

Good College Governance

The Report of the Education Secretary's Task Group

Foreword by Cabinet Secretary

Colleges make a vital contribution to this Government's commitment to improving the lives and employability of all Scotland's people. They have a unique ability to meet the needs of learners and industry, often flexing quickly and creatively to meet changing demands. That is why we continue to make such a significant financial investment in the sector and why, rightly, we take such a close interest in how they are run: quite simply, colleges matter because of the vital contribution they make to our people, economy and society.

Effective governance is fundamental in supporting colleges to improve the life chances of their students and the performance of businesses. And good corporate governance demands an unswerving focus on culture, values and people – and strong systems and processes underpinning decision-making and public accountability. This is true for all our public bodies, including colleges.

I am grateful for the time and energy numerous volunteers devote as college sector board members. I want to thank every one of them for their public service. I know from speaking to board members over the years, theirs is an increasingly demanding role. But I also know the reward they get from making a difference and how satisfying it is to be part of a sector that helps change lives.

That is why the recent examples of governance failures at a small number of colleges are so jarring; those entrusted with the proper stewardship of public funds at such vital institutions broke that trust. What happened at North Glasgow and Coatbridge colleges in 2013 and at Glasgow Clyde College last year was unacceptable. And while we should not lose sight of the fact that the specific governance failures happened before improved arrangements came into place, it would be remiss to fail to learn the lessons.

Building on the good work already in train, with my Task Group, I am absolutely determined to take concrete action for further improvement. I thank all the members of my Task Group for the experience and expertise they brought to our work. We will meet again before the end of the year to review progress. Reports such as this are all well and good but what matters is how they are implemented; that is what will make the difference.

Angela Constance MSP
Cabinet Secretary for Education and Lifelong Learning

Section 1: Executive Summary

1.1 The College Good Governance Task Group was announced by Angela Constance, the Cabinet Secretary for Education and Lifelong Learning, on 8 October 2015 in a Parliamentary Statement as part of the Government's response to governance failures at Glasgow Clyde College. We have been asked specifically to learn lessons from events at Glasgow Clyde College, North Glasgow College and Coatbridge College. Our remit also includes developing the necessary capacity and behaviour to improve governance. We have therefore sought, where appropriate, to focus on culture, behaviour and people, while recognising the importance of rigorous systems and processes.

1.2 This report focuses on areas for improvement. But we should not forget, as Audit Scotland's "**Scotland's Colleges 2015**" report acknowledges, that college sector governance has many positives.

1.3 We were invited to produce an initial assessment on the basis that further relevant evidence will become available later this year. In discharging this aspect of our remit, the Group noted the assessment of the Scottish Funding Council (SFC). The SFC judges that, overall, in most of the colleges the quality of governance is generally effective.

1.4 The lessons we learned highlight the importance of:

- boards striking a proper balance between challenge and support to the college leadership team and chair.
- basic governance arrangements, including meetings with timely minutes and agendas.
- taking decisions with sufficient information and time for consideration.
- the relationship between the chair and principal, and the role of every board member in providing checks and balances.
- the specific role of board secretary in facilitating and supporting effective governance.

1.5 We have identified four strategic themes to strengthen college governance further and to instil greater confidence in it – (1) prevention; (2) self-assessment; (3) external assurance and (4) sanctions.

1.6 We are conscious of the detail in some of our recommendations (and actions already in train) represents the established practice of many boards. However, given the recent failures at a few colleges, we do consider it is helpful to boards and individual board members that all are clear on the fundamentals.

1.7 We recommend that:

- 1) **better arrangements are put in place to improve board member recruitment, including**
 - a) appointing bodies providing comprehensive information for prospective members
 - b) Scottish Ministers consulting on whether assigned college chairs should be remunerated and whether trade union nominees should join incorporated college boards
 - c) college sector boards consider the voluntary pledge to aim for 50:50 gender balance (already in train)
- 2) **board member development is better supported, including**
 - a) Ministers mandating induction and on-going development of (a) regional chairs appointed by them (b) other board members [(b) already in train]
 - b) online learning modules for board members (already in train)
- 3) **board member appraisal is better used to improve performance, including:**
 - a) Scottish Government reviewing appraisal process for regional chairs (already in train)
 - b) Mandatory appraisal of board members (already in train)
- 4) **better systems are put in place to ensure that all boards consistently get the basics right, including:**
 - a) developing a national governance portal
 - b) reviewing the Code of Good Governance to outline requirements more clearly (already in train)
- 5) **good governance practice is better supported and facilitated, including:**
 - a) role of board secretary is enhanced and better supported to better facilitate good governance
 - b) case studies of good governance
 - c) guidance on the performance of principals
- 6) **staff governance is better implemented, including Colleges Scotland and recognised unions are reviewing the sector's staff governance standard (already in train)**
- 7) **board self-assessments are better used to improve performance, including:**
 - a) funding bodies to meet annually with bodies to discuss their self-assessment and development plan
 - b) national framework for external validation of self-assessments being developed, which colleges will undertake by Autumn 2016 (already in train)
- 8) **external assurance is better used to respond more promptly to emerging issues before they become problematic, including:**
 - a) SFC is adopting a pro-active, risk-based, differentiated approach to assurance that the terms and conditions of its grant are being met (already in train)
 - b) Ministers will review how best to ensure appropriate direct observation of board meetings
- 9) **more sanctions are considered so that a wider range of measures is available, if necessary, including Ministers consulting on a range of possible new measures, such as powers to suspend, bar people from college boards who have since left boards, direct in the face of a board not governing effectively**
- 10) **the governance health of the sector is further assessed.**

