



**MORLEY COLLEGE LONDON
CODE OF CONDUCT**

FOR GOVERNING BODY MEMBERS

Approved by the Board 27 March 2017

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CODE OF CONDUCT FOR Governing Body members

1. INTRODUCTION

- 1.1 A Code of Conduct is a set of guidelines setting out the responsibilities, obligations and good practice for an organisation; it provides a structure for the responsibilities and expectations of Governing Body members.
- 1.2 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Governing Body members, to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the Governing Body and the Principal as Chief Executive. This Code therefore is aimed at promoting effective, well informed and accountable governance, and is not intended to be a definitive or authoritative statement of the law or good practice.
- 1.3 In addition to this Code, Governing Body members are recommended to familiarise themselves with the source documents listed in **the Schedule**.
- 1.4 If a Governor is in doubt about the provisions of this Code or any of the source documents, the Clerk should be consulted and, if necessary, external professional advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Governor of the College and for any act or omission in that capacity rests with the individual Governor.
- 1.5 This Code applies to every committee or working party of the Governing Body and to every subsidiary company or joint venture of the College to which Governors may be appointed.
- 1.6 By accepting appointment to the Board, each Governor agrees to accept the provisions of this Code.

2. INTERPRETATION

In this Code:

- 2.1 the 'Code of Governance' means the Code of Good Governance for English Colleges adopted by the Governing Body in October 2015;
- 2.2 all other definitions have the same meanings as given in the College's Articles of Association; and
- 2.3 words importing one gender import any gender.

3. AIMS AND VALUES

- 3.1 The College's Mission, Vision and Values are set out in the Strategic Plan 2016-20 which was adopted by the Governing Body in December 2015.
- 3.2 The Code of Governance is based on a set of Core Values. These are described as 'expectations of good governance, which illustrate the values and beliefs of college governors'. The Core Values are:
 - Putting the student first; promoting high expectations and ambitions for students and staff.
 - Ensuring inspirational teaching and learning.
 - Creating a safe environment for students to learn and develop.
 - Providing strong leadership to both the senior team and the community the college serves.
 - Setting the strategy and acting as guardians of the college's mission.
 - Demonstrating accountability to students, parents, staff, partners, employers, funders, trustees and other stakeholders, including publishing accurate and timely information on performance.
 - Listening to students, parents, employers and staff.

- Ensuring the achievement of equality of opportunity and diversity throughout the college.
 - Using the college's autonomy and independence to meet local education and skills needs.
- 3.3 Together, the College's Mission, Vision and Values and the Core Values set out in the Code of Governance encapsulate the purposes, aims and values of the College. Governors should have due regard to these purposes, aims and values when conducting the business of the Governing Body and considering the activities and proposed activities of the College.
- 3.4 The Governing Body recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, other educational institutions and the wider community. In particular, the Governing Body is committed to:
- 3.4.1 having close regard to the voice of the learner;
 - 3.4.2 combating any discrimination within the College on the grounds of the characteristics protected by the Equality Act 2010; and
 - 3.4.3 engaging with the communities that the College serves in order to understand and meet their needs.
- 3.5 The Governing Body is also committed to ensuring that it conducts its business in accordance with the highest ethical standards as set out in more detail in this Code.

4. **DUTIES**

- 4.1 Governors owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its best interests. The College's objects are set out in its Articles of Association and Governors should become familiar with them.
- 4.2 Governors must run the College and administer its assets in the best interests of current, and future, beneficiaries.
- 4.3 Each Governor should act honestly, diligently and (subject to the provisions appearing in paragraph 10 of this Code relating to collective responsibility) independently. The actions of Governors should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.
- 4.4 Decisions taken by Governors at meetings of the Governing Body and its committees must not be for any improper purpose or personal motive. Decisions taken must always be for the benefit of the College, its students and staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, Governors must not be bound in their speaking and voting by mandates given to them by other bodies or persons (including but not limited to the bodies that elected them).
- 4.5 Governors must observe the provisions of the College's Articles of Association and in particular the duty to give immediate notice to the Clerk should they become disqualified from continuing to hold office. The responsibilities of Governors are summarised in **Appendix 3**.
- 4.6 Governors should comply with the Standing Orders of the Governing Body and the terms of reference of its committees to ensure that the Governing Body and its committees conduct themselves in an orderly, fair, open and transparent manner. Governors must keep those Standing Orders and terms of reference under periodic review.
- 4.7 Governors should also have regard to the different, but complementary, responsibilities given to the Principal as the College's Chief Executive. The responsibilities given to the Principal as Chief Executive are set out in the Articles and detailed further in the Scheme of Delegation approved by the Governing Body. In broad terms, whereas it is the Governing Body's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior staff, it is the Principal's role to implement the Governing Body's decisions, and to manage the College's affairs within the budgets and framework fixed by the Governing Body. Governors should work together so that the Governing Body and the Principal as Chief Executive perform their respective roles effectively.

- 4.8 Governors should refer to the Clerk for advice relating to the governance functions which are set out in **Appendix 4** and have regard to the Clerk's independent advisory role.

5. **STATUTORY ACCOUNTABILITY**

- 5.1 Governors are collectively responsible for observing the duties set out in the Financial Memorandum which the College has entered into with the Secretary of State as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum is set out in **Appendix 5**.
- 5.2 Although the SFA is the main provider of funds to the College, Governors should note that they are also responsible for the proper use of income derived from other sources, such as employers, and for the control and monitoring of expenditure of such income, in order to meet the requirements of the SFA and public audit.
- 5.3 As accounting officer for the SFA, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the SFA puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Principal, as accounting officer for the College, is also directly responsible and accountable to Parliament, through the Committee of Public Accounts, for the effective stewardship by the College of public funds. The Principal may be required to appear before the Committee of Public Accounts, alongside the Chief Executive of the SFA, to give an account of the use made by the College of such funds. The Governing Body is accountable to Parliament for ensuring the financial health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law. The responsibilities of the Principal as Accounting Officer are summarised in **Appendix 4** to this Code.

