

Good College Governance

**Supporting Material to the Report of the Education
Secretary's Task Group**

Section 1

College Good Governance Task Group

1.1 The formation of this 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. Our remit, membership and ways of working are at **Annex A**.

Main Report and Supporting Material Report

1.2 This report should be read in conjunction with our main report¹, which sets out, among other things, our recommendations. In this document we provide supporting detail.

Corporate Governance

1.3 At the outset let us clarify what we mean by 'governance' The **Code of Good Governance for Scotland's Colleges**² provides us with a definition.

Corporate governance:

- is the way in which organisations are directed and controlled
- defines the distribution of rights and responsibilities among the different stakeholders and participants in the organisation
- determines the rules and procedures for making decisions on corporate affairs including the process through which the organisation's objectives are set
- provides the means of achieving those objectives and monitoring performance.

Background

1.4 The college sector has been through a profound period of change in recent years.

1.5 The genesis of these reforms was the Scottish Government's consultation paper **Putting Learners at the Centre – Delivering our Ambitions for Post-16 Education**³. Published in September 2011, it recommended a much more student-focussed approach for colleges and universities. In the college sector this was in large part about taking a regional approach to funding and planning provision, utilising economies of scale to better serve the needs of student and businesses. It provided a catalyst for a major restructuring of the sector and for the introduction of Outcome Agreements (funding contracts that specify what is to be achieved with funding). Since October 2012, twenty six colleges were involved in merger, creating nine colleges of scale and the higher education institution, SRUC.

1.6 Alongside this structural reform were significant changes to how colleges are governed. Following the 2011/2 independent review of college governance⁴ (the Griggs

¹ Our main report can be accessed from <http://www.gov.scot/Topics/Education/UniversitiesColleges/17135/CollegeGovernance/collegegoodgovernancetaskgroup>

² <http://www.scottishcollegegovernance.ac.uk/code/cogg-home>

³ <http://www.gov.scot/Publications/2011/09/15103949/0>

⁴ <http://www.gov.scot/Topics/Education/post16reform/hefegovernance/ReviewofCollegeGovernance-Report>

Review), a Government consultation, and the June 2012 Government response⁵, the Government introduced a Bill which became the Post-16 Education (Scotland) Act 2013. This not only paved the way for the designation of regional colleges and the creation of regional strategic bodies (in multi-college regions) to plan college provision across the region and to fund them, it also contained a number of measures to strengthen college governance and to increase their accountability and effectiveness. It is to the great credit of the college sector itself that as a result of its lobbying, the 2013 legislation includes provisions that paved the way for Scotland's first code of good governance for the college sector, the **Code of Good Governance for Scotland's Colleges**⁶.

1.7 The changes to governance include:

- Regional college chairs appointed by Ministers to improve accountability. They are appointed through an open, regulated process.
- Ministerial guidance that ensures other college board appointments are open and transparent.
- Ministers have more explicit powers to remove incorporated⁷ college board members for board failure, including for serious or repeated breaches of terms and conditions of grant.
- The number of student board members on incorporated college boards has been doubled (from one to two).
- The sector now has its own Code of **Good Governance for Scotland's Colleges**. Published in December 2014, it is now being reviewed.

1.8 In parallel with the reforms, incorporated colleges have put in place new budgeting and financial reporting arrangements following their reclassification by the Office of National Statistics as public sector bodies on 1 April 2014.

⁵ <http://www.gov.scot/Publications/2012/06/9529>

⁶ **Code of Good Governance for Scotland's Colleges** is at <http://www.scottishcollegegovernance.ac.uk/code/cogg-home>

⁷ An 'incorporated' college is a college with a board of management under part 1 of the Further and Higher Education (Scotland) Act 1992. There are 25 publicly funded colleges in Scotland (colleges funded either by SFC or a regional strategic body). Of these there 20 are incorporated colleges.

Section 2

Learning Lessons

2.1 In this section, we set out the lessons we have learned from events at Glasgow Clyde College, Coatbridge College and North Glasgow College. We also draw on practice from within the sector and elsewhere, acknowledging existing and planned activity.

2.2 At the outset we should make clear that the Task Group was not formed to review the findings of the Public Audit Committee (PAC) of the Scottish Parliament of the Cabinet Secretary's decision to remove members from the Glasgow Clyde College Board, or her reasons for such action.

2.3 As part of our work, we have considered the PAC's reports on Coatbridge and North Glasgow colleges and the policy note accompanying the Glasgow Clyde College removal order. In the light of the findings contained in the reports and the policy note, we considered what wider lessons can be learned.

Common Issues

2.4 The events at the three colleges, outlined below and in accompanying annexes, underscore the importance of:

- boards striking a proper balance between challenge and support
- 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 role of board secretary.

2.5 In section 3 we set out our four strategic themes to strengthen college governance further and to instil greater confidence in it.

Glasgow Clyde College

2.6 We understand that concerns about the governance of Glasgow Clyde College first came to light following a board meeting in February 2015 when student boards members were excluded from a board discussion about the then chair's decision to suspend the college principal.

2.7 The Cabinet Secretary concluded that serious failures of governance continued to be made by the Board in the period from February to July 2015. This led to Scottish Ministers taking action in October 2015 to remove board members because, in their view, the Board failed to comply with its (a) Financial Memorandum with the Scottish Funding Council (SFC) and (b) the Good Governance Code; and for mismanaging its affairs.

2.8 Our consideration of the Cabinet Secretary's findings is at **Annex C**.

North Glasgow College

2.9 The April 2014 Auditor General for Scotland (AGS) report on *The 2012/13 audit of North Glasgow College: Governance and financial stewardship*⁸ identified weaknesses in governance and decision-making relating to the early departure arrangements for two senior members of college staff.

2.10 Our consideration of the PAC report is at **Annex D**.

Coatbridge College

2.11 The June 2014 AGS report on *The 2013/14 audit of Coatbridge College: Governance of severance arrangements*⁹ identified governance failures relating to severance arrangements for the Principal, senior managers and another member of staff. The AGS said "There is absolutely no doubt that there have been very serious failures of governance; indeed, they are among the most serious that I have seen during my time as Auditor General".

2.12 The PAC made three recommendations in its January 2016 report¹⁰:

- 1) the former principal repay his severance and the amount recalculated in reference to the agreed scheme for staff; in the event of not repaying renewed consideration to recovering it.
- 2) this Task Group to reflect on PAC's findings to learn all lessons and take action to ensure such events cannot happen again; and consider sanctions and powers that ought to be available to the SFC to be effective, working with OSCR to consider what further powers it requires.
- 3) Scottish Government to look at the operation and effectiveness of SFC's supervisory role.

2.13 Our consideration of the PAC report is at **Annex E**.

2.14 PAC's third Coatbridge College recommendation is for the Scottish Government to respond. That said, we outline in **Annex B of our main report** that SFC is in the process of bringing together financial sustainability and governance to adopt a more proactive, risk based, differentiated approach to seeking assurances on both, including satisfying itself that terms and conditions of grant are being met by colleges and regional strategic bodies. We are confident that SFC's new approach and the implementation of this report will help enhance its effectiveness.

Practice within and outwith the sector

2.15 We outline in **Annex F** 'interesting practice' both within and outwith the sector.

⁸ http://www.audit-scotland.gov.uk/docs/central/2014/s22_140507_north_glasgow_college.pdf

⁹ http://www.audit-scotland.gov.uk/docs/central/2015/s22_150626_coatridge_college.pdf

¹⁰ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/95448.aspx>

Review of Powers and Sanctions

2.16 Among other things, the PAC recommended in its October 2015 report on North Glasgow College¹¹:

- a review of the sanctions available to the Scottish Funding Council and the Scottish Government for non-compliance with the Scottish Public Finance Manual, the Financial Memorandum with Fundable Bodies in the College Sector or the Code of Good Governance. The review should include input from the Scottish Charity Regulator (OSCR) and the Commissioner for Ethical Standards in Public Life (Scotland).

2.17 Among other things, the PAC recommended in its January 2016 report on Coatbridge College¹²:

- [the] Task Group ...consider sanctions and powers that ought to be available to the SFC to be effective, working with OSCR to consider what further powers it requires.