Section 2: Introduction

Background

2.1 The College Good Governance Task Group was announced by Angela Constance, the Cabinet Secretary for Education and Lifelong Learning, on 8 October 2015 in a Parliamentary Statement as part of the Government's response to governance failures at Glasgow Clyde College.

Remit

2.2 Our remit was to:

- produce an initial assessment of the overall quality and resilience of college governance
- consider
 - a) the lessons that can be learned for government and the wider sector from governance difficulties, including from events at Glasgow Clyde, North Glasgow and Coatbridge colleges, taking note of relevant recommendations from the Public Audit Committee¹.
 - b) good practice from within the sector and other sectors [health, voluntary, university, business and NDPB sectors; housing associations and college sectors in England, Wales and Northern Ireland].
 - c) existing - and planned - college sector and Scottish Funding Council (SFC) activity to improve governance (including developing the capacity and behaviour necessary), and whether, and if so, in what ways, that might purposefully be supplemented.
- make recommendations by early 2016 on further measures to improve college governance and to instil greater confidence therein.

Importance of culture, values and people

2.3 The sector's Good Governance Code² makes clear that every college must be governed by an effective board that is, collectively, responsible for setting, demonstrating and upholding the values and ethos of the organisation. Moreover, the nine key principles underpinning public life in Scotland, which incorporate the seven Nolan principles, must be the basis for board decisions and behaviour: duty/public service; selflessness; integrity; objectivity; accountability & stewardship; openness; honesty; leadership and respect. These are the fundamental values we expect every board member in every college to adopt, uphold and exhibit. They also form a core part of Codes of Conduct and of Ministerial guidance on appointments³.

¹ We were not formed to review the findings of the Public Audit Committee (in relation to North Glasgow or Coatbridge colleges or of the Cabinet Secretary (in relation to Glasgow Clyde College).

² **Code of Good Governance for Scotland's Colleges** is at <http://www.scottishcollegegovernance.ac.uk/code/cogg-home>

³ <http://www.gov.scot/Resource/0045/00458051.pdf>

2.4 Our remit specifically includes developing the necessary capacity and behaviour to improve governance. We have therefore sought, where appropriate, to focus on culture, behaviour and people, while recognising the importance of rigorous systems and processes.

Engagement with sector

2.5 During the course of our work, our secretary consulted and engaged widely. He worked with the Good Governance Steering Group (of which, like other Task Group participants, he is a member), regional chairs, principals, student representatives, recognised trade unions, board secretaries and board members.

2.6 Further information on the Task Group, including our membership, can be found in the supporting material report⁴ published alongside this main report.

New controls on colleges following Office of National Statistics (ONS) reclassification as public bodies

2.7 We have been asked specifically to learn lessons from events at Glasgow Clyde College, North Glasgow College and Coatbridge College. The failures at the latter two colleges related to shortcomings in the governance of severance; this took place in 2013. We note that from 1 April 2014, after colleges were reclassified as public bodies by ONS, additional controls applied, which mean that incorporated colleges must now obtain prior approval from SFC for severance and settlement arrangements. The new controls reduce the risk of similar events in future.

2.8 That said, we note from the Policy Note to the Glasgow Clyde College removal order⁵ that one of the Cabinet Secretary's concerns was that prior written approval from SFC for the procurement of services through non-competitive action was not obtained. So regrettably the need for SFC approval may not in itself be sufficient to ensure compliance.

2.9 But this is where effective governance comes in - to ensure compliance through the appropriate checks and balances. We outline later in this report how these can be enhanced, including through a more prominent role for the board secretary

⁴ Our supporting material report can be accessed from <http://www.gov.scot/Topics/Education/UniversitiesColleges/17135/CollegeGovernance/collegegoodgovernancetaskgroup>

⁵ http://www.legislation.gov.uk/ssi/2015/348/pdfs/ssipn_20150348_en.pdf

Section 3: Current Assessment of College Governance

3.1 This report focuses on areas for improvement. But we should not forget, as Audit Scotland's "Scotland's Colleges 2015" report acknowledges, that college sector governance has many positives.

