agenda is finalised and ensures that the governing body's wishes are addressed. In planning a meeting, the clerk will need to take account of the time required for consultation, bearing in mind the need for access to both the principal and the chair.
- 4.11 From time to time, the clerk will need to prepare and present reports to the governing body on matters relating to college governance.
- 4.12 Any individual governor may request that an item is included on the agenda. It can be helpful for the chair or clerk to remind governors periodically that they may bring items forward and to advise them to whom they should be addressed and how much notice is required. The clerk should inform the chair and principal if items are proposed through this route before the agenda is finalised. Such procedures for these circumstances are normally stated in the standing orders and approved by the governing body.
- 4.13 It will be easier for the chair to maintain the coherence and balance of a meeting if the agenda is informative. Governors should receive written notice (i.e. hard copy, unless the 2008 Instrument, and 2009 Instrument for catholic sixth form colleges, has been amended by the governing body to allow electronic communication) of the meeting and an agenda in good time and should be told:
- where and when the meeting is being held

- which matters are to be discussed
- who is presenting each item (whether a governor, a member of the college staff or someone from outside advising the governing body)
- what supporting papers have been circulated (supporting papers should be clearly marked with the number of the agenda item to which they relate). If any papers are to follow, it is helpful to say so clearly on the agenda, although late papers should be avoided if at all possible
- which matters require a decision and which are simply for discussion. Some governing bodies do this by grouping all the decision items at the beginning of the agenda; others by clearly marking items that require decisions. All this information can be provided succinctly on a carefully drafted agenda.

Circulation of Papers

- 4.14 The instrument of government or standing orders are likely to indicate the responsibility for calling meetings, usually placed on the clerk, both the notice of a meeting and the agenda be sent by the clerk to members of the governing body at least seven clear days in advance. The clerk should also endeavour to provide all supporting papers to members a full week before the meeting to enable them to read and consider the matters in hand.
- 4.15 The difficulty of achieving this timetable, particularly if all papers are to be despatched with the agenda, should not be underestimated. There will be pressure to delay despatch because papers are not ready or because current events lead to suggestions for changes to the agenda at a late stage. The clerk should resist this pressure and endeavour to maintain the timetable required by the instrument. There are steps that can be taken to guard against late notice of meetings or the late despatch of papers:
- the clerk should ensure that there is a timetable for submitting papers for meetings of the governing body and its committees. The timetable should be updated and circulated to the college management team when the forward dates of meetings are agreed annually. It should make clear that late papers are not normally acceptable
 - at the agenda planning stage, the clerk should establish with the principal the authorship of any papers due to come forward, to ensure that responsibility for meeting the deadline has been accepted

- the clerk should be conversant with college protocols for clearance of papers (for example, in what circumstances may the clerk accept and despatch a paper that the principal has not seen). If such protocols are not clear or do not exist, the clerk should raise the need for them with the principal.
- 4.16 The support of the principal in adherence to paper deadlines cannot be underestimated. Late or tabled papers can disrupt the flow of meetings and lead to ineffective use of time. It is impossible to avoid the occasional need for this when urgent matters arise. As a general rule, to ensure good governance, the late despatch or tabling of papers should only be accepted under exceptional or urgent circumstances and with the approval of the chair.
- 4.17 Between the despatch of papers and the meeting, it normally helps if the clerk contacts the chair to check that he or she has all the relevant papers and that any additional briefing, from senior staff for instance, has been arranged. At this stage, the chair might also find it helpful to be taken through the minutes of the previous meeting by the clerk to check on matters likely to arise and to establish the latest position on them. The clerk should maintain a tracker of such items which can be presented to each meeting and effectively track agreed actions through to completion. (See paragraph 4.22).

Additional Urgent Business

- 4.18 In certain circumstances, additional meetings may be held. Procedures for this should be laid down in standing orders. Written notice and an agenda are required, but may be sent with less than the normal notice period at the direction of the chair or vice-chair. There are usually two ways in which additional meetings can be convened:
- by the chair
 - by written request from a specified number of members of the governing body.

In both sets of circumstances, it is usually for the chair to decide when the meeting should be, although it would be courteous to consult other governors. In either case, if the chair (or vice-chair) decides that the matter is urgent, the seven-day rule on notice of the meeting can be waived. Where an additional meeting is requested, the chair (or vice-chair) must arrange for that meeting to take place through the clerk.

- 4.19 The clerk should make sure that the business to be discussed at the

additional meeting is clearly stated on the agenda. Where a meeting has been requested, the clerk should ask for written confirmation of the business governors wish to have discussed and check that this is what appears on the agenda. Additional meetings of governors may only deal with the particular business for which the meeting has been called. The agenda will therefore consist only of apologies for absence and the item in question. It would not normally approve the minutes of any previous meeting nor should the chair allow other items to be raised as any other business. Normal rules concerning quorum (see paragraph 5.17), chairship in the absence of the chair (see paragraph 5.36), taking of minutes and so on apply to additional meetings.

- 4.20 Individual governing bodies should decide whether, and if so in what circumstances, their standing orders should permit additional meetings of committees of the governing body to be convened at short notice by the chair of the committee or to be requisitioned by a specified number of the committee's members.
- 4.21 Where urgent matters arise between scheduled meetings there are a number of other ways in which the matter can be dealt with. The 2008 Instrument, and 2009 Instrument for catholic sixth form colleges, allows governing body meetings to be held by video-conference and governing bodies may extend this to telephone conferencing or to allow decisions to be taken by written resolution, which can be circulated in hard copy or electronic form. If an actual or virtual meeting is held, the rules about additional meetings will apply unless the 2008 Instrument, and 2009 Instrument for catholic sixth form colleges, has been amended. In a limited number of cases it may be possible for the matter to be dealt with by the chair under Chair's Action (see paragraphs 4.24-4.26).

Outstanding Business

- 4.22 There will be outstanding business arising from most meetings of governors. It may not be possible to resolve all the issues discussed and new issues will arise and lead to requests for further information. It will be possible to cover many of these under matters arising from the minutes at the next meeting or as specific agenda items. Other matters may take longer to resolve and it is easy to overlook the need to report back on them. Keeping such issues alive by raising them at each subsequent meeting under 'matters arising' is not good practice. It distorts the balance of meetings by encouraging an ever-lengthening list and discussion of matters arising from previous meetings.
- 4.23 The clerk should therefore regard it as his or her responsibility to keep a record of such outstanding business both at governing body and

committee level. This can be done by maintaining a list of outstanding business and circulating it regularly to the governing body, committee members and the principal and managers in the college. This provides:

- a reminder that the matter has not been dealt with
- an opportunity for matters to be taken off the list, for instance if the governing body or committee agree that the issue is no longer current because of subsequent developments.

The clerk and the college's senior management should also ensure that there are mechanisms which keep track of outstanding business, that check they are being dealt with and which keep the clerk informed of progress.

Chair's Action

- 4.24 On rare occasions, it will be necessary for the chair, or the vice-chair in his or her absence, to act on behalf of the governing body between meetings. The governing body should define its policy on this in its standing orders. On the one hand, this is likely to include routine action which would not have merited an agenda item and discussion at a governing body meeting. Examples might include the signing of routine documents on behalf of the governors, (subject to the special rules concerning the use of the college seal see paragraph 9.6) responding to approaches made to the governing body by external organisations or agreeing to detailed aspects of the implementation of matters already agreed by the governing body.
- 4.25 On the other hand, chair's action can occasionally involve matters which are judged too urgent to await a meeting of governors. If such matters are of significance, the chair has the option of calling a special meeting, if necessary with less than the normal seven days' notice, and the clerk should remind the chair of this possibility, depending on the importance of the issue and the circumstances. Some governing bodies have also adopted measures that enable 'electronic' decision-making e.g. via email. Action by the chair on matters of significance should only be taken if delaying a decision would disadvantage the college and there are no alternatives.
- 4.26 The governing body, having authorised its chair to take certain action between meetings, has to accept corporate responsibility for any action taken. It is important therefore that the clerk ensures that as full a record as possible is kept of action taken between meetings and that this is reported as an item on the agenda of the next governing body meeting. The clerk may not be directly involved on each occasion when the chair is

asked to take a decision between meetings. It will be necessary therefore to have an agreed way of keeping the clerk informed or ensuring the clerk's involvement. The clerk should also advise on whether the chair has been given delegated authority to take action (see paragraph 5.36).