2.18 As part of our work we therefore reviewed powers and sanctions. Our review is at **Annex B**.

2.19 Given that the powers of OSCR are not specific to colleges, but instead apply to all registered charities, we focussed on powers and and sanctions specific to the college sector. The Scottish Government is working with OSCR separately on its powers.

2.20 We understand the Scottish Government has introduced stronger controls on severance and settlement agreements and is considering provisions in the Small Business Enterprise and Employment Act 2015 which provide Scottish Ministers with order-making powers to claw back exit payments in certain circumstances. Beyond being aware of this, we have not considered whether college sector board members should be liable to return monies following serious governance failures for which they are personally responsible, as this raises issues that go well beyond the sector.

2.21 We are aware that the terms and conditions of SFC grant can include the repayment (in whole or in part) of a grant in such circumstances as SFC specifies. We make no recommendations on how SFC should use these powers as this is a matter for SFC to consider on the merits of each individual case.

¹¹ http://www.scottish.parliament.uk/S4_PublicAuditCommittee/PAS042015R04_FINAL_REPORT.pdf

¹² <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/95448.aspx>

Section 3

Strategic Themes

3.1 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. These themes frame our recommendations.

Prevention

3.2 Prevention is better than cure for so many reasons as it enables boards to become aware of issues before they become problems. A key aspect of accountability in the public sector is not only governing to required standards, but also being able to demonstrate this to assure both the funding body and others that among other things, terms and conditions of grant are being met. Such openness and transparency can help ‘nip the problem in the bud’; important not least because dealing with governance failures can be hugely costly. The costs to colleges in dealing with the repercussions even in just staff time are substantial. And very quickly other costs to the taxpayer mount up, including in relation to production of Auditor General for Scotland reports and time and money on Parliamentary scrutiny, such as on evidence sessions conducted by the Public Audit Committee (PAC). There is also the human toll, as well as the reputational damage to not only the college concerned but on the sector as a whole.

3.3 Effective governance requires effective checks and balances, so that it is resilient enough to continue to function when stressed. We outline in our main report a number of recommendations to prevent problems arising in the first place. Here we want to specifically highlight our recommendations to enhance and better support the role of board secretary, as part of our proposed package of measures to reduce the possibility of many of the identified governance failings reoccurring elsewhere.

3.4 We want the board secretary to be clearly seen as a third pillar in ensuring effective governance, complementing the distinctive roles of the other two pillars of good governance, the board chair (with responsibility for leading the governing body) and the college principal (for leading staff with particular responsibility for ensuring value for money in their role analogous to that of an accountable officer).

3.5 This enhanced role of the board secretary would not in any way diminish the responsibilities of board members individually and collectively in assuring themselves that boards are governing to required standards.

3.6 In **Annex G** we set out an initial checklist of early warning indicators for Board Members, which we advise in our main report will be developed and disseminated by the Good Governance Steering Group (GGSG).

Self-Assessment

3.7 Governing bodies are responsible for effective governance. That is why college board members have been appointed: to govern their colleges. Board’s own self-assessment must therefore be a fundamental aspect of the boards’ own work.

3.8 Put simply, effective board self-assessments can support boards to govern more effectively. They can also help in terms of prevention (by enabling boards to become aware of issues before they cause problems) and by providing some of the supporting evidence for key agencies, including funding bodies, to demonstrate that governance is robust. However, the utility of a self-assessment largely depends on its frankness and rigour. It must be evidence-based and represent the views of the board.

3.9 We welcome the fact that colleges have themselves agreed to bring forward, to this Autumn, externally validated self-assessments and that the GGSG is producing a national framework to support this.

External Assurance

3.10 The PAC in its October 2015 report on North Glasgow College advised that the Committee needs to be satisfied that arrangements put in place to ensure early identification of issues are sufficiently robust to enable prompt action to be taken if necessary. Similar consideration also applies to learning the lessons from events at Coatbridge College and Glasgow Clyde College.

SFC's current approach

3.11 In his evidence to the PAC in relation to Coatbridge College, the chief executive of the Scottish Funding Council (SFC) acknowledged that the SFC should have been "even more active in supervising colleges in making [severance] deals"¹³

3.12 We understand that in assessing an institution's governance, a key issue for SFC is compliance with the terms and conditions of its grant¹⁴. In the course of the SFC's regular monitoring, issues can be raised in relation to non-compliance with the Financial Memorandum and this requires firm action by SFC. The SFC focuses on the more 'high risk' institutions in its financial analysis and reporting to its Audit and Compliance Committee and Scottish Government. SFC is meeting with institutions assessed as 'high risk from its analysis to gain a better understanding of the issues involved and to provide support where required.

Direct Observation of Board Meetings

3.13 The direct observation of board meetings is an important feature in providing assurance the college boards and regional strategic bodies are governing effectively.

3.14 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:

- provide constructive challenge – get the balance right between challenge and support
- focus on the right things - strategic oversight and not operational detail
- exhibit the right behaviours to encourage and foster a collective working ethos in carrying out their governance role (including chair not over-dominant or acting in an executive role).

Sanctions

3.15 Different mechanisms are in place to ensure accountability of boards and of individual board members. We consider that much more could be done with better use of existing powers – and we make recommendations on this, including in relation to SFC taking

¹³ PAC, Official Report, 28 October 2015, Column 9.

¹⁴ The terms and conditions of SFC grant are set out in its Financial Memorandum (FM). As part of the FM, incorporated colleges and Regional Boards are required to comply with the Scottish Public Finance Manual and all colleges and regional strategic bodies are required to comply with the Good Governance Code. Colleges and regional strategic bodies are also required to comply with SFC guidance as a term and condition of grant.

a more pro-active approach. However, it has become evident from recent governance failures that a wider range of sanctions and powers should be available to tackle any emerging problems. The very existence of enhanced sanctions/powers should help to 'focus minds' on ensuring that proper governance is always followed. However, it is important that relevant bodies have appropriate sanctions/powers to handle matters effectively.

3.16 Our review of powers and sanctions is at **Annex B**. Most of our recommendations arising from our review would require changes to legislation. We have framed our recommendations around consulting as we do not consider it appropriate for the Government to seek to amend legislation without undertaking this first.

GLOSSARY OF TERMS

AGS	Auditor General for Scotland
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
FM	Financial Memorandum
GGSG	Good Governance Steering Group
Griggs Review	2011/12 independent review of college governance
Incorporated college	A college with a board of management under part 1 of the Further and Higher Education (Scotland) Act 1992
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
Regional Board	The type of regional strategic body that has no other functions (i.e. it is not a college or university).
RSB	Regional strategic body
SFC	Scottish Funding Council

COLLEGE GOOD GOVERNANCE TASK GROUP

Our Remit

To:

- 1) produce an initial assessment of the overall quality and resilience of college governance
- 2) 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 Committee¹⁵
 - 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
- 3) make recommendations by early 2016 on further measures to improve college governance and to instil greater confidence therein.

Our Membership

Angela Constance Cabinet Secretary for Education and Lifelong Learning (chair)
David Belsey, EIS
Lynn Bradley, Adam Smith Business School, Glasgow University ('non-executive member')
John Gallacher, UNISON
Hugh Hall, chair of Colleges Scotland and of Forth Valley College
Laurence Howells, chief executive of Scottish Funding Council
Liz McIntyre, vice-chair of Colleges Scotland and principal of Borders College
Vonnie Sandlan, president of NUS Scotland
Martin Tyson, Scottish Charity Regulator ('non-executive member')
Mel Weldon, Scottish Government
Col Baird, Scottish Government (secretary)

Our Way of Working

We met on three occasions (16 November 2015, 4 February 2016 and 10 March 2016).

At our first meeting we agreed to be:

- forward looking, solution-focused and proportionate
- operate so far as possible in a way that taps into its members' experience and expertise
- foster a collegiate environment in which ideas can be explored without the constraint of institutional representation

recognising,

¹⁵ 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).

- it is for institutions to make operational decisions
- governing bodies of institutions are responsible for the governance of the body (including the oversight of operational decisions) and the overall quality of students' experience and outcomes and the effective use of public funds
- it is for the SFC to identify principles of good governance for colleges and regional strategic bodies
- funders (SFC and regional strategic bodies) must satisfy themselves that terms and conditions of grant are being met
- Ministers must be able to discharge their duties to Parliament in relation to the sound governance of Scotland's colleges.