3.2 Quite properly though, following three recent high profile failures in college governance, we were asked to "produce an initial assessment of the overall quality and resilience of college governance". It was natural for us to establish if these events were isolated examples, or whether they were a sign of more systemic weakness.

Initial assessment of the overall quality and resilience of college governance

3.3 We were invited to produce an "initial" assessment on the basis that further relevant evidence will become available later this year - not least in Audit Scotland's 2016 report on the college sector due in the Autumn.

3.4 In discharging this aspect of our remit, the Group noted the assessment of the Scottish Funding Council (SFC), the national, strategic body with responsibility for colleges, regional strategic bodies (and universities). As such, SFC has a central role in advising Ministers of the overall condition of the college sector, including in relation to governance.

SFC assessment

3.5 In most instances, as a consequence of SFC funding the college or regional strategic body, SFC assesses directly whether a body is meeting the terms and conditions of its grant, including whether it is complying with the Good Governance Code. In relation to assigned colleges, SFC in part relies on information provided by the regional strategic body.

3.6 In reaching its assessment, SFC has drawn on a range of evidence:

- the financial statements, incorporating the Corporate Governance statement which describes the governance structures and processes that have been in place during the year under review;
- the external auditor's report, which covers governance matters; and
- the internal auditor's annual report which gives an opinion on the strength of internal controls.

3.7 From the information available to SFC it judges that, overall, in most of the colleges the quality of governance is generally effective. Using its new risk-based approach (see **Annex B**), SFC concludes that, currently, the majority of colleges are in the lower risk categories.

3.8 However, SFC also concludes a smaller number of colleges currently constitute a high risk, generally because of specific financial challenges. In addressing these difficulties (either directly with the college itself, or through its regional strategic body), SFC is establishing the nature of these challenges and the extent to which they are rooted in poor governance.

Further assessment

3.9 Building on SFC's *initial* assessment, we outline in section 6 that SFC will produce a *further* assessment of the health and resilience of the college sector governance based on, among other things, the reports of externally validated self-assessments. These self-

assessments will be undertaken later this year, supported by a national framework being developed by the sector's Good Governance Steering Group.

Sector action to date

3.10 Now that major structural changes are in place, the next phase of reform has rightly focused on supporting boards and their members to govern effectively, including encouraging behaviours that support constructive challenge.

3.11 The college sector itself has already embraced the need to focus on good governance. Chaired by the chair of Forth Valley College, the Good Governance Steering Group, established to develop the Good Governance Code, continues to meet to oversee its implementation. The Group is currently reviewing the Code. Beyond this, it has published a guide for college board members⁶ (June 2015) and board development framework⁷ (November 2015) with many more support materials to follow.

3.12 We have identified four strategic themes to strengthen college governance further and to instil greater confidence in it – (1) prevention; (2) self-assessment; (3) external assurance and (4) sanctions.

3.13 As well as framing our recommendations, we have used them to set out in **Annex A** actions already in train.

⁶ <http://www.gov.scot/Topics/Education/UniversitiesColleges/17135/CollegeGovernance>

⁷ <http://www.pldfscotland.ac.uk/download-document/6214-board-development-framework-guidance-notes>

Section 4: Lessons Learned – Clyde, North Glasgow and Coatbridge Colleges

4.1 Good college governance demands structures and processes for decision-making and accountability and controls. But it is also, fundamentally, about people and the importance of behaviours at the top of the organisation (and throughout) that exemplify and promote effective governance. This is the backdrop to our work and the ‘critical success factors’ we developed to guide our considerations⁸.

4.2 Good governance should always be about learning, including from what is working well – and how that could be done better; from areas of weakness and from the strengths and weaknesses of others. And as a college board, good governance should always be about ensuring the best possible outcomes for learners.

4.3 It was therefore an important part of our remit to consider the lessons learned from Clyde, North Glasgow, and Coatbridge colleges drawing on the findings of the Cabinet Secretary (in relation to Glasgow Clyde) and of the Public Audit Committee (PAC) in relation to North Glasgow and Coatbridge.

4.4 The lessons we learned are set out below (further detail is in our supporting material report). They highlight the importance of:

- boards striking a proper balance between challenge and support to the college leadership team and chair.
- basic governance arrangements, including meetings with timely minutes and agendas.
- taking decisions with sufficient information and time for consideration.
- the relationship between the chair and principal, and the role of every board member in providing checks and balances.
- the specific role of board secretary in facilitating and supporting effective governance.

Glasgow Clyde College

4.5 The specific lessons we have learned from events at Glasgow Clyde College are:

- a) Someone should be clearly identified as responsible for ensuring good governance and that board/committee members receive all relevant information to make a rigorous decision. To achieve this, the distinctive role of the board secretary should be enhanced complementing the separate roles of chair and principal.
- b) Boards need clear guidance on early production and publication of minutes.

⁸ Better board member capacity

- Recruitment
- Development
- Appraisal
- Better board capacity
 - Support, including from SFC/funding body and senior management
 - Self-assessment and board action to improve performance.
- Better pro-active external governance health-checks.

