



Governance and Delegation of Powers

The Governance Arrangements for the F.E. Corporation of South Essex College

This document replaces all previous resolutions and statements on governance and delegation of powers.

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January 2010

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Governance and Delegation of Powers

Introduction

1. This paper sets out the arrangements made by the Corporation to address the key statutory responsibilities set out in the Articles of Government, as prescribed by the Further Education Corporations (Former Further Education Colleges) (Replacement of Instruments and Articles of Government) Order 2007 which came into force on 1st January 2008; augmented by the Financial Memorandum made with the Further Education Funding Council (now Learning and Skills Council).
2. This is an authoritative document in its own right in that it is approved by resolution of the Corporation. However, references to other authorities such as the Instrument and Articles of Government and the Financial Memorandum are intended as a useful summary rather than to replace use of the original authority. Quotations from guidance provided by other organisations and the commentary in this document are intended to provide the sources for the philosophical framework in which the Corporation undertakes its responsibilities.
3. A general overview of both governance and the further education environment is provided in the Further Education Funding Council publication “The College Governor”.¹

Role of the Corporation

4. The Corporation is charged by the Articles with the responsibility for oversight of the College’s activities. In its Governor Training Materials, the Learning and Skills Council (LSC) identifies that this responsibility comprises two primary elements.

“The main business of the Governing Body (Corporation) is to determine the educational character of the college and to ensure its overall well-being and financial solvency.” (*Module 1, Section 2*)

Educational Character and Mission

5. This first element reflects the responsibilities set for the Board in the Articles of Government, which identify the first requirement as:

“... the determination and periodic review of the educational character and mission of the institution and the oversight of its activities”. (*Article 3(1)a*)

6. The FEFC Guide for Governors identifies those features contributing to the educational character, namely:

“... the broad purpose and strategic direction of the college, the nature of its educational programme, pattern of courses and any special characteristics of its range of subjects, its overall ethos, admissions policy and its relationship to its communities.”
(*FEFC Guide for Governors 1994 - Paragraph 7.13*)

¹¹ Members will find it helpful to revisit the publication when considering the issues in this paper. Further guidance is contained in the more recent “Governor Training Materials” issued by the Learning and Skills Council.

7. As has been widely recognised, colleges are dynamic, changing organisations that react or respond differently to the pressure for change placed upon them according to how they are managed and governed. Therefore, the determination of the educational character has a very particular importance, as the primary responsibility of the Board within the overall requirement to take an overview of the whole institution when setting its future direction.²

Financial Solvency

8. The second element, the responsibility of the Corporation for ensuring the statutory duties relating to financial solvency and the resources of the College, is set out in Articles 3(1)(b) and (c), which itself has two main aspects:
 - (i) “the Corporation is accountable to the Further Education Funding Council [which was replaced by the Learning and Skills Council in April 2001] and ultimately to Parliament, through the accounting officer (the Principal/Chief Executive), for the financial health of the College and for ensuring that it remains solvent; and
 - (ii) “the Corporation, through the Principal/Chief Executive, must ensure the effective and efficient deployment, management and use of available resources, including human resources, property and other assets, and consider the financial implications of its decisions.”
(FEFC Guide for Governors, Section 7.23)

Distinctions between Governance and Management

9. John Carver’s Policy Governance framework has provided a useful model in developing the approach adopted by the Corporation. “As a framework, it provides a way for the board to look at corporate issues, separating its role from that of management, delegating powerfully, yet retaining its own accountability ... Governance requires and engenders a passion for leadership, leadership that is not just over others but on others’ behalf.”³
10. The relationship between the Corporation and the Principal and Chief Executive is fundamental to the successful management of the affairs of the College, at the heart of which is the distinction between governance and management.
11. A Colleges’ Employers’ Forum publication⁴ helpfully summarises some of the issues.

“Governors have taken to heart the distinction between their concern for strategy and the responsibilities set for their managers of operational control and identifying and bringing forward crucial issues of policy with the necessary supporting information. Here, as elsewhere, however, there is a need to exemplify and test meanings in a rapidly changing arena of operation.