6. **PUBLIC SERVICE VALUES**

Public service values are at the heart of the education service. High standards of personal and corporate conduct, based on the principles set out in **Appendices 1** and **2** of this Code, and the recognition that students and other users of the College's services come first, are a requirement of being a Governor, and should underpin all decisions taken by the Governing Body.

7. **SKILL, CARE AND DILIGENCE**

A Governor should in all his or her work for the College exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Governors act as agents of the College, for example, when functions are delegated to a committee of the Governing Body or to the Chair. Governors should be careful to act within the terms of reference of any committees on which they serve.

8. **POWERS**

Governors are responsible for taking decisions which are within the powers given to the Governing Body by the College's Articles of Association. A summary of those powers is set out in **Appendix 6**. If a Governor thinks that the Governing Body is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk for advice.

9. **CONFLICTS OF INTEREST**

- 9.1 Like other persons who owe a fiduciary duty, Governors should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the College. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

- 9.2 Governors are reminded that under the College's Articles of Association and its policy on Conflicts of Interest and the general law they must disclose to the Governing Body any direct or indirect financial interest they have, or may have, in the supply of work to the College or the supply of goods for the purposes of the College, or in any contract or proposed contract concerning the College, or in any other matter relating to the College or any other interest of a type specified by the Governing Body in any matter relating to the College, or any duty which is material and which conflicts or may conflict with the interests of the Governing Body.
- 9.3 If an interest of any kind (including an interest of a business partner or of a spouse or partner of a Governor or of a close relative of the Governor or his or her partner or spouse) is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Governor's independent judgement, then:
- 9.3.1 the interest, financial or otherwise, should be reported to the Clerk;
- 9.3.2 the nature and extent of the interest should be fully disclosed to the Governing Body before the matter giving rise to the interest is considered;
- 9.3.3 if the Governor concerned is present at a meeting of the Governing Body, or any of its committees, at which such supply, contract or other matter constituting the interest is to be considered, he or she should:
- (a) not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum for that meeting; and
- (b) withdraw from that Governing Body or committee meeting where required to do so by a majority of the Governors or committee present at the meeting.
- 9.4 For the purposes of clause 9.3 "close relative" includes but is not limited to a father, mother, brother, sister, child, grandchild and step-father/mother/brother/sister/child.
- 9.5 Where it is proposed that the Governing Body should grant a Governor a financial interest (such as a contract for the supply of goods or services) the Board must observe the requirements of the Charities Act 2011. The Governing Body may wish to take legal advice before granting such an interest to a member.
- 9.6 Governors must not receive gifts, hospitality or benefits of any kind from a third party which might be in breach of the Bribery Act 2010 and the College's anti-bribery policy or be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.
- 9.7 The Clerk will maintain a Register of Governors' Interests which will be open for public inspection. Governors must disclose routinely to the Governing Body all business interests, financial or otherwise, which they may have, and the Clerk will enter such interests on the Register. Governors must give sufficient details to allow the nature of the interests to be understood by enquirers. Governors should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Governors should have regard to the meaning given to "interest" in paragraphs 9.3 and 9.5 of this Code. The Register must be reviewed and updated, if necessary, at least annually.

10. **COLLECTIVE RESPONSIBILITY**

- 10.1 The Governing Body operates by Governors taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Governing Body, even when it is not unanimous, is a decision taken by the Governors collectively and each individual Governor has a duty to stand by it, whether or not he or she was present at the meeting of the Governing Body when the decision was taken.
- 10.2 If a Governor disagrees with a decision taken by the Governing Body, his or her first duty is to have any disagreement discussed and minuted. If the Governor strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Governing Body when it next meets. If no meeting is scheduled, the Governor should refer to the power of any five Governors under the College's Articles of Association to requisition a meeting of the Governing Body and, if appropriate, exercise it, requesting

the Clerk to circulate the Governor's views in advance to the other Governors. Alternatively, as a final resort, the Governor may decide to offer his or her resignation from office, after consulting the Chair.

11. **OPENNESS AND CONFIDENTIALITY**

- 11.1 Because of the Governing Body's public accountability and the importance of conducting its business openly and transparently, Governors should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Governing Body. Accordingly, agendas, minutes and other papers relating to meetings of the Governing Body are normally available for public inspection when they have been approved for publication by the Chair.
- 11.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example, when the Governing Body considers sensitive issues or named individuals or for other good reasons. Such excluded items will be kept in a confidential folder by the Clerk, and will be circulated in confidence to Governors. Some confidential items are likely to be of a sensitive nature for a certain period of time only (for example information relating to a proposed commercial transaction or collaboration with another institution). The Governing Body should specify how long such items should be treated as confidential or, if this is not possible, such items should be regularly reviewed to consider whether the confidential status should be removed or whether the public interest in disclosure outweighs that confidential status and the item made available for public inspection. When considering such issues the Governors must also consider the College's publication scheme issued under the Freedom of Information Act 2000. Governors have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the College's Articles of Association.
- 11.3 It is important that the Governing Body and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Governors with a shared corporate responsibility for decisions. Governors should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Governing Body are satisfied should be dealt with on a confidential basis.
- 11.4 Governors should not make statements to the press or media or at any public meeting relating to the proceedings of the Governing Body or its committees without first having obtained the approval of the Chair or, in his or her absence, the Vice Chair. It is unethical for Governors publicly to criticise, canvass or reveal the views of other Governors which have been expressed at meetings of the Governing Body or its committees.