- c) Boards require more awareness of
 - i. schemes of delegation and of incorporated colleges' power to delegate
 - ii. board member collective and individual responsibilities
 - iii. their 'constitutions' and difference between legislative provision and Standing Orders⁹
 - iv. sector norms in relation to Standing Orders, Schemes of Delegation and Election Rules (aspects of governance arrangement that colleges do have responsibility).
- d) Boards require guidance on the unique role they have in relation to the performance of the one member of staff who was not ultimately the responsibility of the college's principal and chief executive, namely the principal themself.

4.6 The events in Clyde largely pre-dated the publication of the sector's new framework for the development of students' associations. However, the events serve to underscore its importance.

North Glasgow College

- 4.7 The specific lessons we have learned from events at North Glasgow College are:
- a) It should be straightforward to locate all relevant guidance (also relevant to Coatbridge College).
 - b) Good governance is not served by college chair being chair of the Remuneration Committee.
 - c) There should be a person clearly responsible for ensuring good governance (also relevant to Glasgow Clyde College and Coatbridge College).
 - d) Board/committee members must receive all relevant information to make a rigorous decision.
 - e) Boards need clear guidance on early production and publication of minutes and for communication of committee discussions/decisions at following meeting of the board (also in part relevant to Glasgow Clyde College and to Coatbridge College).
 - f) Committees need greater support in understanding what constitutes good governance, including in ensuring there is clear written evidence to justify their decisions (also relevant to Coatbridge College).
 - g) The expectation on remuneration committees needs to be clearer.
 - h) A more a pro-active, risk based, differentiated approach to assurance that terms and conditions of grant are being met is required.

Coatbridge College

- 4.8 The specific lessons we have learned from events at Coatbridge College are:
- a) It should be straightforward to locate all relevant guidance (also relevant to North Glasgow College).

⁹ We are aware that the Scottish Government has circulated a guide to colleges on this.

- b) Board members should have more awareness of
 - i. their charity trustee duties
 - ii. their roles on the board or committee
 - iii. the role of internal and external audit.
- c) There should be a person clearly responsible for ensuring good governance and that board/committee members receive all relevant information to make a rigorous decision (also relevant to Glasgow Clyde College and North Glasgow College).
- d) Boards need clear guidance on early production and publication of minutes and for communication of committee discussions/decisions at following meeting of the board (also in part relevant to Glasgow Clyde College and to North Glasgow College).
- e) Chairs must be clear about the scope of their powers.
- f) Decisions about pay must be open and transparent, with appropriate governance oversight.
- g) Principals and boards need to be better aware of the principal's role analogous to that of an accountable officer.
- h) College staff should understand better the distinction between legal and audit function.
- i) The sector may benefit from a more sector-wide approach to the commissioning of legal services.
- j) Members of board committees should be better aware of their role and have all relevant information.
- k) Committees need greater support in understanding what constitutes good governance, including in ensuring there is clear written evidence to justify their decisions (also relevant to North Glasgow College).

Section 5

Good practice within and beyond the college sector

5.1 In this section we summarise some 'interesting practice' in the college sector and beyond¹⁰, which has informed some of our consideration of recommendations.

5.2 We want the college sector in Scotland to continue to learn from good practice that is relevant to the Scottish context. In next section we therefore recommend that the Good Governance Steering Group develop and maintain a national portal that includes good practice case studies.

Recruitment

- **College sector (Scotland)** – (a) two trade union representatives are invited to board meetings of at least one college; (b) some colleges identify candidates during open recruitment for which no immediate position and hold them in reserve for suitable vacancies.
- **College sector (Northern Ireland¹¹)** – Ministers appoint college chair and board members. All are remunerated.
- **Financial Reporting Council** (2011 Guidance on Board Effectiveness) – important to consider personal attributes among board candidates, including ability to listen and forge relationships.
- **Private sector (UK)** – Board Culture (Mazars, 2016) advises matters to be considered for board composition include “personal attributes to work well together” as is diversity.

Development

- **Health sector (Scotland)** – resources available for board members include *Being Effective What NHS non-executive directors need to know*, among other things it includes tips, role in relation to specific matters (e.g. accountability, culture).

Appraisal

- **Housing associations (Scotland)** – all governing body members of registered social landlords subject to annual performance reviews to assess their contribution and effectiveness.
- **College sector (Northern Ireland)** – members are subject to ongoing performance appraisal, with a formal assessment being completed by the chair at the end of each year, and before any re-appointment. The chair is appraised on an annual basis by the Department (the funding body). An unsatisfactory appraisal report may contribute to certain actions being taken, which could ultimately lead to the termination of appointment.

Board support, including from funding body and body and senior management

- **College sector (Wales)** – Governance Code provides (a) clerk (i.e. board secretary) should be solely responsible to the governing body and have a direct reporting line to its chair; (b) governing body must protect their ability to carry out responsibilities, including appropriate training and development and ensuring adequate time and resources are available for the role to be undertaken effectively; (c) clerk must inform the governing

¹⁰ Further detail is in our supporting material report.