² Determining the Educational Character of the College” - Hawkins and Kedney - Colleges’ Employers’ Forum - 1996 - Section 1.2

³ “Corporate Boards that Create Value” John Carver with Caroline Oliver, 2002 - Introduction

⁴ “Reviewing the Performance of the Board” - Hawkins and Kedney - Colleges’ Employers’ Forum - 1996

“Dedicated part-time members of a board cannot, and it is cogently argued, should not, **manage** the affairs of the college, rather they should recognise their particular role and contribution and work in partnership and harmony with their principal.” (Section 3.2)

12. Therefore, the overall aim of the Corporation should be to agree policies and strategies and to ensure that it is able to monitor progress in implementing them. This requires having objective and effective means of knowing whether the College is being properly managed to fulfil its mission, and that it is in good financial health.

13. However, as the FEFC Guide emphasises:

“Except in the most unusual circumstances, it is not the function of the Governing Body to become involved in detailed scrutiny of the management and administration, and teaching programmes of the College. Rather, it will encourage the Principal to get on with the task, but within a clear framework of accountability, including the policies and objectives in the College’s strategic plan that the governing body itself has approved.” (Paragraph 5.7)

14. Therefore, it is recognised that, to achieve this, it is both necessary and good governance for a corporation to delegate matters to its committees and to the Principal and Chief Executive (in accordance with the provisions of the Articles of Government), in a way that reflects the complexity of the College and the experience of the management team.

Delegation of Responsibilities by the Corporation (of South Essex College)

15. The Corporation accordingly delegates many of its functions to

- committees, particularly the Policy and Resources Committee
- the Principal and Chief Executive
- the Chair

16. The arrangements for delegation are set out below, together with the full text of the relevant Articles and appropriate extracts from the Financial Memorandum), in order to provide Members with a clear statement of the arrangements for delegation in the context of the statutory provisions.

The Corporation

17. In accordance with its powers under the **Articles of Government**, the Corporation **reserves to itself** all those powers which cannot be delegated, as set out in Articles 3(1) and 9:

- (a) the determination and periodic review of the educational character and mission of the institution,
- (b) the approval of the annual estimates of income and expenditure,
- (c) the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets,

- (d) the appointment or (subject to Article 17) the dismissal of the Principal or holder of a senior post,
- (e) the appointment or dismissal of the Clerk to the Corporation, and
- (f) the modification or revocation of these Articles,
- (g) approving the quality strategy of the Corporation.

In addition, the Corporation reserves to itself the responsibility for (a) ensuring Child Protection Issues are reflected in a College Policy, embedded in the culture of the institution and comply with the Children Act, and (b) ensuring that the College has an Equality and Diversity Policy in respect of all equality, diversity and discrimination issues, including Race Relations, Age Discrimination, Disability and Sex Discrimination, and all such issues are also embedded in the culture of the institution and comply with all existing legislation, as amended from time to time.

18. Further, under the provisions of the **Financial Memorandum**, the Corporation is responsible for:
- (a) ensuring that funds from the [Learning and Skills] Council are used only in accordance with the Act, the Memorandum and any other conditions which the Council may from time to time prescribe,
 - (b) ensuring that the financial, planning and other management controls, including controls against fraud and theft, applied by the College are appropriate and sufficient to safeguard public funds,
 - (c) ensuring that financial considerations are taken into account at all stages in reaching decisions and in their execution,
 - (d) approving an annual budget before the start of each financial year,
 - (e) planning and conducting its financial and academic affairs so that its total income is not less than sufficient, taking one year with another, to meet its total expenditure. *(from Paragraphs 9 and 10)*

Policy and Resources Committee

19. The Corporation has established a Policy and Resources Committee with responsibilities for financial, estates and employment matters. The Corporation **delegates** powers and assigns responsibilities to the Policy and Resources Committee, as set out below:
- (a) Monitoring financial performance and solvency, academic activities, including Higher Education arrangements, the achievement of students, management effectiveness and the College's employment policies.
 - (b) Authorising significant expenditure or variations in budget allocations in accordance with the Financial Regulations.
 - (c) Determining the College's Financial Regulations.

- (d) Determining the Accommodation Strategy.
 - (e) Determining the Quality Strategy for approval by the Board.
 - (f) Determining all other matters which are not reserved functions of the Corporation under Articles 3 or 9 or which are not delegated to other committees, to the Chairman or to the Principal and Chief Executive.
20. Further, the Policy and Resources Committee may also delegate its powers as appropriate to the Chairman, the Principal and Chief Executive or a sub-committee. The Corporation may, from time to time, seek advice from the Policy and Resources Committee in connection with non-delegable functions.