We also agreed not revisit the regional strategic body structure.

Critical Success Factors

We identified critical success factors for better governance and improved confidence in it:

- 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.

Engagement with sector

During the course of our work, our secretary discussed some possible recommendations with:

- the Good Governance Group (of which he is a member, as are several other Task Group members)
- regional chairs
- principals
- student representatives
- recognised trade union representatives
- board secretaries
- board members at several board member development events organised either by individual colleges or College Development Network.

REVIEW OF POWERS AND SANCTIONS

1. The PAC in its October 2015 report on North Glasgow Colleges recommended a review of the sanctions available to the SFC and the Scottish Government for non-compliance with Scottish Public Finance Manual, the Financial Memorandum with Fundable Bodies in the College Sector or the Code of Good Governance (i.e. terms and conditions of grant). And that the review include input from the Office of the Scottish Charity Regulator (OSCR) and the Commissioner for Ethical Standards in Public Life (Scotland)¹⁶.

2. In its January 2016 report on Coatbridge College, the PAC recommended that this Task Group consider sanctions and powers that ought to be available to the SFC to be effective, working with OSCR to consider what further powers it requires.

3. Given that the powers of OSCR are not specific to colleges, but instead apply to all registered charities, this paper focuses on sanctions and powers specific to the college sector. The Scottish Government will be working with OSCR separately on its powers.

Key Responsibilities for Good Governance in the College Sector

4. By way of background and context **Appendix 1** outlines the key roles of college boards, members and of particular members (chair, principal, staff & student members and senior independent member)¹⁷.

5. A college board is primarily accountable to its main funder – either the Scottish Funding Council (SFC) or its regional strategic body. A regional strategic body is similarly accountable to the SFC. Through the chain of funding, colleges and regional strategic bodies are ultimately responsible to the Scottish Ministers who are accountable to the Scottish Parliament.

6. A board also has a wider accountability to a range of stakeholders including students (both current and prospective), its staff, the wider public, employers and the community it serves, for the provision high quality education that improves people's life chances and social and economic well-being.

7. In **Appendix 2** we outline key responsibilities for college board accountability. They include:

- **Ministers** have powers to remove members for board failure in specified circumstances¹⁸. These include among, other things, a serious or repeated breaches of SFC/regional strategic body terms and conditions of grant.
- **Auditor General for Scotland** makes arrangements for the audit of accounts¹⁹
- **SFC** has a duty to assess and enhance educational quality (reviews carried out by Education Scotland)

¹⁶ The Commissioner for Ethical Standards in Public Life in Scotland was consulted as part of our review. A representative of the charity regulator is a member of the Task Group.

¹⁷ The information is drawn from either the sector's good governance code or guide for board members.

¹⁸ Incorporated colleges and Regional Boards. An incorporated college is a college with a board of management under part 1 of the Further and Higher Education (Scotland) Act 1992. Twenty colleges are incorporated colleges. A Regional Board is the type of regional strategic body that has no other functions (i.e. it is not a college or university). There is one Regional Board, the Glasgow Colleges' Regional Board.

¹⁹ Incorporated colleges and Regional Boards.

- **SFC** must be satisfied all publicly funded colleges are eligible for public funding
- **Funding Body (SFC or regional strategic body)** must be satisfied terms and conditions of grant are being met (i.e. Financial Memorandum, good governance code and Scottish Public Finance Manual). The terms and conditions of SFC/regional strategic body grant can include the repayment (in whole or in part) of a grant in such circumstances as specified.
- **Regional strategic bodies** have a duty to monitor the performance of their colleges.

8. In **Appendix 3** we outline key responsibilities for college board member accountability. They include:

- **Ministers** give appointments guidance²⁰. This includes **annual appraisal** of members (as does the good governance code).
- The **appointing body** of board members must be satisfied that terms and conditions of appointment are being met, including in relation to board member **performance**. **Appendix 4** sets out the appointing body for members of incorporated college boards.
- The **Commissioner for Ethical Standards in Public Life in Scotland** is responsible for investigating complaints in relation to member **conduct**²¹.
- For colleges that are charities, **OSCR** has a regulatory interest in how members of college boards fulfil their **charity trustee duties** (to act in the interest of their college with the appropriate degree of care and diligence, making sure it acts within its charitable purposes and dealing appropriately with conflicts of interest) in governing their colleges.

Review of Powers and Sanctions

9. Against the background we have set out, it seems to us there is scope for further sanctions or powers.

Role of Ministers – Removal of Board Members by Order for Board Failure

10. At board level, Ministers have powers to remove by order any or all board members of an incorporated college board (except the principal) for board failure. Board failure includes a serious breach or repeated breaches of terms and conditions of grant. It therefore includes non-compliance with the Scottish Public Finance Manual, Financial Memorandum and Governance Code as compliance with them is a term and condition of grant.

11. This power was used to remove members from the Glasgow Clyde College Board. Ministers have similar powers in relation to a Regional Board. Removed members are barred from serving on the board of an incorporated college, a Regional Board and the SFC.

12. There are two ways in which these powers could be extended: by giving Ministers a power to suspend and by enabling the bar to apply to former board members.

Power to Suspend

13. At Glasgow Clyde College, the College itself had powers, which the former chair exercised, to suspend the college principal while an investigation was carried out. We note that Ministers generally have no such powers to suspend persons they are considering removing by order because of board failure. At the time they were considering whether to

²⁰ Appointments to incorporated colleges and Regional Boards.

²¹ Incorporated colleges and Regional Boards.

remove board members by order, the board members continued to be responsible for governing the college.

Consideration and Recommendation

14. Depending on the circumstances, this may not always be appropriate. **Ministers should therefore consult on taking powers to suspend any or all board members (except the principal) in circumstances where they consider this appropriate while they carry out further consideration as to whether a removal order is warranted.**

Power to remove former board members

15. The bar on appointments only applies to members removed from office by order. So if a board member resigns from office before an order comes into force, they cannot be barred from office as a consequence of that order.

Recommendation

16. **Ministers should consult on taking a power to include in an order someone who was a member during the period for which Ministers consider there was board failure and bar them from office despite them not being on the board when the order comes into force.**

Ministerial power of direction

Background

17. When colleges were incorporated in 1993, Ministers had a power to direct them. Ministers had this power until it was removed in 2006 by Order as a means of colleges retaining their charitable status without being made exempt from the Ministerial aspect of the charity test. Despite this, OSCR gave a very clear sign in 2007 that the constitutions of incorporated colleges continued not to meet the requirements of charitable status as Ministers still had other powers to direct or otherwise control their activities. In 2008 Ministers (by now a different administration following an election the previous year) decided that the other Ministerial controls should be kept and colleges were exempt to ensure that they did not fail the charity test because of them.

18. Given that incorporated colleges are now exempt from the Ministerial aspect of the charity test, Ministers could have a power of direction without this affecting the colleges' charitable status.

19. Two other things have changed in the intervening period:

- 1) Incorporated colleges are now classified as public bodies for the purposes of the Office of National Statistics. One consequence of this is that incorporated colleges are now required to comply with the Scottish Public Finance Manual, as a term and condition of grant. They are therefore more clearly public bodies for which Ministers have a direct interest.
- 2) As a result of the Post-16 Education (Scotland) Act 2013, regional strategic bodies have a power of direction in relation to incorporated colleges assigned to them. So a power of direction already exists in relation to 9 of the 20 incorporated colleges, a power which vests in the relevant regional strategic body and not Ministers.

20. We also note that the OSCR has a power to issue directions to require colleges to stop taking an action in specific circumstances.

21. Where there is financial mismanagement at a college or regional strategic body, Ministers have powers to direct the SFC to provide financial support to it. This could involve requiring the SFC to require a regional strategic body to provide financial support to an assigned college.

Consideration

22. Powers of direction are generally viewed as an ultimate deterrent; their utility largely deriving from the fact they exist and that bodies will modify their behaviour as a result. It is possible that the existence of such a power might have focussed minds in relation to their decisions about severance, as such a power would have provided a means for Ministers to have stepped in decisively to ensure that decisions were made appropriately. Although clearly, Ministers would have had to have been aware of what was happening first. In the case of Coatbridge College some issues did come to light before the College made a severance payment.