Electronic Administration of Governance

- 4.27 A number of colleges have adopted an electronic process for the administration of governance meetings and other matters and it is likely that the clerk will have a central role to play in this, from initially exploring the concept through to consideration by governors and implementation. This may include the writing of a business case for any proposal put forward.
- 4.28 This use of electronic facilities may include using electronic surveys for elements of governance self-assessment or creating an intranet site for the posting of papers. Both of these have the potential to save both time and money. The submission of surveys electronically enables an initial electronic analysis of the outcomes, otherwise manually undertaken within the college, often by the clerk.
- 4.29 The electronic administration of meetings varies amongst colleges. Some simply send papers via email to members but have hard copies available at the meeting. Others have gone further and created a secure intranet site for the posting of papers, in effect a Governance site, that can encompass other materials such as all statutory governance documents, for reference as required. Governors can receive an email alert when something is posted to the site, can access the papers, can download and annotate the papers, and can then post their annotated versions back to their own individually secure area of the site in readiness for the meeting. At the meeting, a laptop or tablet is available to governors on arrival in order for them to access their papers. Some colleges have given governors a laptop or tablet for the duration of their term of office; in other colleges governors have preferred to use their own hardware to access papers prior to the meeting and to be supplied with a laptop at the meeting. Notably governors are increasingly using their own electronic devices such as tablets for their governance work at such colleges. If hardware is supplied at the meeting, this is often equipment that already exists in the colleges and is made available to other users of the boardroom during the day.
- 4.30 All of the above have the ability to enable the continuation of effective governance administration whilst also saving time from the clerk's perspective (and that of any other administrator involved in the posting of papers) as well as saving money on such things as photocopying and postage. The electronic posting of papers also enables a swifter arrival with governors than regular posting, giving them more time to read and

consider the business in hand.

College Website

- 4.31 Many colleges have a governance section on the college website in the interests of openness and transparency. The clerk should be responsible for ensuring that it is current. Many potential governors will look at a college website and it may be beneficial to include recruitment based materials on such pages (see paragraph 6.5).

Chapter 5 Clerking of Meetings

The Clerk's Role

- 5.1 The clerk's primary responsibilities at meetings of the governing body and its committees are to advise the chair on governance matters such as conduct of the meeting (including whether the meeting is and remains quorate) and to keep a formal record of the proceedings. The clerk is entitled to offer advice during a meeting when questions of procedure are under discussion, and must intervene where he or she judges that the governing body or its chair may be at risk of breaching its own procedures or legal requirements for the conduct of business. The clerk may also be proactive in suggesting a course of action.

Minutes

- 5.2 The minutes of a meeting constitute the formal record of proceedings. There are no circumstances in which the governors can properly take a decision without it being minuted. No other record is kept and their accuracy and completeness is essential to the proper conduct of the government of a college. As well as being the governing body's formal record, the minutes are a publicly available document and, as such, an important means of communication in the college and more widely. Although the business of the governing body and its decisions are, to a large extent, in the public domain, the detail of governors' discussions at meetings, such as attributing the opinions expressed by individuals on particular issues, is generally regarded as being confidential to the governors and not a matter of formal record in the minutes.
- 5.3 These considerations suggest that well-drafted minutes have the following characteristics:
- the emphasis should be on recording the outcomes of discussion i.e. what has been agreed and any arising actions. Whilst narrative or verbatim accounts of discussion are unnecessary, a summary of discussions or reasons for decisions on issues which are of significance can be of value as a record of business and also evidence of robust scrutiny, challenge and constructive governance; the important matter of record is the corporate view that was reached.
 - Minutes should be comprehensible to someone (whether or not a governor) who was not at the meeting. It is good practice to make sure that the minutes contain sufficient information to stand alone as a summary of business without the need to refer to agenda and papers

- formal decisions taken should be differentiated from matters which were discussed and where no decision was reached or none was called for. Different terminology can be helpful in drawing these distinctions; for instance a decision can be denoted by simply using the phrase ‘the governing body decided (or resolved) to...’, whereas a discussion of a paper which did not result in a decision might simply refer to the item having been ‘received’ or ‘noted’
 - the minutes should include a list of all those present but should distinguish between governors and non-governors. Where a governor arrives late or leaves early, the part of the meeting for which he or she was present, should be indicated.
- 5.4 When the governing body (or one of its committees) decides that an item should be regarded as confidential (see also paragraphs 8.10 to 8.12), that item should be minuted on a separate sheet, although there can be a cross-reference to the existence of a separate minute in the main minutes. Circulation of the confidential minute as a draft or as an agreed minute, and the circulation of papers relating to the item, should be restricted to those governors entitled to attend the meeting concerned and care should be taken about who is present at any subsequent discussion of the minute when it is presented for approval.
- 5.5 There may be occasions when the governing body decides that it is the discussion of an issue or the named individuals concerned that should be regarded as confidential rather than the fact that the issue has been discussed and a decision taken. In these circumstances, the governors might decide that a separate minute was not necessary and that the minutes should record the decision but not contain any reference to the discussion or to any individual involved. If the item has required the withdrawal from the meeting of staff or student governors (see paragraphs 5.28 and 5.30), a separate minute should be kept and that minute should not be circulated subsequently to those governors who were asked to withdraw, unless agreed otherwise.

Approval of Minutes

5.6 It is for the governing body to decide whether it is satisfied that the minutes of a particular meeting constitute a true record of the business of that meeting. The clerk's job is to prepare and circulate minutes for the governing body or committee to consider at a subsequent meeting. Implementation of the decisions of the governing body will not normally await approval of the minutes of those decisions.

5.7 Both the accuracy and the early availability of the draft minutes are therefore important to the progress of business. This suggests that the clerk should:

- clear the first draft of the minutes with the chair of the meeting
- unless the governing body has explicitly decided otherwise, circulate the draft minutes for information, once cleared, to all governors (or to members of the relevant committee), whether or not present at the meeting
- agree with the principal how members of staff, charged with taking action arising from meetings, are advised of decisions or actions to be taken.

Clerks should be aware of the need for governors to be informed about the timing of the announcement of key or sensitive decisions. It may be appropriate to ensure that members who were not present when such decisions were taken are informed of them before they are announced.

5.8 Whether or not the draft minutes have been agreed in advance by the chair of the meeting, other members of the governing body (or committee) who were at the meeting may subsequently challenge their accuracy and propose changes when approval of the minutes is considered. It may be helpful if such minutes when circulated are marked 'draft'. Any change proposed to the minutes is subject to agreement by the majority of the governors present at the meeting which is considering the draft minutes. Governing bodies may, in their standing orders, wish to preclude such participation in decisions by governors who were not present at the meeting of which the minutes are under consideration.

5.9 All versions of minutes should be retained by the clerk i.e. draft and approved, to ensure a record of any changes is available. It is not normally necessary to recirculate the agreed minutes to governors and other recipients unless substantial changes have been made.

5.10 Subject to these procedures, the draft minutes are the basis on which the business of the governing body and its committees moves forward between meetings, notwithstanding their provisional status.

5.11 The signed copies of the minutes of the governing body and its committees should be kept in sequence in a loose-leaf minute book or file which the clerk should store in a secure place indefinitely. These are the formal record of the governing body's business and may need to be referred to if questions about the governance of the college arise. Such questions might be raised by outside agencies such as the college's external auditors, a

government funding agency or the courts in the event of legal action or judicial review.

5.12 The clerk should agree with the chair what measures to take to prevent unauthorised alterations to the minutes. Measures commonly used include:

- restricted access to the minute book or file and on the college website. This should be the case anyway as the minute book will include confidential items. Parallel copies of non-confidential minutes should be made available for public reference. This may include the college website or in paper form via the clerk
- a signature and date at the end of the minutes when agreed at the subsequent meeting.

Conduct of Business

5.13 Any organisation will benefit from rules that determine how meetings are conducted. Such rules, normally referred to as standing orders, should be drawn up and agreed by the governing body, be given to each member on appointment and should be the basis on which the chair of the governing body and each of its committees conducts meetings.

5.14 Some procedural rules are effectively laid down in the instrument of government (see paragraphs 5.16 to 5.32 for a summary). They can be described or elaborated upon in standing orders in terms that reflect local practice, but they must not conflict with the instrument of government. For example, while it would be appropriate for standing orders to define the circumstances in which a meeting would be inquorate, it would not be open to a governing body to adopt different rules on the size of a quorum from those that it has set out in its instrument of government.

5.15 Governing bodies should look to the clerk to keep their standing orders under review. Subsequently, it will be part of the clerk's role to advise the chair on the interpretation and application of the rules as and when necessary during the course of meetings.

Procedural Matters determined by the Instrument of Government

5.16 A college's instrument of government will deal with a range of procedural matters. It is essential that the clerk is fully conversant with what the particular instrument for his or her college has to say as it may differ significantly in detail from the interpretations given below. This is most likely to be the case for designated institutions and where a further

education or sixth form college governing body has used the freedom conferred by the Education Act 2011 to amend its instrument within the revised parameters of Schedule 4 of the 1992 Act.