Chairman

21. The Chairman is responsible for ensuring on behalf of the Members that the business of the Corporation is appropriately organised by the Clerk and for acting with the Clerk as the communication link between the Members and the Principal and Chief Executive.
22. From time to time, it will be necessary for the Chairman, or the Vice-Chairman in his or her absence, to act on behalf of the Corporation between meetings. There are occasions when issues arise which are normally placed before the Corporation or the Policy and Resources Committee but the next scheduled meeting is too distant and it is not thought appropriate to call a special meeting. In such circumstances the Corporation **delegates to the Chairman** authority to take action on behalf of the Corporation, after taking advice from the Principal and Chief Executive if this is appropriate, provided that
- such a course of action is not contrary to the Articles of Government or other regulations,
 - the Clerk to the Corporation, in consultation with the Chairman and the Principal and Chief Executive, has sought, if appropriate, the views of the Chairman of the committee associated with the issue,
 - the actions taken by the Chairman are reported to the next scheduled meeting of the Policy and Resources Committee or Corporation, as appropriate.
23. In the case of misconduct by a senior postholder which the Chairman, or in his or her absence the Vice-Chairman, or a majority of the Members of the Corporation, consider may lead to the dismissal of the senior postholder, the Chairman will be responsible for determining the membership of a Special Committee of the Corporation to examine the case for dismissal and make recommendations to the Corporation.

(Article 17.1 and Disciplinary Procedure for Holders of Senior Posts, May 2004)

Principal and Chief Executive

24. The Articles give the Principal and Chief Executive the responsibility for the organisation, direction and management of the College, including the effective working of the College's structures and systems, and for the leadership of the staff of the College.

25. The statutory powers and duties of the Principal and Chief Executive are set out in **Article 3(2)**:
- (a) making proposals to the Corporation about the educational character and mission of the institution, and implementing the decisions of the Corporation,
 - (b) the organisation, direction and management of the institution and leadership of the staff,
 - (c) the appointment, assignment, grading, appraisal, suspension, dismissal, and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts,
 - (d) the determination of the institution's academic activities, and the determination of its other activities,
 - (e) preparing annual estimates of income and expenditure, for consideration and approval by the Corporation, and the management of budget and resources, within the estimates approved by the Corporation, and
 - (f) the maintenance of student discipline and, within the rules and procedures provided for within these Articles, the suspension or expulsion of students on disciplinary grounds and expelling students for academic reasons.
26. Further, under the **Financial Memorandum**, the Principal and Chief Executive is identified as the Accounting Officer and has, within the framework of the Articles, the following responsibilities:
- (a) personal responsibility, which may not be delegated, for ensuring the proper and effective operation of the financial, planning and management controls required under the Financial Memorandum for the Corporation,
 - (b) giving effect to the Corporation's policies for securing the efficient, economical and effective management of all the College's income, assets and expenditure,
 - (c) with the Corporation, for ensuring that any funds from the [Learning and Skills] Council are used only for the purpose for which they are given and in accordance with any terms and conditions attached to them,
 - (d) advising the Corporation in writing if, at any time, any action or policy under consideration by them is incompatible with the terms of the memorandum or would infringe the requirements of propriety or regularity.
(from Paragraphs 12 to 15)
27. Further, the Principal and Chief Executive may be required to appear before the Public Accounts Committee on matters relating to the funds paid by the [Learning and Skills] Council to the College. *(Paragraph 14)*

28. The Corporation **delegates** further powers and **assigns responsibilities** to the Principal and Chief Executive as follows:
- (a) Informing the Corporation, its committees or the Chairman, as appropriate, of all significant matters, achievements, activities and events related to the work of the College.
 - (b) Determining the employment policies of the College.
 - (c) Setting a framework for the pay and conditions of service of staff (except senior postholders, as from time to time defined).
 - (d) Making any rules relating to the conduct of staff (except senior postholders), including discipline, grievance, dismissal and suspension procedures.
 - (e) Making any rules relating to the conduct of students, including suspension, expulsion, discipline, academic appeals and complaints procedures.
 - (f) Making any rules and bye-laws for the government and conduct of the College.
 - (g) Determining all matters relating to the establishment, constitution and conduct of any student body or other social or representative organisation for students.
 - (h) Approving the establishment of Academic Board Committees.
 - (i) Representing the Corporation on the Management Board of the Partnership for Higher Education in South Essex with The University of Essex; determining the other College representatives on the Management Board; determining College policy within the Principal and Chief Executive's general powers and delegated responsibilities and within the decisions and policies of the Corporation or the College, and referring reserved matters to the Board or the appropriate committee; reporting to the Corporation or the appropriate committee on the work of the Management Board.