12. **COMPLAINTS**

- 12.1 In order to ensure that the affairs of the College are conducted in an open and transparent manner and that the College is accountable for its use of public funds but also to its employees, its students and the communities that it serves, it is important for there to be appropriate complaints procedures in place and for these to be well publicised. Governors are reminded of their specific responsibility under the Financial Memorandum to have in place a formal complaints procedure complying with SFA guidance to handle issues raised by students, employers and other third parties and of the legal requirements to have whistleblowing and staff grievance procedures.
- 12.2 Under the SFA's Financial Memorandum with colleges (clause 19.4), students, employers and other third parties have a right to make a complaint to the SFA in respect of the College or of any of its decisions. Governors in particular are reminded that under the SFA's Procedure for Dealing with Complaints about Providers of Education and Training) the SFA:

- *can* investigate complaints about quality or management of learning provision, undue delay or non-compliance with published procedures, poor administration by the

Provider, equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter through the court or tribunals or other organisations), health and safety concerns and complaints made by learners following HE courses in FE colleges;

- *will not* investigate complaints about examination results or curriculum content where a more appropriate form of redress would be the examining body or Ofqual, individual employment issues, contractual disputes, save where this relates to a course funded by a 24+ Advanced Learning Loan, or matters subject of legal action or where legal proceedings are the most appropriate way of resolving the dispute.

13. **ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Governing Body is expected so that Governors can perform their functions properly. If attendance is not possible an apology should be sent to the Clerk in advance.

14. **GOVERNANCE DEVELOPMENT**

- 14.1 The Governing Body shall seek to ensure that all Governors are appointed on merit, in accordance with an open selection procedure carried out by the Governing Body's Search and Governance Committee, and are drawn widely from the communities that the College serves so as to be representative of those communities. The Governing Body should have regard to the provisions relating to the membership of the Governing Body in the College's Articles of Association, the need to combat discrimination and to promote equality, and the need to make available a range of necessary skills and experience to ensure that the Governing Body carries out its functions under the College's Articles of Association.
- 14.2 Governors must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including regular refresher workshops.
- 14.3 As part of a continuing and critical process of self-evaluation and in order to promote more effective governance, Governors will carry out an annual review of the performance by the Governing Body of its duties and responsibilities.

SCHEDULE

List of source documents

1. the College's Articles of Association
2. the Scheme of Delegation
3. the Standing Orders of the Governing Body
4. the terms of reference of any committees established by the Governing Body
5. the Financial Memorandum entered into by the College with the Skills Funding Agency
6. the College's Strategic Plan
7. the College's policies that extend to Governors, including the College's policies on safeguarding learners and preventing people being drawn into terrorism, the avoidance of discrimination and the promotion of equality, the anti-bribery policy as required by the Bribery Act 2010 and the College's Financial Regulations
8. the principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely:
 - selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty; and
 - leadership.

(an extract from the report of the Nolan Committee setting out these Principles in more detail is set out at **Appendix 1**)
9. the Joint Audit Code of Practice issued by the SFA and the EFA
10. The Code of Good Governance for English Colleges
11. the Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services (Good Governance Standard) (an extract from the Good Governance Standard setting out the six core principles of good governance is set out at **Appendix 2**)

Appendices 1 (the Seven Principles of Public Life), 2 (Six Core Principles of Good Governance), 3 (Responsibilities of Governors), 4 (Responsibilities of the Principal and Clerk), 5 Financial Memorandum with the SFA) and 6 (Powers of the Board) are attached to this Code for reference.

APPENDIX 1

The Seven Principles of Public Life

The following is an extract from the Second Report of the Nolan Committee on Standards in Public Life, May 1996

SELFLESSNESS

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2

Six Core Principles of Good Governance

The following is an extract from the Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services, January 2005

1 Good governance means focusing on the organisation's purposes and on outcomes for citizens and service users

- 1.1 Being clear about the organisation's purposes and its intended outcomes for citizens and service users;
- 1.2 Making sure that users receive a high quality service;
- 1.3 Making sure that taxpayers receive value for money.

2 Good governance means performing effectively in clearly defined functions and roles

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

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

- 3.1 Putting organisational values into practice;
- 3.2 Individual governors behaving in ways that uphold and exemplify effective governance.

4 Good Governance means taking informed, transparent decisions and managing risk

- 4.1 Being rigorous and transparent about how decisions are taken;
- 4.2 Having and using good quality information, advice and support;
- 4.3 Making sure that an effective risk management systems is in operation.

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

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

6 Good governance means engaging stakeholders and making accountability real

- 6.1 Understanding formal and informal accountability relationships;
- 6.2 Taking an active and planned approach to dialogue with accountability to the public;
- 6.3 Taking an active and planned approach to responsibility to staff;
- 6.4 Engaging effectively with institutional stakeholders

APPENDIX 3

Summary of Main Responsibilities of Governors

General

Governors have a wide range of statutory responsibilities, for example under employment and health and safety legislation, under the Counter-terrorism and Security Act 2015 (the 'Prevent' duty to have regard to the need to prevent people being drawn into terrorism) and under the Equality Act 2010 (to avoid discrimination and promote equality).

Under regulations

Colleges are required to comply with a wide range of regulations, for example in relation to safeguarding and Special Educational Needs.

As company directors

A summary of directors' duties appears in **Appendix 6**.

As charity trustees

A summary of charity trustees' duties appears in **Appendix 6**.

Under the Articles of Association

Under Article 15.2, to exercise the powers of the company as set out in Article 4.2.

