



## **MEMBERS CODE OF CONDUCT**

**First approved by the Corporation on 19 July 1999**

**Revised on 15 December 2003**

**Revised on 21 October 2008**

**Reviewed by the Corporation on 8 December 2009**

**Reviewed by the Corporation on 25 January 2011**

**Revised by the Corporation on 11 December 2012**

**Reviewed by the Corporation on 8 October 2013**

**Reviewed by the Corporation on 7 October 2014**

**Reviewed by the Corporation on 6 October 2015**

# Code of Conduct for Governing Body Members

## 1. Introduction

1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of 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 Corporation and Principal as the Chief Executive. This Code therefore is aimed at promoting effective, well informed and accountable college governance, and is not intended to be a definitive or authoritative statement of the law or good practice.

1.2 In addition to this Code, Members are recommended to familiarise themselves with the source documents listed in the Schedule. This Code should not be read as an exhaustive statement of duties, powers or provisions and Members should refer to the source documents listed in the Schedule. If a Member is in doubt about the provisions of this Code or any of the source documents, the Clerk to the Corporation should be consulted and, if necessary, professional advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Corporation Member of the College and for any act or omission in that capacity rests with the individual Member.

1.3 This Code applies to every committee or working party of the Corporation and to every subsidiary company or joint venture of the College to which Members may be appointed.

1.4 By accepting appointment to the Corporation each Member agrees to accept the provisions of this Code.

## 2. Aims and Values

2.1 Members are expected to promote the core purposes and aims of the College as set out in the vision, mission statements below.

### **Vision**

Derwentside College aims to be:

the best college in the country at supporting learners into sustained employment and in building successful careers;

renowned for our excellent relationships with employers and partners;

recognised as delivering innovative and excellent teaching, learning and assessment

**Mission** Derwentside College provides high quality education and training that focuses on developing the knowledge, skills and qualities needed by our learners to progress into sustained employment and build successful careers.

2.2 Public service values are at the heart of the education service. The Corporation recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, agents, other institutions and the wider community. 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 Member, and should underpin all decisions taken by the Corporation.

2.3 The Corporation 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.

### **3. Duties**

3.1 Members 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. Each Member should act honestly, diligently and (subject to the provisions appearing in paragraph 8 of this Code relating to collective responsibility) independently. The actions of Members should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.

3.2 Decisions taken by Members at meetings of the Corporation 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, Members must not be bound in their speaking and voting by mandates given to them by other bodies or persons.

3.3 Members must observe the provisions of the College's Instrument and Articles of Government and in particular the responsibilities given to the Corporation by the College's Articles of Government. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out in Appendix 3.

3.4 Members should comply with the Standing Orders and terms of reference of the Corporation and its committees to ensure that the Corporation conducts

itself in an orderly, fair, open and transparent manner. Members must keep those Standing Orders and terms of reference under periodic review.

3.5 Members 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 under the Articles of Government are set out at Appendix 4. Whereas it is the Corporation's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior postholders, it is the Chief Executive's role to implement the Corporation's decisions, and to manage the College's affairs within the budgets and framework fixed by the Corporation. Members, with the Chief Executive, should work together so that the Corporation and the Chief Executive perform their respective roles effectively.

3.6 Members should also have regard to the responsibilities given to the Clerk to the Corporation. The responsibilities given to the Clerk under the Articles of Government are set out at Appendix 4.

#### **4. Statutory Accountability**

4.1 Members are collectively responsible for observing the duties set out in the Financial Memorandum which the College has entered into with the Skills Funding Agency 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.

4.2 Although the Skills Funding Agency is one of the main providers of funds to the College, Members should note that they are also responsible for the proper use of income derived from other sources, such as the Higher Education Funding Council for England (HEFCE) and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit.

4.3 As accounting officer for the Skills Funding Agency, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the Skills Funding Agency 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 Skills Funding Agency, to give an account of the use made by the College of such funds. The Corporation 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.