Quorum

- 5.17 For a meeting of the governing body to be quorate, the overall number or proportion of governors determined by the instrument as being the minimum to form a quorum must be present.
- 5.18 The rules on the quorum apply not only at the start of a meeting, but also at any point during the meeting when the numbers present change as a result of members arriving late, leaving early or declaring an interest. It is thus incumbent on the clerk to keep a note of attendance, including any changes which take place during the meeting. If the meeting becomes inquorate, the clerk should immediately inform the chair. If the meeting becomes inquorate, it should be ended as decisions made by an inquorate meeting would be invalid and subject to challenge. It would be possible to continue informal discussions, and it is open to the chair to call an additional meeting to undertake the remaining business.

Voting

- 5.19 The instrument will establish how every question to be decided at a meeting should be determined, normally by a majority of the votes of the members present and eligible to vote on the question, with the chair having a second or casting vote in the event of a tie. A student member who is under 18 years of age at the time of the meeting may not vote on any question involving the governing body in committing expenditure, making a contract, or incurring debt or liability.
- 5.20 In practice, it would be unusual for all decisions taken at a meeting to be decided by a formal vote. The chair would normally simply ask the governing body for their agreement to the proposal in question at the conclusion of a discussion and only call for a vote either if there was a clear expression of dissent or if it was a matter of particular significance (for example approval of the annual budget or accounts).
- 5.21 Should an individual member of the governing body request a vote on a particular issue, this must be agreed. If a formal vote is taken, it may be helpful to record the number voting for and against in the minutes. It is for the governing body to decide the circumstances in which a secret ballot should be held or in which the names of those voting for or against a proposal should be recorded. Aspects of voting procedure not dealt with in the instrument might usefully be covered by standing orders. Whether or

not a recorded vote has taken place, and even if a decision has been made by secret ballot, a dissenting governor should have the right to have his or her disagreement recorded in the minutes.

Reconsideration of Resolutions

- 5.22 The instrument is likely to require that no resolution of the governors be rescinded or varied at a subsequent meeting of the governing body unless its reconsideration appears on the agenda for that meeting. A resolution, which in this context means any formal decision by the governing body, cannot therefore be overturned or varied, for instance, simply as part of discussions of matters arising from the previous minutes. Not only would the subject appear as a substantive item on the agenda, but also the fact that there is a proposal to vary or rescind a previous decision would be indicated. It may be appropriate for the governing body's standing orders to specify the procedures through which governors may propose such reconsideration.

Declaration of Personal Interest

- 5.23 Following the requirements of charity law, the instrument outline and/or standing orders will specify certain circumstances in which a member who is present at a meeting of the governing body must declare his or her interest, not take part in the discussion, not form part of the quorum and not vote. Declaration of interest may also be required under company law for governors of colleges conducted as companies. These are where the governor has a financial interest in:
- a. the supply of work or goods to or for the purposes of the college;
 - b. any contract or proposed contract concerning the college;
 - c. any other matter relating to the college.
- 5.24 Governing bodies may wish to consider extending this definition of personal interest in its own standing orders to cover two further aspects:
- a. the extent to which a governor's personal interest encompasses the relevant and known interests of those with whom he or she is closely connected. This might include the members' spouse or partner, and their own or spouse's/partner's close family;
 - b. the non-financial personal interest of governors, such as membership of other public bodies and institutions; trusteeship of a trust where the

governor, or other person connected with him or her, may be a beneficiary; or membership of a closed organisation.

- 5.25 The declaration of an interest is essentially the responsibility of the individual governor. However, if the clerk, on the basis of information in the governors' register of interests, has reason to believe a governor has a financial or personal interest that may need to be declared in relation to a particular matter, it would be prudent for the clerk to draw this to the attention of the chair, and the member concerned, preferably before the meeting (see paragraphs 8.7 and 8.9). This is particularly important if the chair may have a personal or financial interest.
- 5.26 At all times, the clerk's objective should be to help governors avoid what might subsequently be seen as a conflict of interest which may embarrass the college or individual governors or invalidate a decision. As a rule, any interest which might be difficult to justify publicly or which may give rise to public criticism should be registered and declared in relevant meetings. The maintenance by the clerk of a register of financial and other interests (see paragraph 6.19 to 6.22) is also relevant in this respect, as is any code of conduct adopted by the governing body.
- 5.27 Having declared an interest, the instrument and articles of government and/or standing orders will set out a set of procedures to be followed in such an eventuality. The declaration of interest by a governor during the course of a meeting should always be recorded in the minutes.

Withdrawal from Meetings

- 5.28 The instrument and/or standing orders will include specific rules which relate to the withdrawal of staff and student governors from meetings in certain circumstances.
- 5.29 Staff governors and, where applicable, the principal, are likely to be obliged to withdraw from any part of a meeting which is discussing:
- their own remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement
 - the appointment of their successor
 - at the discretion of other governors present, the appointment, remuneration, conditions of service, promotion, conduct suspension, dismissal or retirement of any member of staff senior to themselves.

- 5.30 A student governor should withdraw from a meeting discussing his or her own conduct, suspension or expulsion. A student governor should also withdraw from any part of a meeting, if requested to do so by one or more governors, where there is consideration of the appointment, remuneration, conditions of service, dismissal or retirement of any member of staff. Whether or not withdrawal is requested, a student governor may not participate in the discussion or vote.

Public access to Governance Documents

- 5.31 The governing body should stipulate in its instrument and articles of government and/or standing orders its rules regarding the circulation, availability and publication of papers for each meeting, and on the college website. In the spirit of open governance and accountability, approved minutes should be published on the college website.
- 5.32 Governing bodies can take their own view on whether to publish following approval by the chair or approval at the subsequent meeting.

Procedural Matters for Consideration by the Governors

- 5.33 Each governing body should decide the extent to which it wishes to establish its own procedural rules for the conduct of its meetings beyond those required by the instrument. The following suggestions show areas which can be usefully covered, and the clerk may wish to bring them to the attention of governors at any time when standing orders are being considered.

Appointment of Governors

- 5.34 The governing body should, decide and record in its standing orders any rules it wishes to apply to the appointment or term of office of governors and, in the case of parent, student and staff governors, the election arrangements. If the governing body has an agreed procedure for selecting governors, this might also be recorded in the standing orders and published. This should not exceed four years, and unless there are exceptional circumstances, exceed two four year terms of office or its equivalent.

Appointment of Chair and Vice-Chair

- 5.35 It is for the governing body to decide on the period of office of the chair and vice-chair and on the arrangements for new appointments when the period comes to an end, or if either office holder resigns before then. The arrangements should include a practice in which the clerk or vice-chair (if

not a candidate) chairs the appointment meeting and invites nominations for chair; rules concerning the proposing and seconding of nominations and guidelines for whether secret or open balloting is to be used. Standing orders might also include a reminder that the principal, staff and student governors are ineligible for appointment but may still participate in the appointment process. Some governing bodies appoint chairs and vice-chairs annually; others biennially. Good practice dictates that the reappointment of chair should be a robust and transparent procedure, as it would be for any governor appointment.

Chair's Action

- 5.36 The governing body should define the circumstances in which the chair is authorised to act on its behalf between meetings and the arrangements for subsequent reporting of that action to the governing body and its recording in the minutes (see also paragraphs 4.24 to 4.26). It should also be made clear as to the circumstances in which the vice-chair can act.

Public Access

- 5.37 The governing body's policy on allowing access to meetings by non-governors as observers (such as senior members or other staff, professional advisors, students, the public and the press), be made clear as well as the circumstances in which such access might be restricted (see also paragraph 7.23).

Payment and Expenses

- 5.38 The arrangements for claiming expenses that relate to a governor's duties, including a definition of what expenditure is eligible for reimbursement might be described. The clerk should ensure that any payments and expenses are in line with charity law.

Committees

- 5.39 The membership and terms of reference of any committees established by the governing body should be recorded, including the terms of any specific delegation of decision-making; the duty of the clerk to maintain an up-to-date schedule of delegated authority; the arrangements for reporting or providing committee minutes to the governing body; the application of the standing orders to committees; the quorum of each committee; and any rules concerning non-governor membership of committees (see also chapter 7). As professional advisor to the governing body, the clerk should clerk, or be in attendance at, all committee meetings.

Appointments

- 5.40 The procedure for advertising for, selecting and appointing senior staff, including the clerk, the make-up of appointments boards and arrangements for long and short-listing should be defined in standing orders.

Attendance and Removal from Office

- 5.41 Criteria should be established for determining when a governor may be removed from office and the circumstances in which a governor might seek the governing body's permission to be absent. This will include non-attendance.

Debate

- 5.42 Any rules the governing body wishes to make about the way debates are conducted, resolutions are made and the authority of the chair applied should be specified in its standing orders.

Urgent Business

- 5.43 The governing body is not obliged to include an item for any other business on its agenda. Such an item can lead to issues being raised without notice, often at the end of a long meeting. If such an item is to be included, governing bodies may wish to consider a rule that requires such matters be declared prior to the start of the meeting and/or to be restricted to urgent matters.
- 5.44 If governors are to be precluded from raising other business, there will need to be a way of dealing with urgent matters that have arisen since the agenda was circulated.