Governors may under Articles 15.3-15.5 delegate many of their functions to committees and the principal or other senior staff, subject to the limitations in Article 15.6 and the Governing Body's written scheme of delegation.

Under the Financial Memorandum with the SFA

A summary of the Financial Memorandum appears as **Appendix 5**.

APPENDIX 4

Summary of main responsibilities of the Principal

1. Under Article 25.1 of the Articles of Association subject to the responsibilities of the Governing Body, the Principal shall be the Chief Executive of the College and shall be responsible for the academic and executive direction and management of the College, including financial management, organisation, structure, conduct and discipline.

2. Under HM Treasury's *Managing Public Money* the Principal as Accounting Officer for the College shall be responsible for:

- (a) ensuring high standards of probity in the management of public funds, particularly regularity (dealing with public money in accordance with legal requirements), propriety (dealing with funds in accordance with Parliament's intentions) and value for money (through efficient and effective use of resources);
- (b) signing annual statements on regularity, propriety and compliance and submitting them to SFA;
- (c) demonstrating via the governance statement in the audited accounts how the College has secured value for money;
- (d) keeping proper financial records;
- (e) taking personal responsibility for assuring the Governing Body that there is compliance with the Financial Memorandum;
- (f) advising the in writing if any action they are considering is in breach of the Articles of Association or the Financial Memorandum (and informing the SFA in writing if nevertheless the Board decides to proceed with such action); and
- (g) Complying with Treasury guidance on the role of accounting officer and adhering to the Seven Principles of Public Life.

APPENDIX 5

Summary of Main Provisions of the Financial Memorandum with the Skills Funding Agency

Purpose

The SFA issues a financial memorandum for further education colleges, together with a version for sixth form colleges that recruit adult students. The EFA issues a funding agreement for provision of education to those aged 16-19, in different versions for sixth form colleges and for further education colleges. The current versions of these documents came into force on 1 August 2016.

Since the Financial Memorandum was issued, the SFA has become an executive agency of the Department for Education (alongside the EFA).

Definitions

It should be noted that references to public funds include funds provided by HEFCE as well as those provided by the SFA.

Statutory framework

The conditions set out in the Financial Memorandum are intended to enable the Secretary of State for Education to carry out his functions under the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). ASCLA originally conferred these functions on the Chief Executive of Skills Funding but that post has been abolished by the Deregulation Act 2015.

Responsibilities of a Governing Body

The Financial Memorandum recognises that the governing body is an independent body responsible for managing the college and ensuring its financial viability. However, the governing body must inform the SFA of any transaction that could jeopardise the college's financial viability and must also be able to demonstrate that all transactions achieve value for money for funds provided under the financial memorandum.

The governing body must appoint an accounting officer (expected to be the chief executive/principal of the college). There must be an accounting officer in place at all the times and the SFA must be informed of the accounting officer's name and position and who will discharge their various responsibilities if they are absent from the college for an extended period.

The accounting officer takes personal responsibility, which is not delegable, to ensure compliance with the Financial Memorandum and conditions of funding. The accounting officer may be required to appear before the Public Accounts Committee on matters relating to the governing body's use of funds.

The accounting officer must advise the governing body if at any time in his/her opinion any action under consideration by the governing body is incompatible with the Financial Memorandum. If the governing body resolves to continue with such action the accounting officer must inform the SFA.

Allocation of funds

The SFA will allocate funds to the governing body annually provided that it is satisfied that the governing body is financially viable and able to deliver education of a reasonable quality meeting the needs of learners and employers and the governing body has met the previous year's conditions of funding. The governing body is free to spend its funding as it sees fit provided it fulfils the conditions of funding but funds must not be used to deliver provision in respect of which the governing body has already received other funding, public or otherwise, unless agreed by the SFA. The SFA can require assurance that delivery of provision complies with the Financial Memorandum and require, at the College's cost, evidence to support payment claims.

Capital transactions

The governing body must manage its property with regard to good practice guidance in the FE sector. It is no longer necessary to obtain approval of the SFA to the disposal of land or buildings which had been acquired or developed with the help of capital grants from the SFA or previous associated bodies, but the SFA must be notified in writing of such transactions and reserves the right to require repayment of some or all of the associated grant.

Financial reporting

The SFA specifies the information to be contained in the governing body's financial statements. Audited financial statements must be provided to the SFA within five months of the governing body's year end. The governing body must have an effective policy on risk management. The governing body must notify the SFA in writing if at any time there is a risk to the college's solvency and viability.

Audit

The governing body must appoint an audit committee and arrange to provide internal and financial statements audit, including regularity audit, in accordance with the Joint Audit Code of Practice issued by the EFA and SFA.

The governing body must investigate and report to the SFA all significant cases of fraud or suspected fraud.

Payment to employees on termination of employment

The governing body must only make payments to employees on the termination of their employment for the purpose of meeting contractual obligations. Payments must be demonstrated to be regular, secure value for money and avoid spending funds on settlements where disciplinary action would have been more appropriate. Where employment claims are brought by a senior post holder the governing body should take appropriate professional advice on any proposed settlement and the terms of the final agreement should be agreed by the governing body and brought to the attention of the financial statements auditors.

Provision of information

The SFA reserves the right to request information from the governing body in order to exercise his responsibilities. The governing body must inform the SFA in writing of the vacating or filling of the positions of Chair of the governing body, Principal and Clerk. The governing body must inform the SFA if it is sanctioned by an awarding body. The SFA has an expanded right to share information provided by the college, for example with Parliamentary bodies.

Additional conditions of funding

The SFA reserves the right to impose additional conditions where it considers it necessary to secure the delivery of education and training of a reasonable quality or to require the governing body to address concerns about its financial viability.