23. As public bodies, it could be viewed as right and proper that ultimately the democratic will of Ministers can be asserted where it is absolutely necessary to do, not least as this may protect the reputation of the sector more generally in the face of a board not to governing appropriately.

Recommendation

24. Ministers should consult on re-introducing a Ministerial power of direction, and on whether such a power should be in addition or instead of the current power of direction that vests with regional strategic bodies.

Role of SFC – 7(2) Criteria

25. There is a range of criteria that must be met for a college or university to remain eligible in principle to be publicly funded. The criteria is set out in section 7(2) of the Further and Higher Education (Scotland) Act 2005 (2005 Act).

26. We note that SFC has this role whether or not it or a regional strategic body funds a college.

SFC Review of Assigned Colleges

27. The SFC carried out a review of Glasgow Clyde College using its powers under section 7C(7) of the 2005 Act to review whether the college continued to meet the 7(2) criteria. While the College eventually co-operated with the review, the stance taken by the College does raise the question of what might have occurred if the College had not co-operated, particularly in future circumstances where the SFC did not directly fund the College.

Consideration and Recommendation

28. Given the legislation enables the SFC to carry out a review of an assigned college whether or not the SFC directly funds it, there should be no doubt that the College should be required to co-operate fully with such a review. **In the interim, such a requirement should be placed on an assigned college through the FM process. More longer term, Ministers should consult on whether to include such a requirement in legislation.**

SFC/regional strategic bodies right to attend meetings of a college board

29. A member of the SFC has a right to attend and address a meeting of a college board or regional strategic body if SFC is concerned about its financial support. Regional strategic bodies have a similar right in relation to its financial support.

Consideration and Recommendation

30. Going forward, it is possible that the SFC may have concerns about an assigned college (i.e. not funded by it) meeting the 7(2) criteria. It is also conceivable that the SFC and or regional strategic body may wish to address a college board/regional strategic body committee meeting because of its concerns.

31. Ministers should consult on extending SFC's powers to attend and address to include concerns about meeting the 7(2) criteria and that the powers of SFC and regional strategic bodies to attend and address meetings of a governing body are extended to include relevant committee meetings.

Role of Auditor General for Scotland: economy, efficiency and effectiveness examinations

32. The Auditor Scotland for Scotland (AGS) is responsible for auditing the accounts of incorporated colleges and Regional Boards²². The AGS also has powers to conduct economy, efficiency and effectiveness examinations of incorporated colleges, higher education institutions and the three regional strategic bodies²³. The Accounts Commission for Scotland has similar powers in relation to local authorities, which include the two local authority run colleges (Orkney and Shetland Colleges).

33. However, we note that AGS currently has no such power in relation to three non-incorporated colleges²⁴ that receive public funds directly from either the Scottish Funding Council or a regional strategic body. This is incongruous.

Recommendation

34. Ministers should consult on extending the powers of Audit Scotland to conduct economy, efficiency and effectiveness examinations so that all publicly funded colleges can be subject to such examinations.

Powers of appointing persons to suspend board members

35. As a result of the Interpretation and Legislative Reform (Scotland) Act 2010, powers in an Act of the Scottish Parliament to appoint a person, clearly include a power to suspend them. Therefore it is clear that Ministers' powers to appoint people to a regional board include a power to suspend them, as that power is contained in an Act of the Scottish Parliament – the 2005 Act. However, most college sector appointments are made under the Further and Higher Education (Scotland) Act 1992. This Act is not an Act of the Scottish Parliament, so it is less evident that the power to appoint by the relevant person includes a power to suspend.

²² One Regional Board has been established – the Glasgow Colleges' Regional Board.

²³ as one is an incorporated college, one is a Regional Board and one is a higher education institution.

²⁴ Newbattle Abbey College, Sabhal Mòr Ostaig and West Highland College UHI.

Consideration and Recommendation

36. There is no reason why the powers should be different in this regard. **Ministers should consult on regularising the position, so that there is no doubt that an appointing body's powers to appoint includes a power to suspend, in line with other appointments.**

Powers to require information

37. We note that Ministers, SFC²⁵, regional strategic bodies and OSCR each have powers to require information to enable them to carry out their role.

Consideration and Recommendation

38. **Ministers should review whether existing powers to require information are sufficient.**

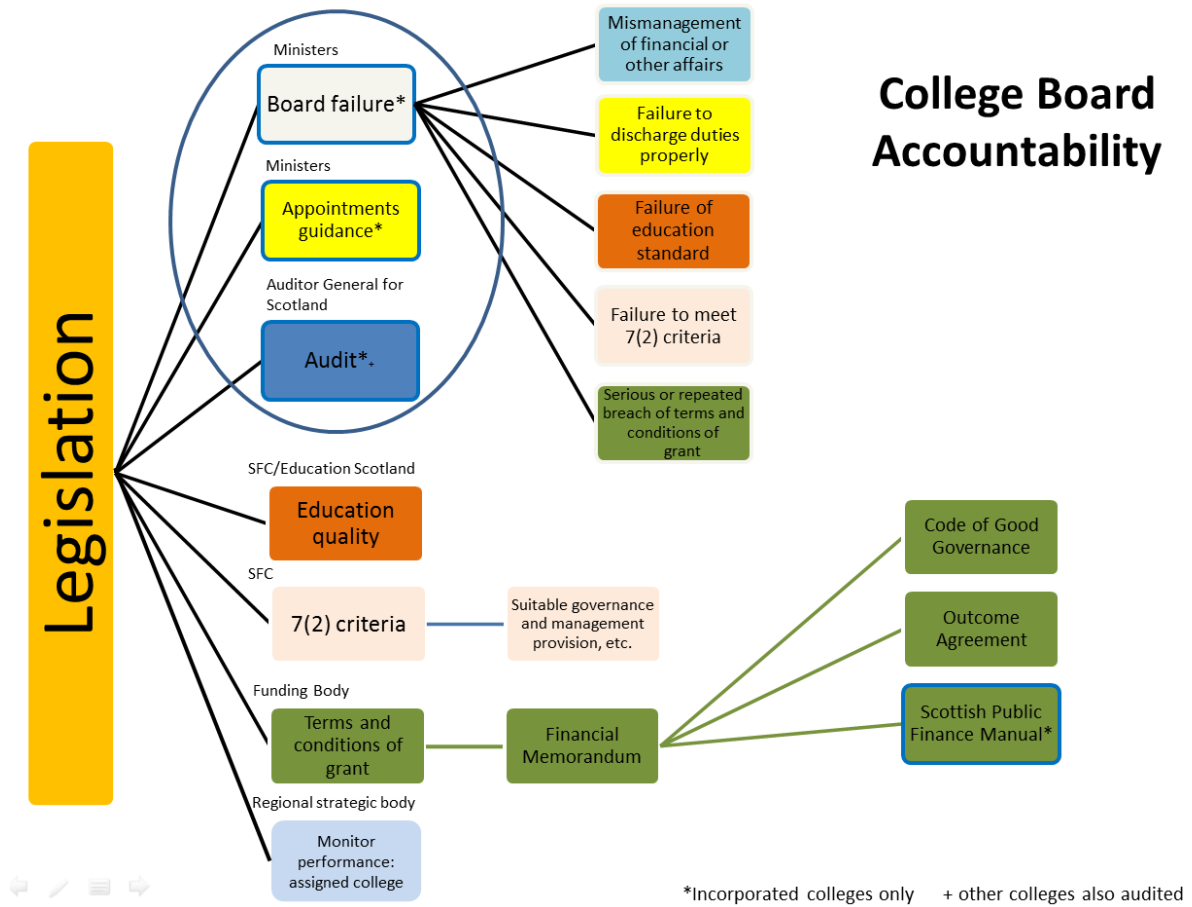
²⁵ SFC's powers includes assigned colleges whether or not funded by it.