The Clerk as Advisor

- 5.45 The clerk's role includes offering advice on the legal framework applicable to the matter under consideration.

Chapter 6 The Governing Body

Self-assessment and Skills Audit

- 6.1 The clerk will have a lead role in taking forward the agreed outcomes of self-assessment into a quality improvement plan for the governing body, creating and maintaining an audit of members' skills and experience, and working with the chair for monitoring it through to completion. If training and development needs are identified by self-assessment, the clerk can propose actions to address these needs and make arrangements for them to be conducted.

Membership and Appointments

- 6.2 Governing bodies vary in their size and composition. Each clerk should maintain a record of:
- the categories of governor
 - the number in each category
 - the name and address of each governor
 - the arrangements by which nominations are made by bodies outside the college or by the staff or student body within the college.
- 6.3 In sixth form colleges, trustees and foundation governors' appointment arrangements should also be explicit.
- 6.4 The clerk should also record equality and diversity data of governors that not only enables them to respond to sector surveys on such data, but that also informs recruitment strategies.
- 6.5 The clerk has an important role in:
- leading recruitment strategies through to completion
 - making proposals for new recruitment strategies to meet specific identified skills needs
 - making sure that the membership of the governing body is as complete as possible, providing materials analysing the outcomes of governance self-assessment that can assist the recruitment, reappointment and succession of governors

- helping the chair in particular, and the governing body in general, to anticipate vacancies and thus to plan for succession
 - advising on the balance of membership, including members' experience and skills, and diversity, required by the governing body
 - keeping apprised of, and advising on, the range of governor recruitment and selection methods
 - managing the election of staff, student and, where applicable, parent governors
 - conveying the decisions of the governing body to those appointed whether these are direct appointments or as a result of nomination by others
 - checking that offers of appointment are accepted and providing new governors with essential information
 - checking to see that serving members are still eligible to serve and that prospective members are not disqualified
- 6.6 The clerk will have a lead role in ensuring that effective and appropriate materials are in place for self-assessment and appraisal of governors that will inform the reappointment of members and the skills a governing body needs on board.

Appointment Procedures

- 6.7 The clerk should take responsibility as far as practicable for checking that any person under consideration for appointment is eligible within the terms of the particular category of governorship, and is not disqualified for any other reason specified in the instrument of government, or as the result of an unsatisfactory Disclosure and Barring Service check, where required. Subject to that, a retiring governor is eligible for reappointment. The governing body should in the case of each appointment decide the term of the appointment. This should not exceed four years, and unless there are exceptional circumstances, exceed two four year terms of office or its equivalent.
- 6.8 The appointment of governors should normally be considered as an agenda item at a meeting of the whole governing body, preferably with prior circulation of the names and other details of those under consideration in an accompanying paper. It is for the clerk to advise the chair about the rules in the instrument of government concerning the

appointment of governors, including the role played by current governors in such appointments.

- 6.9 In the case of staff or student governors, where the appointment is made on the nomination of another body, the appointment of the nominated person is made by the governing body, i.e. the governing body is the appointing authority. If for any reason the person nominated is ineligible, the governing body should seek a further nomination.
- 6.10 Whatever category of governor is involved, it is normally for the chair or clerk to send the formal letter of appointment to a new governor. There is no standard form of words but it is helpful such letters to include:
- the date of appointment, and the length of the term of office decided by the governing body, any conditions on eligibility attaching to that term of office (for instance, whether a parent governor remains in office if his or her child leaves the college) and an indication of how the governor should inform the college if he or she becomes ineligible for office at any point
 - dates(s) of forthcoming meeting(s)
 - a summary of the circumstances in which people are not eligible to be governors (with a cross-reference to the relevant clauses in the instrument of government)
 - a request for acceptance of the appointment to be confirmed in writing

Access for new governors to the following is also suggested:

- a list of the other governors, including the chair's and the clerk's name, a contact address, telephone number and email address
- copies of the instrument and articles of government and the standing orders of the governing body
- a note of the committee structure and membership
- the college prospectus, the strategic plan, inspection reports and other background material about the college, which would be useful
- the latest annual accounts and audit reports
- minutes of recent meetings of the governing body
- the funding body's financial memorandum or funding agreement

- the governing body's code of conduct and register of interests
- relevant governance information and training materials.

Disqualification and Resignation

6.11 The instrument of government and/or standing orders is likely to contain detailed provisions relating to the circumstances in which a person may be ineligible or be, or become, disqualified in law from serving as a governor. In summary:

- that any person under the age of 18 may not be appointed (unless nominated as a student member)
- that members of staff and students with the exception of those nominated or appointed to serve as governors are ineligible for appointment
- that there are limitations on the eligibility of employees to serve as governors
- that there are circumstances which disqualify a serving governor or make a person ineligible for appointment. These circumstances include bankruptcy or a prison sentence
- that the principal, and staff and student members cease to be members on leaving the college or cease to be in the relevant category.

6.12 Although it is a governor's duty to declare any impediment to his or her eligibility to serve, the clerk should ensure, when appointments are being considered, or if the changing circumstances of a governor should affect his or her eligibility, that the governing body is aware of these provisions. In addition, as already suggested above, new governors should be told about these provisions on appointment, as well as any conditions which the governors themselves have attached to the term of their appointment.

6.13 If a governor decides to resign from the governing body, the clerk should seek written confirmation and normally take no action unless and until this confirmation has been received in writing. The clerk should then acknowledge receipt, confirm receipt, confirm the date of resignation and inform the chair. It should be reported to the next meeting of the governors, at which point it would be appropriate to decide the action to be taken to fill the vacancy or to confirm a new appointment if that is possible.

Attendance

- 6.14 It is important that the clerk keeps an accurate record of attendance of governing body and committee meetings. Governing bodies will set out the procedure to be followed for authorised absence. Unauthorised consecutive absences from meetings can lead to a governor being removed from office. The record of attendance is an important part of the formal record of the governors' business, particularly if aspects of the way that business was conducted were ever subsequently to be challenged. The clerk must also be sure when authorising any travel or subsistence expenses that a governor was present on the occasion in question.
- 6.15 Only those actually present at a meeting can be recorded as attending. An advance apology for absence, however valid the reason, does not count as attendance.
- 6.16 One way of recording attendance is by circulating an attendance sheet or register which is signed by those present. This list is then transferred to the minutes of the meeting when they are drawn up. Governors arriving after the meeting starts will need to be reminded to sign the register. The alternative is for the clerk simply to keep a note of who is present. However, this potentially might lead to difficulties if the clerk's attendance record is subsequently challenged.
- 6.17 The clerk should also keep a composite record of attendance at governing body and committee meetings so that he or she can monitor overall attendance. If a governor is approaching the point at which his or her continued membership may need to be decided following absence from consecutive meetings, it is normal courtesy for the clerk or chair to alert the governor to this before the meeting after which continued membership might be called into question.
- 6.18 If a governor's continued membership needs to be decided due to absence, the clerk should inform the chair. This will enable the chair to put the matter to the governing body and to establish whether the governing body considers that the governor should be removed from office, taking into account any special circumstances which may have led to the absences.

Register of Interests

- 6.19 The circumstances in which a governor should declare an interest during a governor's meeting are described in chapters 5 and 8. It is suggested that judgements about the circumstances in which there is personal interest in a particular matter are for the individual concerned to make, but that such

judgements need to be guided by the governing body's own standing orders and the Charity Commission's guidance on conflicts of interest.

- 6.20 Governing bodies should maintain a register of the financial interests of the governors and of members of staff who have significant financial responsibility. A register, publicly available, is a positive indication of the seriousness within which the governing body takes its responsibilities and accountability for public funds. It is for the governing body to decide the form of that register; the nature of personal financial interest, in terms, for instance, of the value of shareholdings, directorships, employment, consultancies, property ownership and other matters that should be declared in the register. The governing body will also need to decide the extent to which personal interest extends to the financial interests of spouses, partners and close relatives of the governor and whether or not that register is to be publicly available. (See also paragraphs 5.23 to 5.27 and 8.7 to 8.9.)
- 6.21 The register should be regularly updated, at least annually, and that new governors or senior staff are invited to consider whether they have interests to register. The clerk should ensure that the register is always available for consultation at meetings.
- 6.22 Any time the clerk believes that, on the basis of the information in the register of interests, the personal financial interest of an individual governor in relation to a specific issue under consideration has not been declared, this should be brought to the attention of the governing body or committee immediately. Similarly, the clerk should bring to the notice of governors concerned and, if necessary, to the chair and the governing body, any interest which he or she believes should have been entered in the register but which has not.

Governors' Expenses

- 6.23 Governing Bodies are subject to charity law and should take that into account when codifying their expenses policy.

Governors' and Clerks' Training

- 6.24 New and experienced governors can benefit from training to increase their effectiveness. The responsibility for recognising and responding to the need for training rests with the governing body, and in particular with the chair and the clerk.
- 6.25 A well informed clerk will be able to provide proposals and suggestions for training, sourced both within and outside the college. Many colleges

choose to set out their expectations of the training and development of governors in a policy.