## **5. Skill, Care and Diligence**

5.1 A Member 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 Members act as agents of the College, for example, when functions are delegated to a committee of the Corporation or to the Chair. Members should be careful to act within the terms of reference of any committees on which they serve.

## **6. Powers**

6.1 Members are responsible for taking decisions which are within the powers given to the Corporation by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992. A summary of those powers is set out in Appendix 6. If a Member thinks that the Corporation is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk to the Corporation.

## **7. Conflicts of Interest**

7.1 Like other persons who owe a fiduciary duty, Members 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 Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

7.2 Members are reminded that under the College's Instrument of Government they must not acquire or hold any interest in any property held or used for the purposes of the College or receive any remuneration for their services (save as a member of the College's staff) without the written approval of the Secretary of State for Innovation, Universities and Skills.

7.3 Members are reminded that under the College's Instrument of Government they must disclose to the Corporation any direct or indirect financial interest they have, or may have, in the supply of work or goods to or 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 Corporation in any matter relating to the College, or any duty which is material and which conflicts or may conflict with the interests of the Corporation.

7.4 If an interest of any kind (including an interest of a spouse/partner/close relative of the governor) is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Member's independent judgement, then;

7.4.1 the interest, financial or otherwise, should be reported to the Clerk to the Corporation;

7.4.2 the nature and extent of the interest should be fully disclosed to the Corporation before the matter giving rise to the interest is considered;

7.4.3 if the Member concerned is present at a meeting of the Corporation, or any of its committees, at which the supply, contract or other matter constituting the interest is to be considered, the Member should:

- 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
- withdraw from that Corporation or committee meeting where required to do so by a majority of the members of the Corporation or committee present at the meeting.

7.5 Members may properly find themselves offering the service of their skills and expertise to the College in an advisory capacity. In these circumstances the offer of services should be made at a committee or Board meeting. The member offering the advisory service should remain in the meeting to give details of the assistance offered, but withdraw whilst consideration of the offer of service is made. Members may choose to accept or decline any such offer, always bearing in mind the required appropriate relationship between Members and the College. The advice of the Clerk to the Corporation should be sought before acceptance of any such offer. Where this occurs it is essential that the minutes of the Corporation or committee meeting at which such assistance from a member is offered and accepted, record the precise terms under which such advice and help is to be given, the purpose of such advice and the limits of such advice.

7.6 Members must not receive gifts, hospitality or benefits of any kind from a third party which might 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 to the Corporation.

7.7 The Clerk to the Corporation will maintain a Register of Member's Interests which will be open for public inspection. Members must disclose annually business interests, financial or otherwise, which they or their close relatives may have, and the Clerk to the Corporation will enter such interests on the Register. Members must give sufficient details to allow the nature of the

interests to be understood by enquirers. Members should inform the Clerk to the Corporation whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Members should have regard to the meaning given to “interest” in paragraphs 7.3 and 7.4 of this Code.

## **8. Collective Responsibility**

8.1 The Corporation operates by Members taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Corporation, even when it is not unanimous, is a decision taken by the Members collectively and each individual Member has a duty to stand by it, whether or not he or she was present at the meeting of the Corporation when the decision was taken.

8.2 If a Member disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Member strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Member should refer to the power of the Chair or any five Members under the College’s Instrument of Government to call a special meeting. If appropriate, this power should be exercised, requesting the Clerk to the Corporation to circulate the Member’s views in advance to the other Members. Alternatively, as a final resort, the Member may decide, after consulting the Chair, to offer his or her resignation from office.

## **9. Openness and Confidentiality**

9.1 Because of the Corporation’s public accountability and the importance of conducting its business openly and transparently, Members should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved for publication by the Chair.

9.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection; for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in confidential records by the Clerk to the Corporation, and will be circulated in confidence to Member. 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 Corporation 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 Members must also consider the College's publication scheme issued under the Freedom of Information Act 2000.

9.3 However, staff and student Members 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 Instrument of Government.

9.4 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 Members with a shared corporate responsibility for decisions. Members should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.