¹¹ Colleges in Northern Ireland are classified as public bodies.

believes that any proposed action would exceed its powers or involve regulatory risk or (where the clerk has other management responsibilities at the college) if there is a potential conflict of interest between clerking and management roles. Wales Assembly Government (the funding body) is developing a governance web portal for colleges

- **Health sector (Scotland)** – NHS Scotland has a staff governance standard for organisations and employees
- **College sector (Northern Ireland)** – Government Department (the funding body) attends meetings of colleges' Audit Committee.
- **University sector (Scotland)** – Governance Code - governing body information and papers to be published “quickly and fully” except when matters of confidentiality.
- **Third sector (UK)** – A principle outlined in Governance Code is “working effectively both as individuals and as a team”. Boards advised to act quickly and positively to deal with any relationship strains or breakdowns, using external facilitation or mediation, where appropriate.
- **Housing Associations (Scotland)** – Scottish Housing Regulator publishes series of “Governance Matters” editions which set out good practice examples in real-life case study of a registered social landlord (anonymised) that had to deal with a serious issue.

Self-assessment and action to improve performance

- **College Sector (Wales)** - Estyn (college inspection agency) 2010 self-assessment manual for colleges includes: How Good is the work of our governors? And lists questions to be considered, including how well they understand their roles, and do they support college as a critical friend and do they hold college to account for standards and quality achieved?

External governance health-checks

- **College sector (Wales)** – Estyn (college inspection agency) 2015 guidance for the inspection of further education includes “inspectors should judge how well governing body is fulfilling its statutory obligations and takes full account of relevant legislation and guidance”. They should evaluate how well governors understand their role; challenge the senior management team; set appropriate strategic direction; oversee standards and quality oversee college procedures and practices (complaints and appeals). Inspections involve examining minutes of meetings of governing body and its committee and discussions with governors.
- **College sector (Northern Ireland)** – Education and Training Inspectorate reports can include views on the governance of the college.

Sanctions

- **College sector (England)** - The FE Commissioner intervenes in FE Colleges, designated institutions and local authority maintained FE institutions, on basis of: an inadequate Ofsted inspection; failure to meet national minimum standards of performance; inadequate assessment for financial health or financial control as identified by the Skills Funding Agency. An annual report is published on lessons learned from interventions.

Section 6

Recommendations

6.1 In this section, we bring together our ten recommendations for strengthening college governance further, framed by four strategic themes:

- prevention (1-6)
- self-assessment (7)
- external assurance (8); and
- sanctions (9)¹².

6.2 We recommend that:

- 1) better arrangements are put in place to improve board member recruitment
- 2) board member development is better supported
- 3) board member appraisal is better used to improve performance
- 4) better systems are put in place to ensure that all boards consistently get the basics right
- 5) good governance practice is better supported and facilitated
- 6) staff governance is better implemented
- 7) board self-assessments are better used to improve performance
- 8) external assurance is better used to respond more promptly to emerging issues before they become problematic
- 9) more sanctions are considered so that a wider range of measures is available, if necessary
- 10) the governance health of the sector is further assessed.

6.3 These recommendations should be considered alongside the considerable activity that is already taking place, set out in **Annex A**.

6.4 As indicated below, some of our detailed recommendations have already been agreed.

6.5 We are conscious of the detail in some of our recommendations (and actions already in train) represents the established practice of many boards. The **Code of Good Governance for Scotland's Colleges** is commendably short, but in so doing it does not include the same level of specificity as some other codes. However, given the recent failures at a few colleges, we do consider it is helpful to boards and individual board members that all are clear on the fundamentals.

6.6 We will meet again as a group before the end of the year to review progress on new and existing activity.

¹² Our tenth is on further assessing the governance health of the sector.

Our ten recommendations in detail

6.7 We recommend that:

1) better arrangements are put in place to improve board member recruitment

- a) **Appointing bodies** should
 - i) provide comprehensive information for prospective board members with:
 - i. a realistic indication of time commitment, i.e. preparation and attendance at board and committee meetings, as well as development and other activities
 - ii. what it is like to serve on a college board, the expectations on them, including in relation to behaviours, and the personal development and satisfaction they might expect to derive
 - iii. link to new governance portal to get full sense of role.
 - ii) advertise all board vacancies on CDN website (this may encourage more from college sector to consider applying).
- b) **Scottish Ministers** will consult on:
 - i) whether assigned college chairs should be remunerated
 - ii) whether trade union nominees should join incorporated college boards and the future of elected staff members
 - iii) amending appointments guidance to make provision for highly regarded candidates for which there is no immediate position and to encourage the recruitment of board members with demonstrable ability to work well as a team.
- c) **GGSG** will advise the Scottish Ministers on updating the national framework for travel and subsistence for college board members.