- 6.26 Each governing body should ensure that there are induction arrangements which enable a new governor to get to know the college and its senior staff, the structure and procedures of the governing body and its committees, and to be informed about further education and his or her responsibilities as a governor. As the person directly in touch with newly appointed governors, the clerk should make sure that they are offered induction on these lines and that early contact is made between the principal and new governors. In some colleges the clerk provides the induction supported by senior staff e.g. finance directors. In other colleges induction is sourced externally. Clerks provide support to all new governors. Staff and student governors benefit from help in understanding their role in relation to their peers in the college, and the role and responsibility of a governor.
- 6.27 As well as attendance on training courses offered outside the college, governing bodies benefit from setting aside time to invite outside speakers or trainers to help them tackle aspects of their own performance as a governing body. Every college will have experience of designing and organising in-house training, and the governing body might wish to draw on the college's own resources for this purpose. Alternatively, there is an increasing number of individuals and organisations with expertise in further education who can provide a similar service. The clerk should not only expect to take on the responsibility for co-ordinating arrangements for governance training events of this kind, but also to attend and participate in them.
- 6.28 Training for the clerk is also essential and there should be an agreed continuing professional development (CPD) plan in place. Anyone who has just been appointed to the role of clerk should seek appropriate opportunities for developing his or her skills and understanding. Such opportunities might include formal training courses designed to improve clerkship or to increase his or her awareness of the further education sector.
- 6.29 Newly appointed clerks are also likely to find that informal and formal networking with other clerks is of considerable practical help. This provides the opportunity for the exchange of good practice, informal advice on procedural matters from the more experienced clerks and a source of support for those new to the role.

Governance Budget

6.30 Governing bodies should therefore ensure adequate resources, including financial, are in place to support the training and development of both governors and clerks. This may include:

- peer mentoring
- induction of governors and clerks
- regional network meetings
- local / regional training events
- governance conferences
- national training events
- resource libraries
- for clerks, specific professional training.

6.31 The Clerk should be responsible for negotiating and managing all aspects of the governance budget.

Chapter 7 Committees of the Governing Body

Clerking of Committees

- 7.1 Committees may be called upon to undertake substantial work on the governing body's behalf, e.g. consideration of specific quality improvement, financial, property and personnel matters. Advising on and assisting in the proper management, conduct and recording of committee business is as much part of the clerk's responsibility as is the business of governing body itself, and should be recorded in the clerk's job description.
- 7.2 There is an expectation that the clerk will normally attend all committee meetings. Informal arrangements in which, for instance another person agrees to act as clerk are rarely satisfactory and should be avoided. Arrangements should also be in place to address the temporary absence of the clerk.
- 7.3 The independence of any person minuting / advising a committee should be considered before a particular route is embarked upon.

Legal and Funding Requirements

- 7.4 The committees which the governing body will establish are:
 - the committee required by the Joint Audit Code of Practice with colleges known as the audit committee;
 - to consider grievance or disciplinary action against the principal or other senior postholder, including the clerk.
- 7.5 The governing body can also establish other committees as it wishes. This may include a nomination or Search Committee to make recommendations to the governing body on the recruitment and appointment of governors.
- 7.6 Committees must not have powers delegated to them that are properly functions of the principal.

Structures

- 7.7 Committee structures and the actual number of committees will vary considerably from college to college, often depending on the size and type of college and the adopted style of governance. In addition, the disciplinary and grievance procedures established by the governors may, and in the case of senior postholders must, involve special committees of the

governing body.

- 7.8 Whatever structure of committees a governing body decides to adopt, it is important that it should make an effective contribution to the governance of the college and the management of its business. The terms of reference and powers of delegation must be clear. Each committee should have a discrete function that reduces and does not duplicate the business of the full governing body or other committees. The timing of each committee's meetings should be such as to ensure that it assists, and does not obstruct the flow of college business.

Membership

- 7.9 The governing body should establish and formally agree the composition of each of its committees, including, if applicable, any limit on a committee's ability to co-opt additional members. It also needs to decide which individual governors are to serve as members of those committees, and whether any are *ex officio* members. It will also be necessary to have arrangements for reviewing membership from time to time and for filling vacancies as they arise. The principal may want to delegate attendance at, and support for, particular committees to members of the college management team. It is normally helpful for such arrangements to be specified and to know whether a member of staff is representing the principal.
- 7.10 The clerk needs to be aware of the specific rules covering membership of committees and the involvement of non-governors. The main points are:
- membership of the audit committee must not include the chair of governors, the principal or any other member of the committee with financial responsibilities for the college. Governors must constitute the majority of the membership of the audit committee but are advised to consider co-opting some non-governor members with relevant audit and financial experience as long as they are not in any way connected with the provision of financial services to the college. The college's auditors, as its professional advisors, have a right to attend meetings of the audit committee and should be present when any report from them is being considered
 - it is open to the governing body to appoint people who are not governors to serve on any committees of the governing body.

In general, it is helpful for the membership of committees to be drawn from as wide a range of governors as possible to spread governors' individual workloads.

Terms of Reference

- 7.11 In order to contribute effectively to the work of the governing body, it is essential that each committee has written terms of reference that have been approved by the governing body. These may form part of its standing orders. The clerk should be prepared to draft terms of reference in consultation with the chair and principal for the governing body to consider.
- 7.12 The terms of reference of committees should:
- state clearly the precise nature and extent of the committee's responsibilities and the authority for them (that is, the date of the governing body's approval of them)
 - establish in the case of each of those responsibilities, whether they are executive (i.e. taking decisions and monitoring implementation) or simply advisory (i.e. making recommendations to the governing body)
 - set any financial or other limitations on the delegated powers of the committee
 - establish the arrangements for electing a chair and the frequency of the committee's meetings.
- 7.13 Overlap between the responsibilities of committees should as far as possible be avoided. It can lead to duplicated consideration of the same issues by different committees. This is an inefficient use of governors' time, slows down decision-making and can lead to confusing outcomes.
- 7.14 In offering advice to a committee the clerk should keep in mind the committee's terms of reference and delegated powers, if any. The clerk should advise on:
- whether a committee may decide, or only advise, on a particular matter
 - when it might be appropriate to remit a particular issue to another committee.
- 7.15 In preparing for meetings, the clerk should brief the committee chair on any matters relating to the areas of interest of more than one committee. It is particularly important that committees which may share membership avoid taking decisions in one committee which are the business of another. It is possible that this would exclude members who were not present from

decisions, and normal arrangements for giving notice of meetings might be bypassed.

- 7.16 If, in the light of experience of a particular committee structure, the clerk believes that the terms of reference lack clarity or lead to duplication of business, he or she should raise the possibility of a review of the terms of reference with the governing body.

Reporting

- 7.17 The delegation of functions does not absolve the governing body from accountability for the conduct and decisions of its committees. The governing body remains responsible for the proper conduct of the college, for undertaking its duties under the instrument and articles and for complying with the other legislation to which it is subject.
- 7.18 In practice, however, there is little point in having a committee structure unless it is trusted to undertake a substantial amount of detailed work without referring back to the full governing body. The key to achieving this balance between accountability and delegation is good reporting arrangements through the regular circulation of the minutes of committees, or a summary of their decisions, either when agreed draft minutes are ready, or with the papers of the subsequent governing body meeting. There should be an opportunity for those minutes or the summary to be formally received and for any points of information or concerns to be raised by governors who are not members of the committee in question. Minutes of all committees should generally be available to all governing body members except where they are specifically kept confidential under arrangements in the instrument and articles of government.
- 7.19 The regular reporting of committee business to the governing body requires good planning and organisation by the clerk and the speedy preparation of draft minutes and/or decision summaries after committee meetings so that they reach the governing body meeting in the same cycle of meetings.

Conduct of Committee Business

- 7.20 The committees of a governing body will usually operate broadly under the same set of rules as the main body. In other words, the broad principles and much of the detail of the governing body's standing orders should also apply to its committees. Governing bodies should not distinguish between the governing body and its committees in procedural matters such as the

declaration of financial interest, the need for governors to withdraw in certain circumstances or the confidentiality of some business. These and other provisions should apply equally to committees of the governing body.

- 7.21 It is not possible simply to transfer the quorum regulations to the committees, particularly since there may be non-governors on some of them. Governing bodies, in establishing their procedural rules, constitution and terms of reference for committees, should therefore define the quorum for each committee, bearing in mind its size, the nature of its membership and the requirement that external members must be in the majority on the remuneration committee.
- 7.22 Some governing bodies may wish, in addition to the core membership of each committee, to appoint the principal and chair of the governing body as *ex officio* members of all committees (other than the audit committee and any special disciplinary committee). In these cases, it will be necessary to be clear in the standing orders whether or not the *ex officio* members contribute to the quorum of a meeting.
- 7.23 Governing bodies should make publicly available a written statement of their policy on attendance at committee meetings by persons who are not members of the committee and on the publication of the minutes of committee meetings. The main points from the statement need to be reflected in any standing orders that apply to committees.