9.5 Members should not make statements to the press or media or at any public meeting relating to the proceedings of the Corporation 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 Members publicly to criticise, canvass or reveal the views of other Members which have been expressed at meetings of the Corporation or its committees.

## **10. Complaints**

10.1 Accountability is at the heart of public service bodies and it is important that the affairs of the College are conducted in an open and transparent manner. To this end Members should be aware of the systems in place to deal with employees' grievances and matters relating to their employment. Members should also be aware of the College's complaints procedure, including the right of any complainant, who feels that a complaint has not been dealt with appropriately by the College to inform the Skills Funding Agency. Members' attention is also drawn to the College Public Interest Disclosure Procedure ('Whistleblowing') and the fact that an allegation of inappropriate behaviour by a Member may be dealt with under this procedure.

## **11. Attendance at Meetings**

11.1 A high level of attendance at meetings of the Corporation and its Committees is expected so that Members can perform their functions properly.

## **12. Governance Development**

12.1 Members must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, and taking other opportunities to extend their knowledge of the College and the education sector.



12.2 In order to promote more effective governance, Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing and critical process of self-evaluation.

12.3 The Corporation shall seek to ensure that all Members are appointed on merit, in accordance with an open selection procedure carried out by the Corporation's Search Committee, and are drawn widely from the community which the College serves so as to be representative of that community, having regard to provisions relating to the membership of the Corporation in the College's Instrument of Government, the need to combat discrimination and to promote equality, and the need to ensure a range of appropriate skills and interests.

### **13. Review of Code**

13.1 This code shall be kept under review by the Clerk to the Corporation and referred to the Corporation for amendment as required.

**AS A MEMBER OF THE CORPORATION OF DERWENTSIDE COLLEGE I  
AGREE TO OBSERVE THIS CODE OF CONDUCT TO THE BEST OF MY  
ABILITIES**

**Signed**

**Name of Member**

**Dated**

## **Schedule to Code of Conduct**

### List of Source Documents

1. The College's Instrument and Articles of Government;
  2. The Standing Orders;
  3. The Committee Terms of Reference;
  4. The Financial Memorandum entered into by the College with the Skills Funding Agency;
  5. The College's Mission Statement and Corporate Objectives;
  6. The College's Strategic Plan;
  7. 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;
8. The Audit Code of Practice issued by the Learning and Skills Council;
  9. The Combined Code on Corporate Governance;
  10. 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;
  11. 'The College Governor' issued by the Learning and Skills Council as an advisory document or its equivalent;
  12. 'The Governor Training Materials' (2002) issued by the Learning and Skills Council as advisory documents or their equivalent.

## **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 public interest and not in the interests of themselves their family or their friends.

#### **Integrity**

Holders of public office should not place themselves under any obligation to a third party which might influence them in the performance of their public duties.

#### **Objectivity**

All decisions involving awarding contracts, benefits or rewards should be made on merit.

#### **Accountability**

Holders of public office are accountable to the public for their actions and should submit themselves to the appropriate authority.

#### **Openness**

All decisions taken should be as open as possible.

#### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duty and resolve conflicts so as to protect 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 system 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 Members under the Articles

Under the College's Articles of Government the Corporation shall be responsible for the following functions:-

1. The determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
  2. approving the quality strategy of the institution;
  3. the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
  4. approving annual estimates of income and expenditure;
  5. the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk;
  6. setting a framework for the pay and conditions of service of all other staff;
  7. setting the policy by which the tuition and other fees payable to it are determined (subject to any terms and conditions attached to grants, loans or other payments paid or made by the Learning and Skills Council).
- "Senior Post" means the post of Principal and such other senior posts as the Members may determine for the purposes of the Articles.

#### Responsibilities which must **not** be delegated

The Articles of Government prohibit the Corporation from delegating the following:-

1. The determination of the educational character and mission of the institution;
2. the approval of the annual estimates of income and expenditure;
3. the responsibility for ensuring the solvency of the institution and the Corporation and the safeguarding of their assets;
4. the appointment of the Principal or holder of a senior post;
5. the appointment of the Clerk to the Corporation;
6. the modification or revocation of these Articles of Government;
7. the consideration of the case for dismissal of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation;
8. the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation.