Repayment of funds

In the case of a breach of the conditions of funding the SFA reserves the right to require repayment of all or part of the funds.

Raising Standards, Feedback and Complaints

The college must deliver the funded provision to an acceptable standard of quality and comply with the Performance Management Rules published by the SFA. There is a set procedure for dealing with inadequate provision which may lead to issue of a Notice of Concern or ultimately a Notice of Withdrawal of Funding. See the strengthened intervention process issued in April 2014 which implements the policy set out in *Rigour and Responsiveness in Skills*.

Colleges are expected to have acceptable procedures for gathering and acting upon feedback and complaints from learners and/or their representatives and employers and the wider community. These must be made available to those who may wish to complain. Where a complaint is not resolved satisfactorily the complainant must be informed of his or her right to complain to the SFA.

Additional matters

The Financial Memorandum incorporates a number of other clauses on compliance matters such as health and safety, equal opportunities, data protection and freedom of information, and State Aid.

Interpretation

Nothing in the Financial Memorandum shall require the governing body to act in a manner which would cause the College to cease to be a charity.

APPENDIX 6

A summary of charity law, company law and regulation as they apply to Morley College

1. BACKGROUND

1.1. Morley College Ltd (the "College") is

- a company limited by guarantee whose object it is to operate Morley College; and
- a charity registered with the Charity Commission.

1.2. As the College combines the features of companies, charities and (in many respects) publicly funded colleges, several sets of terminology are used, but they all refer to the same objects or persons. When referring to the College the following words are synonyms and interchangeable hereafter (unless otherwise stated):

- College = company = trust = charity
- governors = board members = directors = trustees
- board of governors = board of trustees = board of directors = governing body
- members = play a similar role to that of shareholders in a company limited by shares.

2. CHARITY LAW

Duties of charity trustees

14.4 The governors of the College are also trustees of the charitable trust and, as charity trustees, have the following duties:

- 14.4.1 a duty to comply with the governing document (the Memorandum and Articles of Association);
- 14.4.2 a duty to act in the best interest of beneficiaries – both current and future – including students;
- 14.4.3 a duty to avoid conflicts of interest;
- 14.4.4 a duty to safeguard assets;
- 14.4.5 a duty not to profit unless specifically authorised by the governing document or authorised in some other way (for example by statute or by the Charity Commission);
- 14.4.6 a duty to serve without payment and not receive any personal benefit;
- 14.4.7 a duty of care/duty of prudence – to operate to a standard of care of a prudent business person. This is particularly relevant to any borrowing or investments that the trust makes;
- 14.4.8 a duty to comply with charity law and regulation and other legal duties; and
- 14.4.9 a duty to act collectively (with the other charity trustees), supporting decisions made by the trustees. Delegation to committees and individuals is permitted to the extent it is allowed in the governing document or is authorised elsewhere.

Conflicts of Interest

- 14.5 *'A conflict of interests exists when a board member has any interest, duty or obligation which conflicts or may conflict with the duty they owe to the charity'.*
- 14.6 This duty to avoid conflicts of interests also relates to persons connected with the governors (e.g. business associates and family members). There are a number of different definitions of "connected persons" but it would be prudent to construe the term widely to avoid any appearance of impropriety.
- 14.7 The Charity Commission guidance refers to a number of types of conflicts of interests, including:
- 2.1.1 a direct financial gain or benefit;
 - 14.7.1 an indirect financial gain or benefit;
 - 14.7.2 a gain other than a financial one; and
 - 14.7.3 a conflict of loyalties or conflict of duties.
- 14.8 A conflict of loyalty or conflict of duties could exist if a governor was also:
- 14.8.1 an employee of a funder of the College (unless appointed under statute such as by the Secretary of State); or
 - 14.8.2 an employee of a company providing services to the College; or
 - 14.8.3 an employee or governor of a college or other educational establishment seeking to provide some of the same services as the College to some of the same communities.
- 14.9 There is a general obligation on governors to declare, avoid and take action in relation to conflicts of interests.
- 14.10 Governors should maintain a register of interests. The register should be updated at least annually but it is good practice to include the disclosure of interest as a standard item at board meetings.
- 14.11 The Charity Commission requires every charity to maintain a conflict of interest policy which should deal with a number of matters including procedures for declaring and recording conflicts of interest and dealing with a conflict once it has been declared.
- 14.12 After a conflict of interest is disclosed, the trustees will need to deal with the conflict appropriately. It may be helpful to categorise conflicts as follows:
- 14.12.1 the conflict is so serious and/or frequent that the trustee should resign;
 - 14.12.2 the conflict is serious enough to warrant steps being taken by the board, e.g. the conflicted trustee should not attend the meeting of trustees or receive any papers relating to the meeting;
 - 14.12.3 the trustee withdraws from the meeting while the issue is being discussed and decided; or
 - 14.12.4 the conflict is minor and the board member can remain present but not take part in the decision making process.
- 14.13 There must be a "disinterested quorum" – a sufficient number of un-conflicted trustees to make a decision and, if necessary, authorise a conflict.

Payment of charity trustees

- 14.14 Charity trustees have a duty not to profit from their office unless it is specifically authorised by the governing document, statute or by a regulator. It is unlikely that any governors of the College will receive remuneration for their role as a trustee/Board member/governor.
- 14.15 The reimbursement of expenses is permitted where the expenditure is actually incurred (and evidenced) by a governor in the carrying out of duties for the charity. However, the expenses must be reasonable and must not be disguised remuneration.