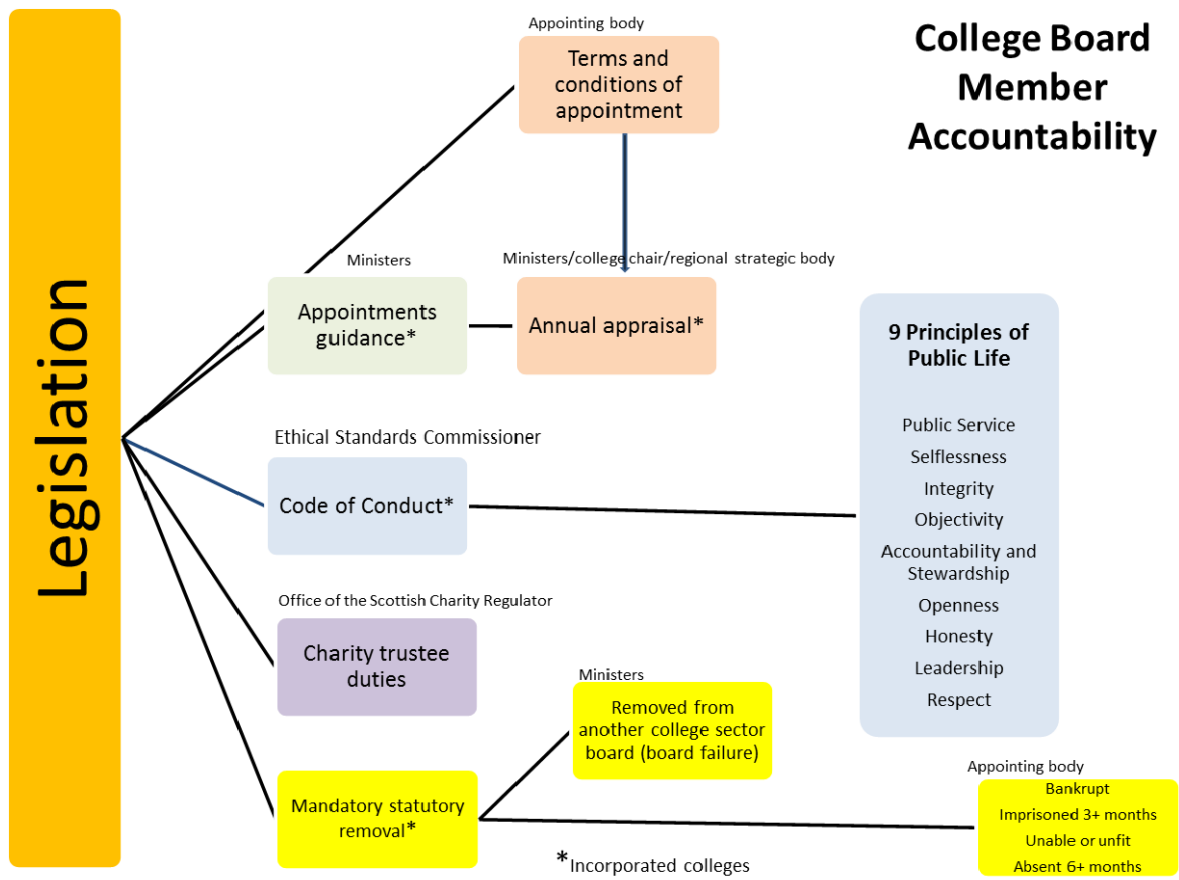
ROLES OF COLLEGE SECTOR BOARDS AND THEIR BOARD MEMBERS

Board			
<ul style="list-style-type: none"> • Provide leadership, direction, and support to college²⁶, setting its strategy and priorities. • Promote commitment to values and ethos of college, including equality and diversity. • Ensure satisfactory delivery of the organisation’s performance and financial objectives, high quality learning and outcomes, and a good learning experience. • Be accountable to and maintain the trust of key stakeholders. • Comply with relevant legal and financial requirements including the Scottish Public Finance Manual. • Ensure identification and control of the main risks to delivery of the organisation’s responsibilities and business objectives. • Ensure staff have the appropriate skills, knowledge, culture and working environment. • Adhere to sector’s Governance Code & the college’s relevant Financial Memorandum. • The whole board is collectively responsible and accountable for all board decisions. • Board members make decisions in the best interests of the college as a whole rather than selectively or in the interests of a particular group. 			
Board Members			
<ul style="list-style-type: none"> • Contribute to board discussions in a constructive and supportive manner, explaining thinking and listening to others. • Scrutinise college’s performance and, when necessary, provide challenge to senior staff and fellow board members. • Give the required amount of time to the role, attending meetings unless previously agreed with the chair and be properly prepared for meetings. • Accept and share corporate collective responsibility once the board has made a decision on anything. • Devote time to understanding your organisation and its operational environment. • Take part in an annual board member appraisal process overseen by the chair, taking up opportunities for training to acquire and keep up to date your skills and knowledge. • Represent your board or organisation at college, regional or national events as required. • Build relationships of trust and mutual respect with other board members & senior staff. • Abide by any confidentiality requirements subject to Freedom of Information laws • Uphold and promote the required standards of behaviour and values. 			
Chair	Principal	Staff & Student Members	Senior Independent Member
<ul style="list-style-type: none"> • Leadership of board, ensuring effectiveness in all aspects of its role • Responsible for setting the board’s agenda and ensuring that adequate time is available for discussion of all agenda items, particularly strategic issues 	<ul style="list-style-type: none"> • Authority for the academic, corporate, financial, estate and human resource management of the college 	<ul style="list-style-type: none"> • Full board members • Must not be excluded from board business unless there is a clear conflict of interest, in common with all board members 	<ul style="list-style-type: none"> • Non-executive board member designated by board • Among other things, acts as intermediary with chair, if required. • If board has vice-chair, will sometimes be same person.

²⁶ References to colleges include regional strategic bodies.

College Board Accountability





APPENDIX 4 OF ANNEX B

APPOINTING BODY FOR BOARDS OF INCORPORATED COLLEGES

Incorporated College	Chair	Non-executive members	Staff members	Student members
Regional College	Ministers (regulated by Public Appointments Commissioner) Terms and conditions of appointment determined by Ministers	College board*, with approval of its chair Ministers Terms and conditions of appointment determined by board	One elected teaching staff member One elected non-teaching staff member Terms and conditions of appointment determined by board	Two nominated by students' association Terms and conditions of appointment determined by board
Assigned College	Regional strategic body* Terms and conditions of appointment determined by regional strategic body	Regional strategic body* Terms and conditions of appointment determined by regional strategic body	One elected teaching staff member One elected non-teaching staff member Terms and conditions of appointment determined by regional strategic body	Two nominated by students' association Terms and conditions of appointment determined by regional strategic body

* Must have regard to Ministerial guidance on appointments²⁷

Notes:

1. College boards must include the principal of college
2. Board composition of New College Lanarkshire differs because of its regional responsibilities for South Lanarkshire College²⁸

²⁷ <http://www.gov.scot/Topics/Education/post16reform/hefegovernance/CollegeSectorBoardAppointments2014>

²⁸ <http://www.legislation.gov.uk/ssi/2014/250/contents/made>

GLASGOW CLYDE COLLEGE

The Policy Note to The Glasgow Clyde College (Removal and Appointment of Board Members) (Scotland) Order 2015²⁹ set out in its accompanying Policy Note the Cabinet Secretary's reasons for the Order³⁰. In summary, the Policy Note sets out:

- 1) There was a lack of preparation and due consideration of matters
 - a) Meetings took place with no agenda
 - b) No advance notice (or papers) were given of key matters, leading to insufficient consideration being given to important and complex matters.
- 2) Decision-making processes were not transparent, properly informed or rigorous. In particular, board minutes
 - a) did not properly record board decisions and actions
 - b) were not always available at the next Board meeting (the board therefore had no agreed common understanding of what was discussed and agreed previously)
 - c) of one meeting were taken by a board member (potentially impairing their participation at that meeting).
- 3) Inadequate arrangements were made for the role of board secretary
 - a) The board secretary was not present at some meetings that considered governance matters
 - b) inadequate arrangements were made to cover the role.
- 4) The board improperly delegated a function to a single member of the Board. As the delegation was in relation to the disciplinary process, it could potentially have had ramifications for that process.
- 5) The board failed to:
 - a) lead by example in its on-going engagement and dialogue with students and the students' association
 - b) obtain prior approval from the SFC before exceeding the delegated limit for the procurement of services through non-competitive action
 - c) seek further detail of the governance concerns raised by the college principal immediately prior to her suspension.