The Corporation may, from time to time, resolve to add other functions which must not be delegated to this list of 'reserved' responsibilities.

## **Appendix 4**

### **Summary of Main Responsibilities of the Principal under the Articles of Government**

Under the College's Articles of Government the Principal shall be the Chief Executive of the College and shall be responsible for:

1. Making proposals to the Corporation about the educational character and mission of the institution, and for implementing the decisions of the Corporation;
2. the determination of the institution's academic and other activities;
3. preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and for the management of budget and resources within the estimates approved by the Corporation;
4. the organisation, direction and management of the institution and leadership of the staff;
5. 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 or the Clerk, where the Clerk is also a member of the staff; and
6. maintaining student discipline and, within the rules and procedures provided for within the Articles, suspending or expelling students on disciplinary grounds and expelling students for academic reasons.

#### **Delegable and non delegable functions**

The Principal may delegate functions to the holder of any other senior post other than:

1. The management of budget and resources; and
2. any functions that have been delegated to the Principal by the Governing Body.

### **Summary of Main Responsibilities of the Clerk under the Articles of Government**

Under the College's Articles of Government the Clerk shall be responsible for:

1. Advising the Corporation with regard to the operation of its powers;
2. advising the Corporation with regard to procedural matters;
3. advising the Corporation with regard to the conduct of its business; and
4. advising the Corporation with regard to matters of governance practice.

## **Appendix 5**

### **Summary of Main Provisions of the Financial Memorandum of the Learning and Skills Council**

The Department for Innovation, Universities and Skills (DIUS) requires the Learning and Skills Council to enter into an agreement set out in a financial memorandum with the College for the purpose of regulating its relationship in financial and related matters and setting out the terms and conditions on which public funds will be paid by the Learning and Skills Council to the College.

A revised financial memorandum was published by the Learning and Skills Council in December 2006 and became effective from 1 August 2006, and this sets out the framework of relationships and responsibilities between Colleges and the Learning and Skills Council. It replaces Further Education Funding Council Circular 99/48.

The memorandum is divided into two parts. Part 1 contains the general terms and conditions under which the Learning and Skills Council funds colleges. A summary of the main provisions of Part 1 appears below. Part 2 consists of any specific conditions which might apply to the College and is the subject of individual annual notification. Important points to note in relation to Part 1 are as follows:-

#### **Preamble**

The revised financial memorandum stresses that in future the Learning and Skills Council and colleges need to work in partnership and to have a relationship based on trust. The financial memorandum sets out the conditions upon which funding is provided by the Learning and Skills Council to colleges under a grant-in-aid relationship as opposed to one of contract. Funding is assumed to be continuous, requiring deliberate action to end it. The form of the financial memorandum is largely dictated by Treasury requirements and the Learning and Skills Council's own financial memorandum with the DIUS. It reflects the Learning and Skills Council's responsibilities for public accountability over the funds it provides to colleges, however, the Learning and Skills Council's expectation is that colleges will take full control of their financial affairs.

#### **Colleges' expectations of the Learning and Skills Council**

The financial memorandum confirms that the Learning and Skills Council will act reasonably on the basis of the evidence available and on its objective analysis of that evidence. It will be open and transparent with colleges and other stakeholders and (even though this would not necessarily be required by the general principles of public law) it will give reasons for all its decisions.

#### **Legislation**

In the financial memorandum the Learning and Skills Council sets out the terms and conditions on which it pays funds to the college, in accordance with the Learning and Skills Act 2000. However, the memorandum also recognises that nothing in it will require the College to act in a manner which would cause it to lose its charitable status or which would be inconsistent with its Instrument and Articles of Government. Note that from 2008 the Learning and Skills Council will become the “principal regulator” responsible for monitoring colleges’ compliance with charity law, under the Charities Act 2006.