Special Committees and Panels

- 7.24 From time to time, it may be necessary to convene special committees or panels to consider disciplinary matters. In some cases this may take the form of an appeal to a committee of governors as the final stage of a disciplinary or grievance process. In others, a committee may have to be convened to consider the discipline and possible dismissal of the principal or other senior postholder.
- 7.25 On all such occasions, the care and sensitivity with which the arrangements for meetings and hearings are made, papers are circulated, proceedings are conducted and the decision(s) recorded are of the utmost importance. The clerk must inevitably take a leading part in ensuring that this is the case, unless there is an over-riding reason why he or she should not be involved.
- 7.26 Such a reason could be where the clerk is also a senior postholder in the college and the proceedings bear directly on that aspect of his or her job or the clerk considers him or herself, or is considered by the governing body

to be too close in terms of management responsibilities to the postholder who is the subject of disciplinary proceedings. Another reason would be if disciplinary proceedings were being taken against the clerk, whether it be in his or her capacity as clerk or as a member of college staff.

- 7.27 In circumstances of this kind, the governing body may need to consider engaging the services of another person to clerk the proceedings. This might be a service that could be provided by the college's legal advisors unless they themselves are a party to the proceedings. Alternatively, it may be possible to invite an experienced clerk from another college to handle the matter.

Audit Committee

- 7.28 In some respects, the audit committee will stand separate from the general governing body arrangements. It may include people who are not governors (see also paragraph 7.10). It must operate within the terms of reference that the governing body has approved in accordance with the provisions of the Joint Audit Code of Practice. However, subject to these terms, the committee will itself determine how and when it conducts its business, and what matters it chooses to consider.
- 7.29 The clerk will be expected to service the committee and help its chair to plan future business.

Remuneration Committee

- 7.30 The same procedure for calling meetings, clerking and minuting applies to a remuneration committee if one exists. However, where the clerk is a senior postholder and the committee considers the remuneration of the post of clerk, or of any senior post held by the person who is also the clerk, it would be appropriate for him or her to withdraw for that part of the meeting, and for the chair of the committee to prepare a formal minute of the committee's decision on the matter. This minute can then be kept with the other confidential minutes of the governing body.

Chapter 8 Propriety

Administrative Law

- 8.1 Following the passage of the Education Act 2011, further education corporations and sixth form colleges were reclassified by the Office for National Statistics (ONS) in May 2012 for National Account purposes from the General Government Sector to Non Profit Institutions Serving Households (NPISH) from 1 April 2012. Nevertheless, as long as a college receives more than 50% of its funding from public sources it remains bound by the public procurement rules. Where a college is a statutory corporation and/or receives substantial amounts of public funding it remains subject to the principles of public administrative law enforced by means of applications for judicial review. FE college corporations and sixth form colleges are specifically covered by the duty to promote equality in the Equality Act 2010 and by the Freedom of Information Act 2000.
- 8.2 As such, their actions are subject to the main principles of administrative law and could be challenged in the courts through the process of judicial review. Each governing body and its clerk need to be aware of this in terms of their overall conduct of business and in particular in terms of the way in which decisions are reached.
- 8.3 The concept of administrative law, which effectively regulates the way further education colleges and sixth form colleges behave in exercising their powers, is based not on legislation as such but on case law accumulated over many years. From this, it is possible to summarise some general principles which governors acting individually or corporately should bear in mind, and which the clerk may from time to time need to bring to the attention of governors:
- further education colleges and sixth form colleges must act only within their powers. To this end, their members must know what their powers are and be confident that they are being used for the right purpose
 - the delegation of powers is only possible within the limits set by Schedule 4 of the Further and Higher Education Act 1992 and the college's instruments and articles
 - where the exercise of particular powers requires procedural steps before a decision can be taken, such as consultation with those affected, such steps must be taken and adequate time and information must be provided for this
 - decisions must take account of all the relevant factors and take no

account of irrelevant factors

- further education colleges and sixth form colleges must act reasonably; that is, they should never come to a conclusion that no reasonable body could have reached
- the reasons for any decisions that may not be obvious should be clear and be recorded
- any member of the body who may be regarded as having a personal or conflicting interest that could lead to bias in decision making should not be involved in that decision
- governors must take account, in making decisions, of the legitimate expectations of those affected, for example, expectations that might derive from custom and practice (for instance, on consultation) in addition to any statutory or contractual rights.

Conduct

- 8.4 The public nature of the governing body's role, its accountability, its stewardship of substantial public funds, and not least the good name of the college and the interests of its students, all demand high standards of conduct in exercising its functions.
- 8.5 Governing bodies are encouraged to approve a code of conduct covering their corporate responsibilities and behaviour. The Seven Principles of Public Life, commonly referred to as the Nolan Principles and listed at the end of this chapter, form the core principles expected in public life.
- 8.6 A code and/or a clerk alone cannot ensure a high standard of conduct. It is a collective responsibility on all governors and a leadership responsibility for the chair. The clerk, however, does have a responsibility to raise with the chair matters where he or she feels that standards of conduct conflict with the governors' own code or fall below what might be expected from those serving on public bodies (see paragraphs 8.13 to 8.21).

Personal Interest

- 8.7 It is a duty in charity law for governors as charity trustees to declare personal interests and ensure their decisions are not tainted by conflicts of interest. A recurring theme in this guide, in administrative law, in codes of conduct and the financial aspects of corporate governance, is the importance of declarations of personal interest by members of corporate

bodies or that of persons closely connected to them. The procedure which must apply when matters involving financial interest arise in meetings is clear from the instrument and both this and personal interest are the subjects of advice elsewhere in this guide (see paragraphs 5.23 to 5.27).

- 8.8 Governors, and the clerk on their behalf, must also guard against conflicts of interest that arise outside formal governors' meetings where it is equally important that a personal interest is declared and the governor concerned takes no further part in the discussion. The areas of greatest vulnerability are those involving the invitation and consideration of tenders and the award of contracts. It is suggested therefore that the clerk should be responsible for making sure that there are procedures drawn up by the college, in consultation with its external auditors and approved by the governing body, and included in the college's financial regulations, for the issue, receipt, opening and consideration of tenders and for the award of contracts above a specified value. Those procedures should establish whether there is to be governor involvement at any particular stage or level and make specific provision for the exclusion of anyone (including members of staff) from the process who may have a financial or other personal interest in it.

Register of Financial and Personal Interests

- 8.9 The following are examples of the types of financial and personal interest which governors might be asked to list in a register of governors' interests. The register should include the declaration of relevant and known interests which also relate to the spouse or partner of a governor and the governor's own or spouse's/partner's close relatives (for example, father, mother, brother, sister, child, stepchild or grandchild).

Financial interests

- remunerated employment, office, profession or other activity
- directorship of a company
- shareholding in a company
- partnership in a business or professional partnership
- consultancies (whether or not remunerated)
- trusteeship of a trust where a governor or his/her partner or spouse or a member of his/her family may be a beneficiary

- gifts or hospitality offered by outside bodies and arising from the person's position as governor.

Personal interests

- membership of another public body or quango including:
 - local authority
 - central government department or quango, including relevant funding agency
 - health authority
 - NHS trust
 - Academy, school or college governing body
- unremunerated posts, honorary positions and other positions that might give rise to a conflict of interest or of trust
- membership of closed organisations.

Confidentiality

- 8.10 There is likely to be provision in the instrument of government and standing orders for governors' proceedings to remain confidential when they so decide and also when an existing or prospective member of staff or student is mentioned by name. Such matters are separately minuted, and those minutes remain confidential. Every governor present at the meeting or subsequently receiving the minutes is bound by any decision on confidentiality. Any breach of confidentiality by a governor which comes to the attention of the clerk should be reported to the governing body.
- 8.11 Despite these provisions, the clear principle and intention is that as far as possible, governors' business should be open to scrutiny. The principle of public accountability is an important one. Sometimes, governing bodies will need to keep some financial, property and personnel issues confidential. They should however be cautious in the extent to which they decide that their business should be confidential. It may be appropriate for governing bodies to establish criteria in advance against which decisions on confidentiality may be made. Consideration of examples within the Freedom of Information Act 2000 may assist governors' decisions in this regard. The Freedom of Information Act will generally require a college to disclose information that it holds, subject to the limited exceptions in the Freedom of Information Act. In particular, even initially confidential information will have to be disclosed if and when the quality of confidentiality is lost.
- 8.12 The requirements for the publication not only of agendas and minutes of

meetings, but also the non-confidential papers circulated for those meetings, should be clearly set. The clerk should take responsibility for making sure that these requirements are met and that access to the relevant papers is provided during normal office hours.