2) board member development is better supported

- a) **Scottish Ministers** will incorporate in terms and conditions of appointment mandatory induction and on-going development of regional chairs appointed by Ministers.
- b) **CDN** will:
 - i) work closely with SFC on identifying training needs for board members, including by SFC copying CDN all relevant sector communications
 - ii) ensure governance training for all board members includes boards' role to nurture, mentor and support student board members
 - iii) review governance training for principals and other senior managers, including to support principals in their 'accountable officer' roles
 - iv) incorporate audit in the training for principals and senior managers
 - v) advise college staff of different functions of legal and audit professionals
 - vi) seek to work with relevant bodies on the delivery of training for board members. These could include National Union of Students Scotland, sparqs, recognised trade unions, Office of the Scottish Charity Regulator (OSCR), Audit Scotland, the Standards Commission for Scotland, Ethical Standards Commissioner for Scotland, SFC and Scottish Government. (Some of this is already happening.)

3) board member appraisal is better used to improve performance

- a) Direct board observations should inform chair appraisals – see 8(b).

4) better systems are put in place to ensure that all boards consistently get the basics right

- a) **CDN** will develop and maintain a national governance portal that includes:
 - i) links to Financial Memorandums, guides and guidance, including to relevant OSCR publications
 - ii) examples of excellent minutes and board/committee papers of various types
 - iii) good practice case studies
 - iv) jargon-busting' material for new board members unfamiliar with the sector
 - v) where to go for further advice on particular matters.
- b) **SFC and regional strategic bodies** must ensure their Financial Memorandums list all extant guidance.
- c) **GGSG** should review the Code to make clear:
 - i) boards must ensure college staff report relevant financial matters to them
 - ii) Audit Committees promptly pursue recommendations arising from external audit reports and that Audit Committees monitor their implementation.

5) good governance practice is better supported and facilitated

- a) **College Development Network (CDN)** will
 - i) develop:
 - i. a structured training programme for board secretaries, which includes mandatory units both in terms of initial development of skills, knowledge and behaviours and in relation to continuous professional development.
 - ii. specific resources for board secretaries to enable them to carry out their role effectively
 - iii. opportunities for board secretaries to network not only with each other but with others carrying out a similar role in different sectors.
 - ii) consider whether a bespoke qualification/module should be developed or whether existing qualifications could be utilised to support board secretary development
 - iii) remind colleges to appoint a non-executive board member as a senior independent member
 - iv) review scope for a more sector-wide approach to the commissioning of some legal advice, where issues are similar across a number of colleges, to inform (but not replace) consideration by individual colleges
- b) **SFC, regional strategic bodies and the Scottish Government** must send correspondence relevant to the governance of a college to the chair, principal and board secretary, recognising the distinction between governance and operational is not always clear-cut, so erring when in doubt on copying them in.

c) **GGSG** will:

- i) develop and disseminate a checklist of early warning indicators for board members (see **Annex G** of our supporting material report for our initial draft)
- ii) produce case studies of good governance drawn from reports of externally validated self-assessments
- iii) develop guidance for incorporated colleges on the performance of principals, including in relation to any suspension or disciplinary action and require compliance with it
- iv) consider whether changes are required to principals' contracts to emphasise their role analogous to that of an accountable officer.

6) staff governance is better implemented

- a) **GGSG** will incorporate within a revised Code key elements of a revised Staff Governance Standard.

7) board self-assessments are better used to improve performance

- a) **Funding bodies** should meet at least annually with their funded bodies to discuss their self-assessment and development plan to identify what support they require (this may include peer support). Funding bodies should seek to adopt a consistent approach.
- b) **SFC** will send regional college/Regional Board self-assessments and board development plans to Scottish Ministers to inform regional chair appraisals.

8) external assurance is better used to respond more promptly to emerging issues before they become problematic

- a) **Regional strategic bodies** must adopt a pro-active, risk-based, differentiated approach to assurance that the terms and conditions of its grant are being met for the colleges they fund.
- b) **Scottish Ministers** will review how best to ensure appropriate direct observation of board meetings. The purpose of the observations would be to provide early warning of governance problems and involve assessing, among other things, the extent to which board members
 - i) provide constructive challenge – get the balance right between challenge and support
 - ii) focus on the right things - strategic oversight and not operational detail
 - iii) exhibit the right behaviours conducive to working collectively to carry out their governance role (including chair not over-dominant or acting in an executive role).

This may involve the piloting of new approaches.

Direct board observations should inform (a) institutions' self-assessments; (b) SFC/RSB risk assessments; and (c) chair appraisals.

- c) **SFC and OSCR** in reviewing their Memorandum of Understanding for the sharing of information, should extend it to include regional strategic bodies, given their role in funding and monitoring colleges.