A copy of the Joint Venture Agreement is available from the Clerk.

- (j) Determining the College's responses and communications to other organisations (including the Learning and Skills Council) in accordance with Corporation policy.

Review

29. The Corporation agrees to review annually the operation and appropriateness of the delegation of powers and responsibilities.

Other Corporation Committees

30. The Corporation currently has established in addition to the Policy and Resources Committee, three other committees:

Audit
Remuneration
Search

The Corporation **delegates** powers and responsibilities set out in terms of reference set out in **Annex A**.

31. The present membership of the Corporation and its Committees is set out in **Annex B**. Membership of Committees may be varied from time to time by resolution of the Corporation.

OTHER MATTERS

Statements made on Behalf of the Corporation or the College

32. Unless otherwise agreed by the Corporation to meet the needs of specific circumstances, **it is agreed that** statements on behalf of the Corporation will only be made by the following:

- the Chairman
- the Principal and Chief Executive
- the Clerk

33. It is recognised that the majority of items which require public statement concern the strategic management and day-to-day operation of the College and thus are dealt with by the Principal and Chief Executive.

34. Members should exercise care in responding to correspondence and avoid implying that they speak on behalf of the College or Corporation, except when specifically authorised. Advice should be sought from the Clerk, the Chairman or the Principal and Chief Executive in such circumstances.

The Corporation Seal

35. The Corporation Seal is affixed to certain documents to express the Corporation's intention to bind the College. Any contract related to property acquisition requires the application of the College Seal and the signature of both the Principal and Chief Executive and the Chairman.

RESOLUTION

The Corporation approves the Governance arrangements, as set out in paper FEC.09.47 "Governance and Delegation of Powers". This document replaces all previous resolutions and statements on governance and delegation of powers.

Terms of Reference of Other Corporation Committees
(reference Paragraph 30)

1. Audit Committee

Effectiveness

1. To advise the Corporation on the adequacy and effectiveness of the College's systems of internal control and its arrangements for risk management, control and governance processes, including controls for securing economy, efficiency and effectiveness (value for money).
2. To consider and advise the Corporation on relevant reports by the National Audit Office (NAO), the Learning and Skills Council (LSC) or their successors and other funding bodies and, where appropriate, management's response to these.
3. To monitor, annually or more frequently if necessary, the implementation of agreed recommendations relating to internal audit assignment and annual reports, financial statements auditor's management letter and the funding auditor's management letter and spot-check reports (where appointed).
4. To be informed of all additional services undertaken by the IAS, the financial statements auditor and the funding auditor (where appointed).
5. To establish, in conjunction with College management, relevant annual performance measures and indicators, and to monitor the effectiveness of the IAS and financial statements auditor through these measures and indicators and decide, based on this review, whether a competition for price and quality of the audit service is appropriate.

Internal Audit

6. To advise the Corporation on the appointment, re-appointment, dismissal and remuneration of the internal audit service (IAS) (and the head of internal audit, if applicable).
7. To consider and advise the Corporation on the scope and objectives of the work of the IAS, including audit needs assessment and strategic and short term audit plans for the IAS.
8. To consider and advise the Corporation on internal audit assignment reports and on annual reports, and management's responses to these.

Financial Statements Audit

9. To advise the Corporation on the appointment, re-appointment, dismissal and remuneration of financial statements auditors and objectives of their work.
10. To consider and advise the Corporation on the financial statements auditor's reports and management letters (and the funding auditor, where appointed) and the management responses to these and receive the annual financial statements to inform that process.

11. To consider and advise the Corporation on the annual financial statements.

General

12. To ensure effective co-ordination between the IAS, the funding auditor (where appointed) and the financial statements auditor, including whether the work of the funding auditor should be relied upon for internal audit purposes.
13. To review and advise the Policy and Resources Committee on the adequacy of the College Financial Regulations.
14. To ensure that all allegations of fraud and irregularity are properly followed up.
15. To produce an annual report for the Corporation and the Principal and Chief Executive (as Chief Accounting Officer), which includes the Committee's advice on the effectiveness of the College's risk management, control and governance processes, and any significant matters arising from the work of the IAS, the funding auditor (where appointed) and the financial statements auditor.
16. To ensure that all the above are conducted in accordance with the minimum schedule of business attached, but through not less than three meetings per year, and to report regularly to the Corporation on the Committee's business.