Resolving Difficulties

- 8.13 As this guide has made clear, the clerk's role includes advising on proper procedure and if necessary intervening when he or she feels that the governing body is acting inappropriately or even beyond its powers. The assumption is that the clerk's advice will generally be respected and accepted if it is correct.
- 8.14 A clerk will at times be called upon to use diplomatic skills, to recognise a potential issue before it escalates, and to take mitigating steps to resolve potential areas of conflict before they exacerbate.
- 8.15 There may be occasions when a clerk feels that his or her advice is being disregarded or over-ruled, and that because of this the proper conduct of the governing body is being put at risk. In these circumstances, what options are open to the clerk?
- 8.16 If matters exceptionally reach this stage, the clerk should make every effort to resolve the matter through the avenues available to him or her within the college and be certain that the reason for his or her concerns is understood. Depending on the nature of the problem and the response the clerk receives, the clerk may have to take some or all of the following steps to make sure that the issue which he or she has raised has been considered adequately by all those concerned within the college:
- that the reasons for the concern have been put in writing and sent by the clerk to the chair and principal
 - that the chair of the audit committee has been informed if the issue is relevant to the committee's terms of reference
 - that the clerk has reported his or her concern to a meeting of the relevant committee or the full governing body and asked for this to be recorded in the publicly available minutes
 - that the college's external auditors have been consulted.
- 8.17 The clerk should also obtain legal advice if there is disagreement about whether an action may be unlawful and should be free to do so within appropriate financial limits. In such cases, the governing body may choose

to seek further legal advice, for example from legal counsel if it considers the issue is important enough.

- 8.18 In the unlikely event that no action results from this sequence of steps and if the grounds for concern, in the view of the clerk, still present a threat to the proper governance of the college, and/or may result in action which is outside the powers of the governing body, there is a need for a mechanism by which the clerk's concerns may be raised externally.
- 8.19 There may be different ways in which this situation can be handled, for example:
- a. prior authorisation being given by the governing body to the clerk to seek advice from the appropriate funding agency in such circumstances and to inform the chair and principal that this has been done;
 - b. a mechanism being agreed by the body whereby, on receipt of a formal recommendation to the governing body from the clerk, the chair or principal shall seek advice from the appropriate funding agency; and shall report that advice and its implications to the governing body.
- 8.20 Colleges are recommended to consider their approach and to decide which mechanism they would prefer.
- 8.21 Such steps taken in good faith by the clerk in these circumstances should not become grounds for disciplinary action under the college's disciplinary procedures.
- 8.22 The Seven Principles of Public Life, commonly referred to as the Nolan Principles, are listed here as follows:

The Seven Principles of Public Life

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness *Holders of public office should act solely in terms of the public interest.*

Integrity *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 and relationships.

Objectivity Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability 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.

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.

Source : Committee on Standards in Public Life Fourteenth Report of the Committee on Standards in Public Life Standards matter A review of best practice in promoting good behaviour in public life Cm 8519 January 2013.

Chapter 9 Law and the Governing Body

Clerk's Role

- 9.1 The activities of governing bodies are subject not only to those laws concerning their own powers and conduct but also to other legislation which applies, for instance, to charities and to employers in general. The clerk cannot be expected to be a legal expert or to be acquainted in detail with the full range of legal requirements for colleges and their governing bodies. Therefore, from time to time, the clerk and/or the governing body will need to seek legal advice before taking decisions.
- 9.2 As it is the governing body that is accountable under the law for the proper conduct of the college, even in those areas delegated to the principal, it is clearly helpful if the clerk has a general grasp of the scope of legislation which might affect the business coming before the governors, and is thus able to alert the chair to possible implications when matters are being discussed. The clerk should be fully conversant, however, with the specific legislation that relates to the duties, powers and procedures of governing bodies, and governors should be entitled to expect expert advice from the clerk on the interpretation of such legislation, including charity law
- 9.3 The clerk can expect from time to time to receive formal notification or advice on legal matters from central or local government or other agencies. The chair and principal and, where appropriate, the governing body, should always be advised of any implications for the college. It may be necessary to consult the college's legal advisors on such matters.
- 9.4 In addition to specific legislation, from time to time guidance and statutory guidance are published, along with supporting regulations. Clerks should keep themselves apprised of these, their relevance to their governing bodies, and specifically to the provision offered in the college, e.g. higher education (HE). Where necessary, clerks should draw them to the attention of their governing body, and if appropriate, renew their governance and practices.
- 9.5 Whilst there are numerous documents, recently published (October 2014) highly relevant to college governance have included:

College Governance: A Guide (Department of Business, Innovation & Skills (BIS) August 2014

<https://www.gov.uk/government/publications/college-governance-how-further-education-colleges-operate>

This outlines the accountability and regulatory frameworks relevant to further education colleges. Sixth form colleges are not formally within scope but clerks will find the guidance useful and in the most part relevant to good governance in sixth form colleges.

Further education and sixth form college governance review (Department of Business, Innovation & Skills (BIS) July 2013

<https://www.gov.uk/government/publications/further-education-and-sixth-form-college-governance-review>

This makes recommendations on how to better recognise, give better incentives for, and reward good governance for better quality further education, including Annex B Payment and Expenses of Governors.

Memorandum of understanding between the Charity Commission and the Secretary of State for BIS in his role as Principal Regulator of Further Education Corporations in England (Department of Business, Innovation & Skills (BIS) February 2014

<https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-charity-commission-and-the-department-for-business-innovation-and-skills>

This document outlines the relationship between the Department for Business, Innovation and Skills (BIS) and the Charity Commission and the role of the Secretary of State as Principal Regulator of further education colleges as exempt charities. (see paragraphs 9.16 to 9.21)

Clerks should also be aware of the role of the Further Education (FE) Commissioner and Sixth Form College Commissioner (see paragraph 9.14 to 9.15)

Corporation Seal

- 9.6 The corporation's seal is affixed to certain documents to express the corporation's intention to bind the college. Affixing the seal requires authentication, which is normally achieved by the signatures of the chair and another member of the governing body. Colleges should seek legal advice on which documents need to be executed under the seal. The clerk should take responsibility for the seal's safekeeping and for making arrangements for documents to be executed under the seal.

Education Law

- 9.7 Historically, and to set the context, the further education sector was established by the *Further and Higher Education Act 1992* (the Act). The Act

brought into one sector, and under a common system of governance, existing colleges of further education, tertiary and sixth form colleges previously maintained by local authorities, and some formerly grant-aided institutions. Statutory orders incorporating institutions as free-standing bodies came into effect on 1 April 1993. New arrangements were introduced for the direct funding of colleges by central government and funding councils for England and Wales were established with, among other responsibilities, that of administering the central government grants. The Act also defined the range (in terms of course types) of further education coming within the remit of councils, and that which might still be funded by local authorities.

- 9.8 The secretary of state for education made two sets of regulations relating to college governance under the powers given to him in the 1992 Act. These were *The Education (Government of Further Education Corporations) (Former Further Education Colleges) Regulations 1992* and *The Education (Government of Further Education Corporations) (Former Sixth Form Colleges) Regulations 1992*.
- 9.9 In most cases, these regulations prescribed the provisions that, unless modified in accordance with the *Further and Higher Education Act 1992*, would form the basis of each college's initial instrument (constitution and procedure) and articles (powers and duties) of government, where that college was constituted as a further education corporation. The rationale for separate regulations for former education colleges and former sixth form colleges was that the new arrangements were designed to preserve some aspects of the different traditions of the two groups; for instance the involvement of parent governors in sixth form colleges and of foundation governors in voluntary controlled sixth form colleges.
- 9.10 A number of former voluntary aided sixth form colleges and specialist institutions were designated, not incorporated, under the provisions of the 1992 Act and are collectively known as 'designated institutions'. The regulations did not apply to these designated institutions. However, each designated institution operated under its own instrument and articles of government, approved by the secretary of state. In most respects, these took the same form as those prescribed by the regulations mentioned above. This also applied to those colleges run as companies, where the instrument and articles form part of the company's memorandum or articles of association.
- 9.11 Under the Apprenticeships, Skills, Children and Learning Act 2009 it became possible for sixth form colleges to seek designation as sixth form college corporations and in due course the great majority of such colleges were so designated. Sixth form college corporations have similar powers

and are subject to similar regulation as are further education corporations but are covered by separate provisions in the 1992 Act as amended by the 2009 Act.

- 9.12 The Instrument and Articles of Government were subsequently replaced in 2001, 2006, 2008 (and 2009 Instrument for catholic sixth form colleges) and 2012. The FHEA Act Replacement of the Instruments and Articles of Government Order 2007, which came into effect on 1 January 2008, outlined numerous statutory responsibilities of the clerk with regard to the role, but attention is drawn to the following:

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

The Instrument and Articles of Government (I&As) were subsequently modified in March 2012, with the Education Act 2011 Schedule 4 amendments retaining the statutory duty on corporations to have:

"an instrument must make provision for there to be a chief executive of the institution and clerk to the body" and "must make provision about the respective responsibilities of the body, the chief executive and the clerk".