9) more sanctions are considered so that a wider range of measures is available, if necessary

Scottish Ministers will

- a) consult on:
 - i) Ministerial powers
 - i. to suspend any or all board members (except the principal) when considering a removal order
 - ii. bar people from college boards, even if they have since left the board
 - iii. to direct colleges in the face of a board not governing appropriately.
 - ii) requiring co-operation of assigned colleges in SFC reviews. Meantime, this should be given effect through the Financial Memorandum mechanisms.
 - iii) SFC's powers to attend and address meetings in failing to meet criteria to be publicly funded.
 - iv) SFC and regional strategic body powers to attend and address meetings relevant committee meetings.
 - v) extending the powers of the Auditor General for Scotland to conduct economy, efficiency and effectiveness examinations so that all publicly funded colleges can be subject to such examinations.
 - vi) clarifying that the powers of an appointing body's powers includes a power to suspend, in line with other appointments.
- b) review whether existing powers to require information are sufficient.

10) the governance health of the sector is further assessed

- a) **SFC** will produce a further assessment of the health and resilience of the college sector governance based on, among other things, the reports of externally validated self-assessments when available.

GLOSSARY OF TERMS

Appointing bodies	Scottish Funding Council and regional strategic bodies
CDN	College Development Network
Code/ Good Governance Code	Good Governance Code for Scotland's Colleges
EIS	Educational Institute of Scotland
GGSG	Good Governance Steering Group
NDPB	Non-Departmental Public Body
NUS	National Union of Students
ONS	Office of National Statistics
OSCR	Office of the Scottish Charity Regulator
PAC	Public Audit Committee
SFC	Scottish Funding Council

SECTOR ACTIONS ALREADY IN TRAIN

1) better arrangements are put in place to improve board member recruitment

- a) **College sector boards** are considering the voluntary pledge to aim for 50:50 gender balance.

2) board member development is better supported

- a) **GGSG** is
 - i) incorporating in model terms and conditions of appointment mandatory induction and on-going development of board members
 - ii) developing online learning modules for board members, including those sitting on Audit and Remuneration Committees
 - iii) reviewing the Code to ensure new college committee members receive a committee induction pack and have their specific training needs assessed and met.
- b) **College Development Network (CDN)** is holding
 - i) an annual national conference for all board members
 - ii) new mandatory national induction seminars.

3) board member appraisal is better used to improve performance

- a) **Scottish Government** is reviewing the appraisal process for regional chairs appointed by Ministers.
- b) **GGSG** is incorporating in model terms and conditions of appointment mandatory appraisal at least annually

4) better systems are put in place to ensure that all boards consistently get the basics right

GGSG is

- a) reviewing the Code to make clear:
 - i) the prompt production, dissemination and publication of board/committee minutes and papers
 - ii) committees promptly informing their board of their discussions/decisions.
 - iii) all board/committee meetings must have well-structured agendas
 - iv) boards/committees must retain key documents which help justify decisions made
 - v) a college board chair cannot be the chair of the Remuneration Committee
 - vi) expectations on the Remuneration Committee
 - vii) each board committee must have a designated manager and the expectations on those managers are clearly laid out

- viii) colleges must have regard to the framework for the development of students' associations¹³, including by having embedded partnership processes to work together to achieve change and regular and open communications (e.g. set out in a Partnership Agreement)
 - ix) no individual board member (other than the chair) can be delegated functions
 - x) chairs have no authority to act outwith their powers
- b) developing model
- i) Standing orders
 - ii) Scheme of delegation
 - iii) Model terms and conditions of appointment
 - iv) Election rules for staff members¹⁴.

5) good governance practice is better supported and facilitated

GGSG is reviewing the Code to ensure:

- a) The distinctive board secretary role includes:
 - i) facilitating good governance and advising board members on:
 1. the proper exercise of their powers, including in relation to relevant legislation
 2. the board's compliance with its Financial Memorandum, the Good Governance Code, its Standing Orders and Scheme of Delegation
 3. their behaviour and conduct in relation to the college's Code of Conduct.
 - ii) providing clear advice to the chair and the board/committee on any concerns they may have that board members have not been given:
 1. sufficient information
 2. information in an appropriate form
 3. sufficient time to make an informed and rigorous decision in an open and transparent way.
- b) It includes provision in relation to a board secretary's potential or real conflicts of interest, and the meaning of the distinctive nature of the board secretary role: the Board Secretary may be a member of the senior management team in their board secretary capacity, but they cannot hold any other senior management team position at the same time; and that they report to the chair direct in their role as board secretary.
- c) The board secretary attends and provides support to every board meeting and every meeting of every board committee. Where the board secretary is unable to attend, while the board secretary retains overall responsibility, proper arrangements must be made to cover the role with a person who is fully able to discharge the role effectively.
- d) The board secretary must report any unresolved concerns about the governance of the body to the relevant funding body (i.e. the SFC or the regional strategic

¹³ <http://www.saframework.co.uk/>

¹⁴ These will give colleges a better understanding, so that any decisions to depart from sector norms (which may be warranted in particular circumstances) are taken in the full knowledge of them.

body¹⁵). Such a requirement would be in addition to the obligation on a college in the Code to report immediately any inconsistency with the Code.