2. Remuneration Committee

1. To determine the remuneration of senior postholders (taking into account evidence of remuneration levels at comparable colleges, the College's and individuals' performance against targets and the College's financial position) and making recommendations to the Corporation.
2. To make arrangements for the appraisal and development of senior postholders.
3. To discharge any authority or responsibility of the Corporation in respect of discipline or grievances of senior postholders, including constituting the pool of Members from whom a Special Committee established under the Articles of Government shall be drawn, except that any other eligible Member may be co-opted for this purpose in the event of insufficient members of the Remuneration Committee being eligible or available.

3. Search Committee

1. The Committee will be responsible for:
 - (a) advising on the appointment of Corporation members (but see (c) below),
 - (b) advising on the co-option of the co-opted members of the Corporation,
 - (c) determining and overseeing the nomination process for student and staff members of the Corporation,

- (d) reviewing the memberships of the Corporation's Committees on an annual basis at the last meeting of the Committee for the academic year. The Committee will make recommendations for the composition of all Corporation Committees for consideration by the Corporation at its July meeting each year enabling them to be in place at the commencement of each academic year,
 - (e) advising on such other matters relating to membership and appointments as the Corporation may remit to the Committee.
2. The Committee will normally meet on three occasions each year, on dates set in the calendar approved annually by the Corporation. Special meetings shall be called by the Clerk at the request of the Chairman or any two Members under similar general rules as apply to Special Meetings of the Corporation. All meetings shall be conducted to timed agenda.
 3. The Committee will from time to time, and at least annually, consider and make recommendations to the Corporation on its composition in the light of the Instrument of Government.
 4. The Committee shall be responsible for keeping under review requirements for appointment or re-appointment of Members, including the number, composition and balance of interests represented on the Corporation and its committees; and, when necessary, making recommendations for change to the Corporation.
 5. The Committee shall be responsible for oversight and implementation of arrangements to recruit, inform and interview potential Members in line with Corporation policy, and for reviewing the contribution of existing Members eligible for re-appointment, and for making recommendations to the Corporation. Interviews of candidates shall normally be delegated to a panel of two or three Members, and conducted in an informal manner (but within a formal framework, scoring understanding and potential to contribute to the work of the Corporation with regard to a schedule of relevant issues determined by the Committee from time to time).
 6. No person other than a member of the Committee or the Clerk to the Corporation shall be entitled to attend meetings of the Committee except at the invitation of the Committee.
 7. When a vacancy occurs or is anticipated or identified for a Member, the Committee will research suitable candidates either by the placing of an open advertisement in regional or local media, or by initiating searches with relevant interested bodies. The Committee will assess candidates' suitability in accordance with explicit criteria for selection and established process, including a process of interview and confidential references. The Committee will put forward to the Corporation for its consideration suggestions for each vacancy.
 8. Where a vacancy occurs or is anticipated or identified for a Student or Staff Member, the Committee will determine and oversee the nomination process.
 9. The Corporation shall not appoint any Member of the Corporation (other than the Principal and Chief Executive) unless it has first considered the advice of the Committee. Appointments shall be made in accordance with the Instrument and Articles of Government, and the Corporation Scheme of Governance and Delegation of Powers (FEC.09.47).

ANNEX B

Current Membership of the F.E. Corporation and its Committees

Corporation	Policy and Resources Committee	Audit Committee	Remuneration Committee	Search Committee
<p>Peter Pickford (<i>Chair</i>) Michael Baker John Bruce Sally Carr Meredith Coombes Graham Fuller Yusuf Goolamali Roderic Gray (<i>Vice-Chair</i>) Diana Hale Carol Horton Rosalind Klass Richard Lane Richard Launder David O'Halloran Lee Privett Malcolm Smith Rex Smith</p> <p><i>Principal and Chief Executive</i> Jan Hodges</p>	<p>Peter Pickford (<i>Chair</i>) Michael Baker John Bruce Roderic Gray Jan Hodges Carol Horton Malcolm Smith</p>	<p>David O'Halloran (<i>Chair</i>) Yusuf Goolamali Rosalind Klass Lee Privett Paul Stafford(<i>co-opted</i>)</p>	<p>Carol Horton (<i>Chair</i>) Michael Baker Rod Gray Peter Pickford</p>	<p>Rosalind Klass (<i>Chair</i>) John Bruce Rod Gray Jan Hodges Carol Horton Richard Launder</p>