### **Responsibilities of the Learning and Skills Council**

The Learning and Skills Council’s chief executive, as accounting officer under the Learning and Skills Council’s financial memorandum with the DIUS, is accountable to Parliament for ensuring that the uses to which the Learning and Skills Council puts its funds comply with the conditions attached to them. The accounting officer must be satisfied that the College has appropriate arrangements for sound governance, financial management, securing value for money and accounting, and that the College’s use of public funds is consistent with the purposes for which the funds have been given.

### **Responsibilities of the College**

The revised financial memorandum does not repeat the College’s wide responsibilities under statute and the Instrument and Articles of Government. However, Governing Bodies are reminded that they are responsible for ensuring that the College’s funds are used only in accordance with its powers under the Learning and Skills Act 2000, the financial memorandum and any other conditions that the Learning and Skills Council may from time to time impose. The Governing Body must ensure it uses its discretion reasonably and takes into account any relevant guidance on accountability or propriety issued from time to time by the Learning and Skills Council, the National Audit Office or Parliament. The Governing Body must require the Principal to take personal responsibility to ensure that there is compliance with the financial memorandum and the terms and conditions referred to above.

The Principal as accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College’s use of public funds and College funds. The Principal is responsible for advising the Governing Body if at any time he / she considers that any action or policy under consideration by the Governing Body is incompatible with the terms of the financial memorandum. Where the Governing Body determines to proceed despite the Principal’s advice, the Principal should consider the Governing Body’s reasons and if he / she still considers that the action proposed is in breach of the financial memorandum, the Principal should inform the Learning and Skills Council’s accounting officer in writing of the position.

The Clerk also should intervene when he / she considers that the Governing Body is acting inappropriately or beyond its powers, in which case the Clerk may need to seek external advice.



### **Allocation of funds**

The Learning and Skills Council will notify the College in writing of the allocation of recurrent funds as soon as possible in advance of the academic year to which they relate, ideally at least four months in advance. The Learning and Skills Council will seek to maximise the College's discretion to use the Learning and Skills Council's funds in achieving the Learning and Skills Council's objectives as agreed with the College. On occasion the Learning and Skills Council may allocate funds to the College for a specific purpose, in which case the College must apply such funds only for that purpose. The College must not apply public funds to provision for which it has already received other funding and it must not use the Council's funding to make claims for any European source of funding, in each case without obtaining the Learning and Skills Council's written consent.

### **Payment of funds**

The Learning and Skills Council will make payments to the College monthly in accordance with a funding profile for the year. The Learning and Skills Council may be prepared to make exceptional ad hoc payments to the College.

### **Capital Transactions**

The College should manage its property having regard to the guidance issued by the Learning and Skills Council. The College will normally be required to apply the proceeds of asset sales to investment in land and buildings and it must seek independent professional advice before disposing of these. The College must obtain the Learning and Skills Council's consent to capital transactions where the total cost or proceeds exceed £1.5 million or 5 per cent of the College's annual revenue, whichever is the lesser. The College must seek to secure the best obtainable value for money on disposal of property to a third party. Where such building may have been acquired with public funds the Learning and Skills Council may require the College to surrender some or all of the proceeds.

### **Borrowing**

The College must seek the Learning and Skills Council's prior written consent for any borrowing by itself or its subsidiaries, save that the Learning and Skills Council gives consent for unsecured borrowing of up to 5 per cent of the College's total annual income and for secured borrowing up to a cumulative maximum of 5 per cent of the College's total annual income in order to finance construction, refurbishment or purchase of land and buildings which are offered as security.

### **Contingent liabilities**

The College must not give any guarantees or indemnities other than in the normal course of business.

### **College companies**

The College must seek the consent of the Learning and Skills Council to participate in companies providing education funded wholly or partly by the Learning and Skills Council.

#### **Financial reporting**

The College must keep proper accounting records and prepare financial statements in accordance with the Learning and Skills Council's requirements. Copies of the College's audited financial statements must be supplied to the Learning and Skills Council and be made available to members of the public on request.