Limitations of charitable status

Restrictions on loans

- 14.16 Charities can only make loans on a secured basis and at a commercial rate of interest. If the money can be designated as a "programme related investment" (i.e. the investment may generate a financial return but the charity's main objective in making it is to help its beneficiaries) then this restriction does not apply.

Restrictions on investing in shares and investments

- 14.17 Charities can only invest in shares in companies (including, trading and unrelated companies) if there is a demonstrable case that the charity's objects will be enhanced by such investment or it can be justified as a financial investment. Other investments are subject to similar rules.

Restrictions on giving guarantees

- 14.18 Charities are restricted in the circumstances in which they can give guarantees. In essence they can only give a guarantee if it supports the objects of the charity and is in respect of something they could themselves do under their charitable status.

Consent of Charity Commission required for certain acts

- 14.19 Where a company is a charity, the prior written consent of the Charity Commission is needed before regulated changes, such as to the charity's objects, dissolution provisions and trustee/member benefit provisions are made. Without the prior written consent of the Charity Commission approval by the members of the following is ineffective:
- 14.19.1 a payment to a governor for services as a director or as compensation for loss of office or as consideration for or in connection with his retirement;
- 14.19.2 a payment to a governor as compensation for loss of office or as consideration for or in connection with his retirement, in connection with the transfer of whole or any part of the undertaking or property of a company;
- 14.19.3 a governor's service contract for more than two years, not terminable by notice by the company or only so terminable in specified circumstances;
- 14.19.4 an arrangement whereby an asset above a certain value is to be acquired by a governor from the company or by the company from a governor; and
- 14.19.5 loans to governors.

Duties of trustees

- 14.20 The governors of a charitable company have the double function of directors of a company and trustees of a charity. Therefore, they need to comply with the duties and obligations of both company directors and charity trustees.

Annual returns and accounts by registered charities

- 14.21 **Trustee Annual Reports** - Registered charities must prepare trustees' annual reports, to be made available on request. The duty to file accounts and the trustees' annual report with the Charity Commission applies to all registered charities whose gross yearly income exceeds £25,000. The trustees' annual report and accounts should be filed online.
- 14.22 **Annual return form** - the duty to complete and file the annual return with the Charity Commission applies to all registered charities whose gross yearly income exceeds £10,000. Each registered charity receives an annual return form from the Charity Commission shortly after its financial year end. In all cases the annual return should be completed online. The annual return gives the Charity Commission basic financial details, and details of contacts, trustees, activities and of the charity's classification.
- 14.23 The trustees' annual report and accounts must be sent to the Charity Commission within 10 months of the end of the charity's financial year.

No distribution of profits to non-charitable Members

- 14.24 The profits of a charity may not be distributed to its members unless the members are charities themselves. Unlike a commercial company, which may distribute end of year dividends or interim dividends to its shareholders, a charity may not do the same.
- 14.25 Clause 5.1 of the College's Memorandum of Association provides that the income and property be applied solely towards the promotion of the objects and that none of the income or property of the College may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the College, subject to the limited exceptions to payments made in the interests of the College in accordance with clause 5.2. However, a charity is free to distribute its profits to a member which is a charity itself provided that the objects are aligned and conflicts of interest are managed.

Status to appear on correspondence

- 14.26 If neither the word "charity" nor the word "charitable" is part of its name, a company which is a charity must state that it is a charity in all the following documents: its business letters; notices and other official publications; bills of exchange; promissory notes; cheques; endorsements; orders for money or goods to be signed on the charity's behalf; instruments which create, transfer, vary or extinguish an interest in land and which purport to be executed by it; bills issued by the charity; and its invoices, receipts and letters of credit. Breach of these rules is a criminal offence.

15. COMPANY LAW

Companies limited by share/guarantee

- 15.1 Companies limited by guarantee are generally (although not always) formed for charitable, social or other non-trading purposes not intending to make a profit. As with companies limited by shares, the guarantee company is a legal entity in its own right and can, for example, enter into contracts, must produce accounts and will be the employer of its employees. Like all guarantee companies, the College generally enjoys limited liability, owns all its own assets and is, in turn, owned by its members (as opposed to shareholders). Guarantee companies are subject to the provisions of the Companies Act 2006, just like companies with share capital.

Constitution

- 15.2 A guarantee company's constitution is contained in its Articles of Association filed at Companies House. The Articles set out the mechanics of running the company on a day to day basis.

Members

- 15.3 The members of the College company are the equivalent of shareholders of a company limited by shares. The members are the 'owners' of the College. There must be a minimum of three members but membership cannot be transferred in the same way shares in a company limited by shares can be sold and transferred. If a member wishes to leave he/she must resign their membership and a new member must be appointed if their resignation takes the number of members to below three.
- 15.4 Members' rights under company law and the Articles of Association include the right to:
- 15.4.1 amend the Articles (a special resolution will be required and the consent of the Secretary of State may be needed);
 - 15.4.2 appoint and remove members;
 - 15.4.3 appoint and remove governors and the auditors; and
 - 15.4.4 receive audited accounts.
- 15.5 Liability of the members of a guarantee company is limited by the amount of the guarantee, i.e. of a fixed amount which each member agrees to pay when the company is wound up if there are insufficient funds to meet the claims of creditors. The amount of each member's contribution must be specified in the memorandum of association of the guarantee company and is the fixed amount agreed to be paid (to the extent there are insufficient funds) to discharge the company's debts and liabilities and pay the costs of a winding up. No minimum or maximum amount is required although the sum stated in the College's Memorandum is £1 per member.

Board of Governors/Directors

- 15.6 The board of governors will be responsible for the day to day management of the College. Such a board may be composed of executive and non-executive governors; the latter generally are not company employees but contribute by having relevant business experience or specialist educational knowledge.
- 15.7 The Articles of Association of the College set out the exact composition of the College's board of governors.
- 15.8 Members of the board have certain legal obligations imported to them in their capacity as directors under company law.