- e) The board secretary (or substitute) has an unambiguous right to speak at board and committee meetings to convey any concerns they may have about governance.
- f) The board itself must appoint its board secretary who should have a direct reporting link to the chair for board business.
- g) Board secretaries have suitable skills, knowledge and behaviours to carry out this important, enhanced role effectively. In particular, Board secretaries receive appropriate induction. Board secretaries new to the role should be mentored by a more experienced college board secretary for at least their first year.
- h) Board secretaries have adequate time and resources available to undertake their role effectively.

6) staff governance is better implemented

- a) **Colleges Scotland and recognised unions** are reviewing the sector's Staff Governance Standard
- b) **National Joint Negotiating Committee** is deciding which staff are in scope of the national collective bargaining agreements, ensuring that college sector pay is dealt with in an open, transparent and equitable manner.

7) board self-assessments are better used to improve performance

GGSG is

- a) developing a national framework for the external validation of self-assessment reviews, which colleges will undertake by Autumn 2016.
- b) developing a national framework for annual self-assessments (which will be based on the next version of the Code).
- c) reviewing the Code to make clear
 - i) externally validated self-assessments must take place at least every 3 years¹⁶
 - ii) that colleges and regional strategic bodies must send
 - i. their self-assessments (include externally facilitated assessments)
 - ii. board development plans (including progress on previous year plan) to their funding body and publish them online.

¹⁵ The regional strategic body must in turn advise the SFC of this.

¹⁶ At present the Code provides for them every 3 – 5 years.

8) external assurance is better used to respond more promptly to emerging issues before they become problematic

SFC is

- a) adopting a pro-active, risk-based, differentiated approach to assurance that the terms and conditions of its grant are being met (see **Annex B**).
- b) bringing wider performance and quality issues within its new assurance framework for financial sustainability and governance.

SCOTTISH FUNDING COUNCIL NEW MORE PROACTIVE, RISK BASED, DIFFERENTIATED APPROACH

1. Taking account of recent advice, and the Public Audit Committee's report, the Scottish Funding Council (SFC) is developing a pro-active, risk-based, differentiated approach to assurance. This will enable SFC to take timely and appropriate action, based on a robust assessment of risk. It places a heavy emphasis on prevention – and therefore proactivity is paramount to prevent situations deteriorating and risk escalating.

2. In practice, this will mean SFC liaising as appropriate with the Scottish Government, Education Scotland and Audit Scotland, to collate and analyse a wide range of information and 'softer' intelligence - including the most up-to-date financial, procedural, governance, performance and quality issues in relation to a college. It will use this comprehensive body of evidence – including 'real time' data – to monitor change and proactively manage risk. This will allow SFC to target its resources and tailor responses efficiently and effectively.

Risk categorisation

3. SFC will categorise risks and take action as follows:

- High risk bodies – '**red**' – **Those where SFC has a concern of potential serious or critical financial and/or governance issues.** SFC will conduct a full review of governance/financial documentation including minutes of board and committee minutes, interviews with key individuals (including with students' associations representatives and recognised trades unions, as appropriate), and observation of board meetings with a view to developing an action plan to put things right or take other appropriate action.
- Medium risk bodies – '**amber**' – **Those where SFC has a concern that there are financial and/or governance issues that need to be addressed.** In this instance, SFC will use some of the actions for red' bodies, as appropriate, with a lighter touch in satisfactory areas.
- Low risk – '**green**' – Those where SFC has no significant concerns. Here, SFC is likely to rely on a college's self-assessment.

4. SFC's approach continues to be to try to prevent serious difficulties from the outset – by persuading, informing and influencing before crucial decisions or events. Necessarily, this 'prevention' stage needs to be carefully handled, with much of the interaction undertaken in private or with key board or senior executive colleagues. If these attempts are not successful then SFC escalates its approach to more formal action.

5. To ensure SFC has a full overview of governance across the sector, including in relation to colleges funded by regional strategic bodies (RSBs), RSBs are required to inform the SFC of any breaches by assigned colleges of the terms of the regional Financial Memorandum (and Code of Governance). We note though that responsibility for ensuring compliance with the terms and conditions of grant rests with the body making that grant (i.e. the RSB for colleges it funds).

6. Under the new approach, when SFC is concerned about a college or regional strategic body, it informs the body of its concerns. Depending on the circumstances SFC contacts either or all of: the chair of the Board; the whole Board; the Principal; and the

regional strategic body¹⁷. SFC then works with the college/regional strategic body to improve matters. If SFC met with an unwillingness to cooperate then it would escalate matters, as appropriate.

¹⁷ Either because the regional strategic body itself has been assessed as high risk or because one of its assigned colleges has.