- 9.13 The Education Act 2011 gave colleges greater freedom to change their Instrument and Articles of Government provided that they worked within the duties of Schedule 4 of the Act and adhered to other statutes for example Charity and Employment Law. It is important that the clerk is conversant with the instrument and articles that are currently in force in their college, including any amendments.

- 9.14 When an FE college, local authority maintained FE institution, or specialist designated institution triggers intervention, the FE Commissioner will review the position of the college or institution and advise ministers and the Chief Executives of the funding agencies on the action necessary to secure improvement. These actions might include:

- changes to governance and/or leadership;
- conditions or restrictions on funding;
- the appointment of funding agency observers on the Board;
- new (or revisions to existing) recovery plans, curriculum reviews and
- quality improvement plans;
- a college/institution or FE Commissioner led Structure and Prospects
- Appraisal;
- use of the Secretary of State's intervention powers; or
- Administered College status.

College Governance: A Guide (Department of Business, Innovation & Skills (BIS) August 2014

<https://www.gov.uk/government/publications/college-governance-how-further-education-colleges-operate>

- 9.15 The Secretary of State for Business is advised as to the exercise of the intervention powers by the FE Commissioner and his/her team of advisors, who will visit the college concerned and advise the Secretary of State as to whether and if so how the intervention powers should be used. Summaries of the FE Commissioner's recommendations, and the Secretary of State's decisions, are published. The Secretary of State for Education may obtain similar expert advice from the Sixth Form College Commissioner where a sixth form college is liable to be intervened in. For more information see:

Intervention in further education: the strengthened intervention process, BIS, April 2014:

<https://www.gov.uk/government/publications/further-education-commissioner-intervention-process>

Charities Act

- 9.16 All colleges in the sector have charitable status. This status carries both benefits (for example, general exemption from corporation tax on its surpluses) and obligations. The obligations will vary, depending on the route through which recognition as a charity was granted. Historically, this will have been in one of two ways:

- **Registered as a charity**
- Colleges which were established by trust deed and those which are companies limited by guarantee are registered as charities by the charity commissioners under Charity Law. Registration provisions apply to designated colleges (including adult colleges and specialist institutions) and to trusts that support a number of institutions such as former voluntary controlled sixth form colleges (where the college itself is likely to have been incorporated and be an exempt charity). The commissioners ensure that the college's aims are charitable, and that they are stated in the trust deed, or memorandum and articles of association, as appropriate. The commissioners exercise powers of supervision over registered charities although some charities which are companies are exempt from some procedures.
- **Excepted as an exempt charity**

- Colleges incorporated as further education corporations are established as charities exempted from registration under Charity Law. The charity commissioners do not have supervisory powers over exempt charities, and such charities do not have to submit accounts to the commissioners. There is however an expectation that, in the conduct of their affairs, the governors will discharge business according to the standards required of those charity trustees who are directly accountable to the charity commissioners.
- 9.17 The members of the governing body of a further education corporation, sixth form college or an institution run as a company limited by guarantee are also trustees of the charity, whatever the status of that charity. Trustees of a designated institution operating under a trust deed may consist of named individuals on the governing body, or a separate group of trustees rather than the whole governing body. In such cases, responsibilities in relation to the trust are limited to those individuals.
- 9.18 Governors, in their capacity as charity trustees, have a duty to ensure that the college acts in accordance with its powers and objects. Those powers and objects for further education corporations are set out in sections 18 and 19 of the Act. For designated institutions run as companies limited by guarantee or under trust deed, the powers and objects are set out in the memorandum and articles of association or in the trust deed, as appropriate.
- 9.19 Considerations that the governing body and its clerk need to bear in mind in relation to the charitable status of the college and their responsibilities as charity trustees include the following:
- to apply the property and income of the college only for the defined charitable purposes
 - to act only within their legal powers. If in doubt as to whether actions contemplated may take them outside the law, the governing body should seek the advice of the charity commissioners or of its own legal advisors
 - to take particular care in organising the trading activities of a college, as these may not be regarded as charitable
 - to manage and protect the property of the college
 - for those which are registered charities, to respond to the requirements of the charity commissioners for information and returns.

- 9.20 Most types of exempt charity (including FE corporations and sixth form college corporations) are listed in Schedule 3 to the Charities Act 2011 (which replaced Schedule 2 to the Charities Act 2006). Other designated FE providers and colleges can be charities but must register with the Charity Commission. Amendments to The Charities Act 2006 Schedule 2 removed the exempt status of certain charities or classes of charity. The charities which remained exempt - including FE colleges in England - were required to have a Principal Regulator or lose their exempt status and register with the Charity Commission. The Secretary of State for Business, Innovation and Skills has been appointed as the Principal Regulator for all FE Corporations in England and charitable companies wholly owned by FE Corporations. This appointment came into force on 1 September 2013. The Principal Regulator for Sixth Form College Corporations is the Secretary of State for Education. As the Principal Regulator, the Secretary of State has a duty to do all he/she reasonably can to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity.

(Source: BIS Regulations of Further Education Colleges in England : Information note to FE colleges - appointment of the Secretary of State as Principal Regulator of FE colleges as exempt charities, February 2014).

- 9.21 Corporations need to confirm in their annual report and accounts that they have complied with charity law in the year in question. They also have to report to their principal regulator any incidents which may have involved a breach of charity law.

Company Law

- 9.22 Those designated institutions that are constituted as companies limited by guarantee are subject to company law, for which purposes governors are directors of the company. In practice many of the procedural requirements placed by the companies acts on boards of directors are also placed on governing bodies by the education acts and associated instruments and articles of government. The governing body, however, should not assume that all aspects of company law are fully covered by compliance with the education acts. This is an area where legal advice should be taken if there is doubt.
- 9.23 The accounting and auditing policies for colleges registered as companies limited by guarantee will need to comply with certain statutory requirements.
- 9.24 Any trading subsidiary that the college has established as a company must

also comply with the companies acts. Its management and activities must be at arm's length from the college. If the clerk is also company secretary, he or she must retain a clear differentiation of roles and be alert to any possible conflict of interest.

Health and Safety

- 9.25 The governing body carries significant responsibilities for Health and Safety at work. Those responsibilities relate to the college staff, as their employees, as well as to students and members of the public using college buildings.
- 9.26 Governing bodies need to satisfy themselves that:
- the college has a health and safety statement / policy
 - management responsibility for health and safety issues is clearly designated
 - those with such designated responsibility in the college are aware of, and have access to, relevant regulations advice and training.

Other Relevant Legislation

- 9.27 This section describes some of the other legislation that is relevant to further education; it is not intended to be a complete description of the legal framework in which a college operates.

Employment Law

- 9.28 Governing bodies, as employers of the staff working at the college, are responsible for complying with the law relating to employment matters.

Equal Opportunities

- 9.29 The responsibilities of college governors relate to the safeguarding of equal opportunities not only in employment but also in education. The clerk should therefore make themselves aware of the legal responsibilities placed on governors in respect of equality and diversity under the Equality Act 2010.

Safeguarding

- 9.30 The corporation has responsibilities under the Safeguarding Vulnerable Groups Act 2006 and the Children Act 2002 s.175 to ensure that vulnerable

students and others on their premises are kept safe from harm. The corporation must ensure that:

- it has an appropriate safeguarding policy;
- there is a senior staff member designated to receive safeguarding concerns and liaise with the local authority to ensure they are appropriately dealt with;
- suitable measures are taken to ensure checks are made with the Disclosure and Barring Service on members of the college community who will have unsupervised access to vulnerable people.

Public Health Law

- 9.31 Certain aspects of the college are to come within the scope of public health law, particularly where food is prepared or sold, whether in staff/student dining areas or through departments running hotel and catering courses.

Data Protection

- 9.32 The provisions of the *Data Protection Act 1998* will apply to colleges, which should register computer records they hold which include personal information; and have arrangements in place for individuals to have access to the information held. Colleges also have a legal requirement under the Freedom of Information Act 2000 to make information available proactively through a publication scheme. Colleges are also obliged to make environmental information available proactively through the Environmental Information Regulations 2004.

LEGAL ADVICE

- 9.33 The advice offered in this guide is intended to assist chairs, principals and, in particular, clerks to governors, in applying the law relating to the responsibilities and conduct of governing bodies. It should help to answer many points that will arise during the normal course of governors' business. It is not however intended to be an authoritative interpretation of the law, and if there is any doubt about a correct course of action, independent legal advice should be sought.
- 9.34 The college and its governing body will in any event, need to seek professional advice on its legal obligations from time to time. The clerk to the governors should have authority to seek legal advice direct from the college's legal advisors on interpretation and application of the law relating to the governance of the college, within agreed limits on cost.

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