Directors' duties

Companies Act 2006

- 15.9 Please note that the statement of duties of companies directors under the Companies Act 2006 is not exhaustive and that the fiduciary, statutory and trust law duties, other than those provided under the Companies Act 2006, set out below remain applicable to College directors (in particular the duties of trustees which may be similar in nature but held to a higher standard). The Companies Act 2006 also provides that more than one of the duties set out below may apply in any given case.

A duty to act within powers

- 15.10 A director must act in accordance with the College's Memorandum and Articles of Association and only exercise his/her powers for the purposes for which they have been conferred to him/her.

A duty to promote the success of the company

- 15.11 A director must act in the way he/she considers, in good faith, would be most likely to promote the success of the company to achieve its purposes (i.e. objects), and in doing so have regard (amongst other matters) to:
- 15.11.1 any long term consequences;
 - 15.11.2 the interests of the company's employees;
 - 15.11.3 the need to foster business relationships with customers, suppliers and others;
 - 15.11.4 any impact on the community and environment;
 - 15.11.5 the desirability of maintaining a reputation for high standards of business conduct; and
 - 15.11.6 the need to act fairly as between members of the company.
- 15.12 This duty is similar to the duty owed by the governors as charity trustees – promoting the objects of the charity.

A duty to exercise independent judgment

- 15.13 A director must exercise independent judgement. This duty is not infringed by him/her acting in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors or by him/her acting in accordance with the Memorandum and Articles of the company.

A duty to exercise reasonable care, skill and diligence

- 15.14 In general the standard traditionally expected of a director in undertaking his/her duties on behalf of the company is the degree of skill and care that can be reasonably expected from a person of his/her knowledge and experience, so that if a director possesses a special skill or experience he/she is judged accordingly.
- 15.15 That traditional subjective test has given way to more onerous requirements and the standard now expected of a director is a mixture of both the subjective test set out above and an objective test of the standard which can reasonably be expected of a person carrying out the same job as the director. A director would be expected to meet whichever is the higher standard.

A duty to avoid conflicts of interest

- 15.16 A director must avoid a situation in which he/she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- 15.17 This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company's Articles allow that duty to be so disapplied, but such exemptions are limited in the case of charitable companies.
- 15.18 This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or if the matter has been authorised by the directors (in a duly convened and held meeting of the directors, in accordance with the company's Articles, without the concerned director being taken into account for quorum or majority purposes).
- 15.19 As with the duty to avoid conflicts of interest as charity trustees, it is good practice to maintain a register of interests and include disclosure of conflicts as an item at every board meeting.

A duty not to accept benefits from third parties

- 15.20 A director must not accept a benefit from a third party conferred by reason of him/her being a director or him/her doing (or omitting) anything as a director.
- 15.21 This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

A duty to declare an interest in a proposed transaction or arrangement

- 15.22 If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he/she must declare the nature and extent of that interest to the other directors, before the company enters into the transaction or arrangement.
- 15.23 A director need not declare an interest in the following cases:
- 15.23.1 if it cannot be reasonably regarded as likely to give rise to a conflict of interest; or
 - 15.23.2 if, or to the extent that, the other directors are already aware of it (or should reasonably be aware of it).

Fiduciary duties

- 15.24 In addition to duties owed to the company under the Companies Act 2006, there are broadly three types of fiduciary¹ duty which apply to directors:
- 15.24.1 a duty of good faith – a director must act bona fide in what he/she considers to be the best interests of the company;
 - 15.24.2 a duty not to fetter discretion – a director is not entitled to enter into any arrangement which fetters his/her future discretion; and
 - 15.24.3 a duty not to put himself/herself in a position of conflict, i.e. a conflict between his/her duty to the company and his/her personal interests.

Statutory duties

Loss of office payments (including in connection with take-over/change of control)

- 15.25 Any payments to a director for loss of office (as a director, employee or any other office including retirement), including non-cash benefits, must be disclosed to all members of the company and their approval must be sought if the amount or value of the payment exceeds £200.
- 15.26 Any payments to a director for loss of office in connection with a take-over or change in control of the company must be approved by the members.

Contracts with the company in which a director has an interest

- 15.27 A director must disclose any direct or indirect interest in a contract or proposed contract with the company.
- 15.27.1 **Substantial property transactions**

¹ A fiduciary is a person to whom power or property is entrusted for the benefit of another.

The approval of the company in general meeting is required for arrangements in respect of non-cash assets between a company and a director or persons "connected" with that director, e.g. family members or associated companies.

15.27.2 **All transactions involving directors**

The company is entitled to set aside any act or transaction entered into by it in circumstances where the board of directors has exceeded any limitation on its powers under the company's constitution, i.e. its Memorandum and Articles of Association and the parties to the transaction include either a director of the company (or its holding company) or a person connected with such a director.

15.27.3 **Directors' loans**

The general position is that loans by a company to its directors or the directors of its holding company are subject to prior member approval.

15.27.4 **Wrongful trading**

If a director knows or, taking account of his general knowledge, skill and experience ought to conclude, that there is no reasonable prospect of the company avoiding insolvent liquidation, the director has a duty to advise the Board of this and to ensure that every step is taken to minimise the loss to creditors.