²⁹ <http://www.legislation.gov.uk/ssi/2015/348/policy-note/contents>

³⁰ The EIS representative on the Task Group makes clear that the EIS makes no comment on the Cabinet Secretary's findings on Glasgow Clyde College.

Cabinet Secretary's Findings and Our Lessons and Proposed Actions

Cabinet Secretary's Findings	Lessons	Actions
1. Lack of preparation and due consideration of matters	There should be a person clearly responsible for facilitating and supporting good governance and that board/committee members receive all relevant information to make a rigorous decision. The distinctive role of the board secretary should complement the separate roles of chair and principal.	<ul style="list-style-type: none"> a) Role of board secretary to be enhanced and better supported [see A5³¹] b) Good Governance Steering Group (GGSG) to review Code to make clear that all meetings have agendas. [A4(a)(iii)]
2. Minutes were deficient, not always available at the next Board meeting, were taken by a Board member	Boards need clear guidance on early production and publication of minutes.	<ul style="list-style-type: none"> a) GGSG to develop review code on early production and publication of minutes. [A4(a)(i)] b) CDN to develop and maintain national governance portal that includes minutes and board/committee papers of various types should be available to all board members [See 6.4(a)³²]
3. Inadequate arrangements were made for the role of board secretary	As 1) – board secretary	<p>See 1) above</p> <ul style="list-style-type: none"> a) GGSG to review Code to make clear that board secretary post must be properly covered by a person able to discharge the role effectively. [A5]
4. Improper delegation of functions	Increase awareness of schemes of delegation and of incorporated colleges' power to delegate	<p>We are aware that GGSG is developing a model scheme of delegation for boards [A4(b)]. In communicating this to the sector:</p> <ul style="list-style-type: none"> a) GGSG to remind colleges no individual board member (other than the chair) can be delegated functions. [A4(a)(ix)]
5. Board failure to properly engage with students and students' associations	[The events in Clyde largely predated the publication of the sector's new framework for the development of students' associations. However, the events serve to underscore its importance]	<ul style="list-style-type: none"> a) GGSG to review Code to make clear that colleges must have regard to new framework for the development of students' associations. [A4(a)(viii)] b) CDN to seek to work with, NUS and sparqs on training

³¹ Action in train 5) outlined in **Annex A** of our main report.

³² Recommendation/action 6 outlined in **section 6** of our main report.

		for all board members, including in boards' role to nurture, mentor and support student board members. [6.2(b)(ii) and (iv)]
6. Board failure to obtain prior written approval from the SFC	Increase awareness of boards and of members of their collective and individual responsibilities As 1) – board secretary	See 1) above CDN is undertaking training for board members which makes this clear. [A2]
7. Board failure to seek detail of governance concerns from the principal	As 1) – board secretary	See 1) above

Wider lessons

8. Performance of principal	One of the contributory factors in some of the governance problems at the College seem to have stemmed from the unique role the Board of Management had 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 themselves. While the chair had particular delegated authority to suspend the principal, the Board's standing orders had at the time reserved to the Board itself the discipline of the principal.	a) GGSG to develop guidance for incorporated colleges on the performance of principals, including in relation to any suspension of disciplinary action. [6.5(c)(iii)]
9. Out-of-date college Standing Orders which that reflected a repealed statutory provision [which led to student boards members being inappropriately excluded]	Increase board awareness of their 'constitutions' and difference between legislative provision and Standing Orders. Increase awareness of sector norms in relation to Standing Orders, Schemes of Delegation and Election Rules (aspects of governance arrangement that colleges do have responsibility)	Scottish Government has circulated a guide to colleges on college constitutions ³³ . In addition GGSG is developing model Standing Orders. [A4(b)(i)] The Good Governance Code makes clear that student (and staff) members are full board members.

³³<http://www.gov.scot/Topics/Education/UniversitiesColleges/17135/CollegeGovernance/collegesregionalisationconstitutionguide>

NORTH GLASGOW COLLEGE

The April 2014 Auditor General for Scotland (AGS) report on *The 2012/13 audit of North Glasgow College: Governance and financial stewardship*³⁴ identified weaknesses in governance and decision-making relating to the early departure arrangements for two senior members of college staff.

The report found

- 1) the college did not provide evidence
 - a) that the severance arrangements for two senior members of staff had been subject to appropriate approval;
 - b) that the costs had been assessed as providing value for money.
- 2) the college's initial calculation of the costs of severance arrangements was incomplete.

The Public Audit Committee (PAC) published its report in October 2015 report³⁵.

Public Audit Committee (PAC) Findings and Our Lessons and Proposed Actions

PAC Findings	Proposed Lessons	Proposed Actions
1. SFC guidance on severance should have been re-circulated to the sector (paras 18-20)	Make it straightforward to locate all relevant guidance	<ol style="list-style-type: none"> a) SFC/RSB Financial Memorandums (FMs) to list all extant guidance [6.4(b)] b) CDN to develop and maintain national governance portal that includes links to FMs and guidance [6.4(a)(i)]
2. No chair of a college board should chair the College's remuneration committee (paras 26-28)	Good governance not served by college chair being chair of the Remuneration Committee	<ol style="list-style-type: none"> a) Good Governance Steering Group (GGSG) to review Code to make clear that a college board chair cannot be the chair of the Remuneration Committee [A4(a)(v)]
3. Remuneration committee terms of reference required it to meet once a year but it did not meet for years; committees need to be properly supported; it should be a condition of SFC funding that statutory committees have designated management and secretariat support; the responsibilities and professionalism expected of support should be set out unambiguously (paras 33-35)	<p>There should be a person clearly responsible for facilitating and supporting good governance and that board/committee members receive all relevant information to make a rigorous decision.</p> <p>The distinctive role of the board secretary should complement the separate roles of chair and principal.</p>	<ol style="list-style-type: none"> a) Role of board secretary to be enhanced and better supported [A5] b) GGSG to review Code to make clear that each committee should have a designated manager and the expectations on those managers [A4(a)(vii)] c) CDN to review governance training for principals and other senior managers [6.2(b)(iii)]

³⁴ http://www.audit-scotland.gov.uk/docs/central/2014/s22_140507_north_glasgow_college.pdf

³⁵ http://www.scottish.parliament.uk/S4_PublicAuditCommittee/PAS042015R04_FINAL_REPORT.pdf

<p>4. Colleges' initial calculations fell short; remuneration committee decisions were not reported formally to the Board, depriving the Board of opportunity to consider consistency of approach; Committee was not properly supported and there was no audit trail of its decision-making; the process was not transparent (paras 54-60)</p>	<p>As 3) – role of board secretary should be enhanced</p> <p>Boards need clear guidance on protocols for early production and publication of minutes and for communication of committee discussions/decisions at following meeting of the board.</p> <p>Committees need greater support in understanding what constitutes good governance, including in ensuring there is clear written evidence to justify their decisions.</p>	<p>a) GGSG to review Code on role of board secretary to include attending and providing support to all committees, where possible [A5(c)]</p> <p>b) GGSG to review Code on prompt production and publication of minutes and informing board of committee discussions/decisions [A4(a)(i)]</p> <p>c) GGSG to review to Code to make clear boards must retain key documents which help justify decisions made [A4(a)(iv)]</p>
<p>5. Welcome SFC update guidance on severance and new oversight as a result of Office of National Statistics reclassification. Recommends guidance on remuneration committee best practice and effective support for college boards and committees (paras 68-69)</p>	<p>Need to be clearer about expectation on remuneration committees</p> <p>As 3) – role of board secretary should be enhanced</p>	<p>In addition to above –</p> <p>a) GGSG is developing online learning modules for board members on Remuneration Committees [A2(a)(ii)]</p> <p>b) GGSG to review Code to make clear expectations on the Remuneration Committee [A4(a)(vi)]</p> <p>c) Good Governance Group is developing model scheme of delegation that will include matters to be reserved to the board. [A4(b)(ii)]</p>
<p>6. Recommends review of sanctions available to SFC and the Scottish Government for non-compliance. Review should include input from OSCR and Commissioner for ethical standards (paras 70-71)</p>	<p>Our review of powers and sanctions is at Annex B.</p>	
<p>7. Arrangements in place to be sufficiently robust to ensure early identification of issues to enable prompt action to be taken if necessary; and for that action to include appropriate sanctions (para 72)</p>	<p>See Annex B of our main report on SFC's new pro-active, risk based, differentiated approach to assurance that terms and conditions of grant are being met.</p>	

COATBRIDGE COLLEGE

The June 2014 Auditor General for Scotland (AGS) report on *The 2013/14 audit of Coatbridge College: Governance of severance arrangements*³⁶ identified governance failures relating to severance arrangements for the Principal, senior managers and another member of staff. The AGS said “There is absolutely no doubt that there have been very serious failures of governance; indeed, they are among the most serious that I have seen during my time as Auditor General”.