The College must have an effective risk management policy, including appropriate insurance arrangements, having regard to Learning and Skills Council guidance.

The College must notify the Learning and Skills Council in writing if at any time there is a significant deterioration in its financial position. The Learning and Skills Council may require the College to put in place a suitable recovery plan.

### **Audit**

The Governing Body must appoint an Audit Committee and arrange for internal and financial statements audit in accordance with the Learning and Skills Council's Audit Code of Practice. The Learning and Skills Council may from time to time carry out audits at the College and its subcontractors, as may the National Audit Office. The College must retain all records necessary to verify the provision delivered by it or its sub-contractors for six years after the end of the funding period. The College must investigate and report to the Learning and Skills Council all significant cases of internal and external fraud or suspected fraud or irregularity.

### **Procurement and contracting**

The College must comply with all relevant UK and European regulations.

#### **Payments to employees on termination of employment**

Payments made to employees on the termination of their employment should normally only be for the purposes of meeting contractual requirements, exceptions must be justified by explicit and quantified reference to value for money. The College must avoid spending public funds on settlements where disciplinary action would have been more appropriate.

The College must take professional advice and the terms of any final agreement should be agreed by the Governing Body. The cost of settlements must be declared in the College's financial statements.

### **Provision of information**

The College must provide the Learning and Skills Council with the information it needs in order to meet its responsibilities and European funding requirements. In requesting information the Learning and Skills Council will act reasonably and

consider information previously supplied by the College to the Learning and Skills Council or others with whom the Learning and Skills Council can share information. The Learning and Skills Council will have regard to the cost and timescale of provision of the information and, where appropriate, its confidentiality. However, if the College does not provide information to the Learning and Skills Council appropriately it may carry out investigations or use reasonable estimates to exercise its functions. The College must notify the Learning and Skills Council's chief executive in writing of the vacating or filling of the positions of Chair of the Governing Body, Principal and Clerk.

### **Repayment**

If the Learning and Skills Council overpays the College as a result of its use of estimates, the Learning and Skills Council reserves the right to recover any overpaid funding. If the College does not comply with any conditions attached by the Learning and Skills Council to the payment of funds the Learning and Skills Council reserves the right, in exceptional circumstances, to require the College to repay all or part of those funds.

## **Appendix 6**

### **Summary of the Statutory Powers of the Corporation**

#### Principal Powers

Under section 18(1) of the Further and Higher Education Act 1992 a further education corporation may:-

1. Provide further and higher education;
2. provide secondary education suitable to the requirements of persons who have attained the age of 14 years, or provide secondary education or participate in the provision of secondary education at a school (subject to the consultation with the appropriate local education authority); and
3. supply goods or services in connection with their provision of education.

These powers are known as the Corporation's "principal powers".

Supplementary Powers Under section 19 of the 1992 Act the Corporation may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers conferred by section 18 of the Act, including in particular the following:-

1. the power to acquire and dispose of land and other property;
2. the power to enter into contracts, including in particular:
  - contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the Corporation's principal powers; and
  - contracts with respect to the carrying on by the Corporation of any such activities;
3. subscribe for or otherwise acquire shares in or securities of a company. This power may not be exercised for the purpose of conducting an educational institution, or providing education funded by the Skills Funding Agency unless the Skills Funding Agency consents;
4. the power to borrow such sums as the Corporation thinks fit for the purposes of carrying on any activities it has power to carry on or to meet any liability transferred to it under sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with

such borrowing, the power to grant any mortgage charge or other security in respect of any land or other property of the Corporation. This power may not be exercised without the consent of the Skills Funding Agency, which may give its consent for a particular borrowing or for borrowing of a particular class;

5. power to invest any sums not immediately required for the purposes of carrying on any activities the Corporation has power to carry on;

6. power to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and

7. power to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.

The Corporation may also provide facilities of any description (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties) which appear to be necessary or desirable for the purposes of or in connection with the carrying on of the principal powers.

The powers conferred by section 19 of the 1992 Act are known as “supplementary powers”.