Company Secretary/Companies House filing

- 15.28 Filing requirements of guarantee companies are very similar to those limited by shares. All normal documents relating to companies limited by shares must be lodged with Companies House, including notification of changes of governors and the company secretary, changes in its registered office and accounting reference date, all special and certain ordinary resolutions and an annual return (although guarantee companies do not have to send lists of their Members to the Registrar). Company law no longer requires companies to have a company secretary, but one can be appointed if desired. It is crucial that the College has someone responsible for all company administration and filings with Companies House (especially given the fact that there are financial penalties for late filing) whether it is by way of a formal company secretary appointment or not.

16. **STATUTORY REGULATION**

Duties of a Governor of the College

Responsibilities under the College's constitutional documents

- 16.1 The governors of the College are to exercise all the powers of the College under the College's Articles of Association.
- 16.2 In particular, the governors are to expend the College's funds in a manner beneficial to the achievement by the College of its objects. The governors are able to invest the College's funds and to enter into contracts on behalf of the College.
- 16.3 The governors are to undertake the strategic role in the running of the College, which may entail giving strategic direction to the Principal of the College.

Responsibilities under the Financial Memorandum

- 16.4 The management of the College needs to comply at all times with the provisions of the Financial Memorandum, which is signed between the SFA and the College and which set out the funding arrangements for the College. Some of the obligations set out under the Financial Memorandum may be delegated by the governors to the Principal and staff. However, the ultimate responsibility for complying with the Financial Memorandum's provisions remains with the governors.

Responsibilities under Education Laws and Regulations

16.5 Colleges are strictly regulated by statutes and regulations issued by the Department for Education, the SFA and the Office for Standards in Education. We set out below a non-exhaustive list of statutes applying to the College:

16.5.1 Further and Higher Education Act 1992

16.5.2 Education Act 2011;

16.5.3 Charities Act 2011;

16.5.4 Equality Act 2010;

16.5.5 Freedom of Information Act 2000 and Freedom of Information (Time for Compliance with Request) Regulations 2010

Other Statutory Responsibilities

16.6 It is important to realise that provisions of some statutes can apply to governors, for example, liability for health and safety and environmental offences may extend to individuals. Such liability occurs in serious cases and where it arises may include criminal liabilities. Criminal liability may extend to individuals within the company, may be additional to the liability of the company and may include imprisonment.

16.7 The following legislative duties apply to governors:

Health and Safety Law

16.8 So far as is reasonably practicable employers have a general duty to ensure the health, safety and welfare at work of their employees. This includes safe plant and systems, installation, instruction and supervision.

16.9 In addition, there is a general duty for employers to conduct their undertaking in such a way as to ensure, as far as reasonably practicable, that persons other than their employees are not exposed to risks to their health and safety.

16.10 The College should manage and review the risks associated with the working environment on a regular basis. The College should put in place and be able to demonstrate that its health and safety policy is kept up to date, well publicised and being implemented.

16.11 In the current climate it is increasingly possible that the governors, in addition to the College, will be held personally liable for failure to comply with health and safety obligations. Current penalties are imprisonment, a fine or both.

Corporate manslaughter

16.12 A college may commit the offence of corporate manslaughter under the Corporate Homicide and Corporate Manslaughter Act 2007 and may incur significant penalties if convicted, including a substantial fine (the court can impose an unlimited fine) and reputational damage (the court can force an organisation to publicise the conviction).

16.13 It is possible for individuals acting in their capacity as governors to be convicted of gross negligence manslaughter at common law, but convictions are hard to secure and prosecutions are therefore rare. A conviction carries a maximum sentence of life imprisonment and would lead to disqualification as a director of the College.

Environmental Protection Act 1990

- 16.14 This statute prohibits the unauthorised or harmful deposit, treatment or disposal of waste and provides for a new system of waste management licences.
- 16.15 Liability under this statute can extend to governors if the College is guilty of an offence as a result of the neglect of a governor, or the governor consented to or was in connivance of such an offence.
- 16.16 Under the Companies Act 2006, quoted companies must include information on their environmental policies and impact on the environment of their business in the governors' report. Legislation requiring all companies to produce transparent, accurate and comparable environmental reports may emerge in the near future.

Data Protection Act 1998

- 16.17 The rules on data protection apply to all "data controllers". A "data controller" is anyone, including the College, who alone or with others determines the purposes for, or the way in which, any personal data is used or held.
- 16.18 Personal data covers all information recorded about people that can be related to living people and includes both expressions of opinion about people and expressions of intention towards them. Records held on employees will fall into the provisions of the Act.
- 16.19 Offences under the Data Protection Act 1998 include processing data without making a notification to the Information Commissioner's Office, failing to notify changes to the registered entry and improperly disclosing or obtaining personal data.
- 16.20 Contravention of the Data Protection Act 1988 may involve criminal penalties and possibly an unlimited fine. Any person who suffers damage as a result of the contravention will also be entitled to compensation for that damage.

Tax, National Insurance and VAT

- 16.21 By the 19th day of each month the College must account to HM Revenue and Customs in respect of specified PAYE amount in relation to each employee.
- 16.22 As an employer, the College is also responsible for accounting for the national insurance contributions of its employees together with any VAT arising from the supply of goods or services (other than exempt supplies such as education) by the College.
- 16.23 It is the governors' responsibility to ensure that such payments are made and, in the event that they are not, a governor may face criminal charges if he/she consented to or connived of a non-payment or as a result of his neglect.

Procurement

- 16.24 The College is likely to fall under the definition of "contracting authority" under the Public Contracts Regulations 2015. The Regulations apply when a college which receives more than 50% of its funding from public sources procures contracts for the supply of goods, contracts for services, contracts for carrying out works and certain specific types of contract defined by the Regulations.

Please note that the above list is not exhaustive and contains illustrative examples only. There are numerous other statutes and regulations which may apply to college governors. For more specific advice on the applicable laws and regulations, detailed legal advice should be sought.