The report lists:

- 1) failure to meet the standards expected of public bodies in the use of public money and a lack of transparency in the decision-making process for voluntary severance arrangements;
- 2) payments made that exceeded the terms of the College’s severance scheme;
- 3) the proposed severance scheme for senior staff offered terms that were significantly higher than the Scottish Funding Council’s guidance and the schemes of the other colleges that merged to form New College Lanarkshire;
- 4) the College did not retain sufficient evidence (minutes and business cases) that severance proposals, and salary enhancements, had been subject to a value for money assessment;
- 5) the absence of any evidence that the Remuneration Committee had access to the information and advice it needed to fulfil its responsibilities;
- 6) the Principal failed to take the steps needed to demonstrate that the inherent conflicts of interest were properly handled.

The Public Audit Committee (PAC) in its January 2016 report³⁷ made three recommendations:

- 1) the former principal repay his severance and the amount recalculated in reference to the agreed scheme for staff; in the event of not repaying renewed consideration to recovering it.
- 2) this Task Group to reflect on PAC’s findings to learn all lessons and take action to ensure such events cannot happen again; and consider sanctions and powers that ought to be available to the Scottish Funding Council (SFC) to be effective, working with OSCR to consider what further powers it requires.
- 3) Scottish Government to look at the operation and effectiveness of SFC’s supervisory role.

³⁶ http://www.audit-scotland.gov.uk/docs/central/2015/s22_150626_coatridge_college.pdf

³⁷ http://www.scottish.parliament.uk/S4_PublicAuditCommittee/Reports/PAS042016R01.pdf

Public Audit Committee (PAC) Findings and Our Lessons and Proposed Actions

PAC Findings	Lessons	Proposed Actions
1. SFC should have reminded colleges of its guidance (para 40)	Make it straightforward to locate all relevant guidance	a) SFC/RSB Financial Memorandums (FMs) to list all extant guidance [6.4(b)] b) CDN to develop and maintain national governance portal that includes links to FMs and guidance [6.4(a)]
2. Clear responsibilities on college board members as charity trustees (para 50)	Increase awareness of charity trustee duties	a) CDN to seek to work with OSCR on training for board members [6.2(b)(vi)] b) New Governance portal to include links to relevant OSCR publications [6.4(a)(i)]
3. Questions whether Board secretary should also provide support to Remuneration Committee (para 60)	Board secretary should attend and provides support to every board meeting and every meeting of every board committee (where possible) ³⁸ .	a) Role of board secretary to be enhanced and better supported [A5]
4. SFC should have better supported boards and committees to ensure they understood their roles/responsibilities (para 65)	Increase board/committee/member awareness	a) CDN to work closely with SFC on identifying training needs for board members [6.2(b)(i)] b) All relevant SFC sector communications copied to CDN [6.5(b)] c) All new college committee members to receive committee induction pack and need for specific training assessed [A2(a)(iii)]
5. Remuneration committee members should have received all relevant information – role of College's executive staff to do that. They were not given the information as a deliberate act (paras 91-94)	There should be a person clearly responsible for facilitating and supporting good governance and that board/committee members receive all relevant information to make a rigorous decision. The distinctive role of the board secretary should complement the separate roles of chair and principal.	a) Role of board secretary to be enhanced and better supported [A5]
6. Significant and widespread governance failings: no agenda or formal papers for meeting; not usual for secretary of committee to	As 4) – role of board secretary should be enhanced Boards need clear guidance on protocols for early production and	a) Good Governance Group to review Code ³⁹ to make clear that all meetings have agendas [A4(a)(iii)] b) Good Governance Group

³⁸ We took advice from the Good Governance Steering Group (GGSG) on this. The benefit of this approach is that enables the board secretary to have an overview of the work of the board and all its committees, enabling them to make connections between them, ensuring the board is fully apprised of the work of the committees, as appropriate. There were specific issues at Coatbridge College because the board secretary also held another senior management team role.

³⁹ The Code was not in place at the time the events in Coatbridge College occurred.

attend its meetings; minutes of meeting not prepared for 9 months; no report of committee meeting available at next meeting of board (para 95/96)	publication of minutes and for communication of committee discussions/decisions at following meeting of the board.	to review Code in relation to role of board secretary to include attending and providing support to all committees, where possible [A5(c)] c) Good Governance Group to review Code on early production and publication of minutes and papers and informing board of committee discussions/decisions [A4(a)(i) and (ii)]
7. Decisions taken by the Remuneration Committee should have been minuted and agreed and the minutes should have been tabled at the next Board meeting. (para 108) Chair had no authority to issue the letters before these fundamental governance steps had been taken (para 109)	As 5) – boards need clear guidance on protocols Chairs must be clear about the scope of their powers	In addition to other proposed actions, we are aware that the Good Governance Group is developing a model scheme of delegation for boards [A4(b)(ii)]. In communicating this to the sector: a) the Good Governance Group to advise chairs that they have no authority to act outwith their powers. [A4(a)(x)]
8. Unacceptable that senior staff received pay increases not available to other staff (para 131)	Decisions about pay must be open and transparent, with appropriate governance oversight.	a) 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 [A6(b)].
9. Clear responsibilities and expectations of principal not met, including in not recognising conflict of interest at earlier stage (para 160)	Increase awareness by principals and boards of a principal's role analogous to that of an accountable officer.	a) CDN to review governance training for principals and other senior managers, including to support principals in their 'accountable officer' roles [6.2(b)(iii)]
10. Solicitors cannot provide internal audit function (para 167)	Increase awareness by college staff of distinction between legal and audit function Sector may benefit from a more sector-wide approach to the commissioning of legal services	a) CDN to advise college staff of different functions of legal and audit professionals. [6.2(b)(v)] b) CDN to review scope for a more sector-wide approach to the commissioning by colleges of legal advice [6.5 (a)(iv)]
11. Committee unaware of its role and of relevant correspondence from SFC, as chair withheld information	Greater need to ensure board committees are aware of role and all relevant information	In addition to other proposed actions, a) SFC/regional strategic

		bodies to copy all correspondence in relation to governance to college board secretary [6.5(b)] b) SFC/regional strategic body powers to attend board meetings to be extended to include relevant meetings of board committees. [6.9(a)(iv)]
12. Remuneration Committee did not reconsider severance arrangements for principal; Committee did not record exceptional circumstances (para 198)	Committees need greater support in understanding what constitutes good governance, including in ensuring there is clear written evidence to justify their decisions	In addition to other proposed actions, a) Good Governance Group to review to Code to make clear boards must retain key documents which help justify decisions made. [A4(a)(iv)]
13. Remuneration Committee did not receive a key SFC letter; received legal advice that was predicated on misplaced understanding (para 199)	As 4) – role of board secretary should be enhanced	As 4)
14. No business case to support decision and no costings; no evidence any consideration given to proper stewardship of charity funds; internal and external auditors were not informed of arrangements (para 207)	As 4) – role of board secretary should be enhanced Increase awareness of charity trustee duties Increase awareness of role of internal and external audit	See 4) above – board secretary role See 2) above – charity duties See 8) above – ‘accountable officer role’ a) CDN to seek to work with Audit Scotland on training for board members [6.2(b)(vi)] b) CDN to incorporate audit in training for principals and senior managers [6.2(b)(iv)]
15. SFC should have been prepared to not to fund any of the severance costs; board members should have had no doubt about failings and what was required of them (para 211)	[New arrangements are now in place requiring incorporated colleges to obtain SFC approval for severance schemes] As 4) – Enhance role of board secretary to provide further governance check and balance	a) SFC to take a more proactive approach [A8(a)] See 4) above – board secretary
16. Auditors were not contacted; solicitors were not a substitute for auditors; remuneration committee were unaware of SFC communication; legal advice was based on an incomplete picture (paras 227-230)	Increase awareness by principals and boards of a principal’s role analogous to that of an accountable officer As 9) - Increase awareness by college staff of distinction between legal and audit function As 4) – Enhance role of board	See 8) above - ‘accountable officer role’ See 9) above – legal and audit function See 4) above – board secretary role

	secretary to provide further governance check and balance	
17. Settlement agreement was signed by principal and chair before meetings of remuneration committee and board (para 237)	As 4) – Enhance role of board secretary to provide further governance check and balance As 6) chairs must be clear about the scope of their powers	See 4) above – board secretary See 6) above - chair authority
18. College presented deficit due in large part to severance payments (para 264)	[New arrangements are now in place requiring incorporated colleges to obtain SFC approval for severance schemes – this will ensure among other things that there will always be business cases]	a) SFC has recently issued revised guidance on severance ⁴⁰
19. Former principal and chair deliberately refused to accept difference between federation and merger arrangements (para 270)	[New arrangements are now in place requiring incorporated colleges to obtain SFC approval for severance schemes]	See 17) above
20. Should have been a requirement for a business case for all payments that SFC was prepared to fund; a national scheme should have been established; any exceptions should have required a proper business case (para 274)	[New arrangements are now in place requiring incorporated colleges to obtain SFC approval for severance schemes]	See 17) above
21. Task Group put in place measures to ensure failings are not repeated (para 279)	This report	This report

⁴⁰ <http://www.sfc.ac.uk/communications/Guidance/2016/SFCGD012016.aspx>

INTERESTING PRACTICE WITHIN AND OUTWITH THE COLLEGE SECTOR IN SCOTLAND

Board Member Recruitment

Health (Scotland) -

- a) encouraging recruitment of board members with skills gaps that can be met⁴¹
- b) Ministers appoint college chair and board members. All are remunerated. One non-executive board member is nominated by unions

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 (Wales⁴²) – Ministers do not appoint college chair or board members. None are remunerated.

College sector (Northern Ireland⁴³) – Ministers appoint college chair and board members. All are remunerated.

University sector (Scotland) – Governance Code: continuous service beyond three terms of three years (or two terms of four years) not desirable.

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) –

- a) Blackrock 2014 Corporate Governance Guidelines include directors advising company secretary before accepting invitation to serve on another company board.
- b) Board Culture (Mazars, 2016) advises matters to be considered for board composition include “personal attributes to work well together” and diversity in terms of gender and ethnic background is very important, but so too diversity of industry/professional expertise and of preferred approaches and working styles.

Board Member Development

College sector (Scotland) - ‘buddying’ of experienced and new board members

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). NHS Scotland Knowledge network has a range of resources. Resources include general questions for board members to prompt them to consider their questions at board meetings and outlines what ‘good looks like’ in relation to matters, such as an open and fair culture.

⁴¹ Already a feature of college sector Ministerial guidance.

⁴² Colleges in Wales are not classified as public bodies.

⁴³ Colleges in Northern Ireland are classified as public bodies.

Board Member 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.

UK Corporate Governance Code – Led by senior independent director, the non-executive directors should meet with the chair at least annually to appraise their performance.

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

College sector (Wales) –

- a) Governance Code provides
 - i. clerk (i.e. board secretary) should be solely responsible to the governing body and have a direct reporting line to its chair;
 - ii. 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;
 - iii. clerk must inform the governing body if they believe 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.
- b) some colleges have a membership body which acts as a sounding board and scrutinising body for the college, whose members include a wide range of stakeholders.
- c) Wales Assembly Government (the funding body) is developing a governance web portal for colleges

College sector (Northern Ireland) – governing body must appoint a secretary. They must not hold another position within the college. They must be capable of taking responsibility for organising the business of the governing body and for advising it on points of procedure.

College sector (England)⁴⁴ colleges must, as funding condition, adopt the Association of Colleges voluntary code of governance or have due regard to the UK Corporate Governance Code. **Third sector (Scotland)**: Scottish Council for Voluntary Organisations has dedicated web pages to support good governance of voluntary organisations⁴⁵

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.

⁴⁴ Colleges in England and not classified as public sector.

⁴⁵ <http://www.scvo.org.uk/running-your-organisation/good-governance/>

University sector (Scotland) – Governance Code:

- a) governing body information and papers to be published “quickly and fully” except when matters of confidentiality.
- b) appointment and removal of board secretary decision of the governing body as a whole.
- c) includes examples of good practice (e.g. principal meeting staff and student members before each Court meeting).

University sector (UK) – Leadership Foundation for Higher Education published in 2012 a *guide for new clerks and secretaries of governing bodies of higher education institutions in the UK*

Financial Reporting Council (2011 Guidance on Board Effectiveness) - set outs roles of board and of board members, including specific responsibilities of chair, senior independent director, executive directors, non-executive directors. Also role of company secretary, including in playing a leading governance role.

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.

NDPB sector (Scotland) – Sponsorship team receives and considers all NDPB board papers and agrees process for feeding back questions and comments.

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

University sector (Scotland) – Governance code:

- a) annual effectiveness review; externally-facilitated evaluation at least every 5 years; effectiveness assessed against Statement of Primary Responsibilities and compliance with Code.
- b) Actions from effectiveness reviews should be reported upon publicly

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?

Better pro-active external governance health-checks

College sector (Wales) –

- a) Governance Code provides governing body must inform Wales Assembly Government (the funding body) of any “materially adverse change” in the college’s circumstances.
- b) 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:
 - i. understand their role;
 - ii. challenge the senior management team;
 - iii. set appropriate strategic direction;
 - iv. oversee standards and quality

- v. oversee college procedures and practices (complaints and appeals).
- c) Inspections involve examining minutes of meetings of governing body and its committee and discussions with governors.

College sector (Northern Ireland) –

- a) Government Department (the funding body) attends meetings of colleges' Audit Committee.
- b) Education and Training Inspectorate reports can include views on the governance of the college.

Sanctions

College sector (England) - The FE Commissioner

- a) 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.
- b) assesses the capacity and capability of the current governance and leadership to deliver rapid improvement. This assessment takes place over a two week period.
- c) considers the relevant available information and data and takes account of the views of the staff and learners, local stakeholders, Ofsted, the Departments (DfE and BIS), and the Funding Agencies
- d) recommends the action needed to secure improvement to the Minister and the Chief Executives of the Funding Agencies. The college or institution is charged with developing and implementing an action plan for implementing the recommendations.
- e) publishes an annual report on lessons learned from interventions.

DRAFT CHECKLIST OF EARLY WARNING INDICATORS OF GOVERNANCE ISSUES FOR BOARD MEMBERS

There is a wide range of indicators that may be alert board members to emerging governance issues.

Some of these can be picked up through observing how people behave at meetings; others can be gained from information/documents.

- Poor financial results
- Poor quality Board/Committee papers
- Late circulation of minutes
- Little or no discussion on core business items at board meetings
- Board discussion focuses on operational detail rather than strategic oversight
- Items discussed at meetings for which there was no or little prior notice
- Board members not constructively challenging the executive
- Board member poor attendance at Committee/Board meetings
- Inappropriate exclusion of staff or student members from board decisions; all members not being treated equally
- Board members not exhibiting the right behaviours, conducive to working collectively to carry out their governance role
- Behaviour of board members inconsistent with the Principles of Public Life
- Dominant Chair/Chair taking an operational role
- Poor outcomes from student and staff surveys
- Less than satisfactory Board members/Chair appraisals
- Less than satisfactory self and/or independent evaluation
- Non-attendance of board members at training and development opportunities
- Recommendations arising from internal or external audit reports including audit opinion
- Informal feedback on governance from external auditors following college audits
- High turnover of Board members
- High staff turnover or sick absence (including Principals and other members of the senior management team)
- Not meeting activity targets
- Poor results in Education Scotland reviews
- Issues raised through anonymous allegations and whistleblowing
- High number of grievances
- High number of Freedom of Information requests
- Staff and student demonstrations
- Legal claims
- Late, inconsistent, poor quality returns.