

FW: Private and Confidential - GCRB letter to Scottish Government

[REDACTED]
Fri 17/07/2015 15:07

To: [REDACTED];

For info

Sent from my Sony Xperia Z1 Compact on O2

----- Original Message -----

Subject: FW: Private and Confidential - GCRB letter to Scottish Government

Sent: 17 Jul 2015 15:46

From: [REDACTED] >

To: [REDACTED]

Cc:

Dear Colleagues

Like you, I received a copy of the letter sent by the Interim Chair of the GCRB to the Scottish Government on behalf of the Board following our special meeting on Monday 13 July. I have a number of serious concerns about the content of the letter which I do not believe fully reflects the views expressed by the Board or the decisions we made.

In normal circumstances, if I felt it necessary to challenge the record or interpretation of decisions made at a meeting I would do so at the point of the approval of the minutes. I did ask the Chair to circulate a note of the meeting to Board members prior to the letter being sent to the Scottish Government and was advised that this was not possible due to time constraints. As the letter had been sent and that Scottish Government decisions were imminent, and it would not be possible for me to challenge the minutes of the meeting in advance of these decisions being made, I contacted the Chair by email on receipt of the letter (Wednesday). I outlined my concerns and asked for her advice on the course of action open to me to have the Board consider these concerns and, if it is so agreed, to have the her letter rectified.

I have yet to receive a reply. I understand that [REDACTED] and may not have received my email. I had hoped to deal with my concerns directly with her before decisions are made by the Government. However, this doesn't appear possible. I feel that this matter is of such importance and time critical that I should share my concerns with other Board members. I have emailed [REDACTED] again to advise her that I intend to do this. I am very conscious that this could be viewed by some as seeking to undermine the authority of our Chair. That I not my intention. My intention is simply to ensure that the views and decisions of the Board on such a critical matter are properly reflected.

While there little in much of the letter with which I would take issue, I feel very strongly that, overall, it does not adequately reflect the strength of view expressed by the Board in relation to the failings and inadequacies of the DLA Piper Report and, in particular, the SFC Report. It doesn't reflect our view that the SFC's Report lacks credibility, rigour or balance and that the 'evidence' it presents is in many cases no more than supposition and innuendo. In particular, the letter doesn't mention the Board's view that the SFC has failed to make any connection between the 'evidence' presented in its Report, its findings and the recommendations made. Specifically it omits to mention the Board's view that the most important recommendation, that the Chair of GCC be removed, is not justified by the

'evidence' and finding in the SFC Report. In addition, there is no mention of the decision that we made to request a meeting with Aileen McKecknie to discuss our concerns about the Reports and the recommendations.

I feel it is important to advise you of my views and would welcome your comments on whether or not my recollection and understanding of the views expressed and the decisions taken on Monday aligns with yours and if you share my concerns about how they have been reflected in the Chair's letter.

GIVEN THE OBVIOUS SENSITIVITY OF THIS ISSUE, I WOULD APPRECIATE IF MY EMAIL WAS KEPT PRIVATE AND CONFIDENTIAL TO GCRB MEMBERS ONLY.

Regards

[REDACTED]

Advanced Learning and Science Directorate
Aileen McKechnie, Director

T: 0300 244 1264
E: directorofadvancedlearningandscience@scotland.gsi.gov.uk



Laurence Howells
Chief Executive
Scottish Further and Higher Education Funding Council
Apex 2
97 Haymarket Terrace
Edinburgh
EH12 5HD



10 July 2015

Dear Laurence

I write following receipt of the letter and associated attachments sent to Scottish Ministers from your Vice Chair, dated 30 June. The associated attachments, the SFC report and the DLA Piper fact finding exercise, were provided to Scottish Ministers under section 7C(8) of the 2005 Act.

I would advise that a request has yesterday been made to the Scottish Ministers, on behalf of the solicitors to the Disciplinary Committee, asking that the redacted reports be shared with the College Principal's representatives. We have responded to Thorntons Law asking who has seen the report and for an explanation of the circumstances in which they were provided with the reports and why, given that they were provided to the chair and board members in strictest confidence.

We have subsequently received a request from Thorntons Law that the two reports be shared with the fourth (external) member of the disciplinary panel (given that the other three board members are already in receipt of copies). We consider that, in the interests of natural justice, all persons involved in the disciplinary proceedings should have access to the redacted reports – in strictest confidence.

Therefore, we are minded to accede to these requests and would confirm that the reports would be provided directly to the Principal and her representative, and the external panel member (by Thorntons Law), on a strictly confidential basis, for use only in relation to the disciplinary proceedings. If the SFC has any concerns about this course of action, please do let me know immediately.

All good wishes

AILEEN McKECHNIE
Director of Advanced Learning and Science

STAKEHOLDER PHONE CALLS – as @ 25/9/15

MINISTER / OFFICIAL	STAKEHOLDER	REPRESENTATION TO MINISTERS	AFTER LETTER TO CHAIR HAS ISSUED	AFTER ORDER IS LAID
Cabinet Secretary	The Herald – Andy Denholm (5-10 min interview tbc)			Comms to line up
	Leader, Glasgow City Council – Frank McAveety			[REDACTED]
	EIS – Larry Flanagan			[REDACTED] (PA's number) [REDACTED]
	Johann Lamont MSP, Lab	Wrote to Cab Sec 9 April with concerns about situation and it impact on sector. Met on 20 May		Mobile: [REDACTED] 0141 270 1890 johann.lamont.msp@s cottish.parliament.uk
	Opposition spokespeople Iain Gray MSP Lab			01875 616610 lain.gray.msp@scottis h.parliament.uk
	Liam McArthur MSP - LibDem			01856 876541 liam.mcarthur.msp@sc ottish.parliament.uk
	Mary Scanlon MSP - Cons			01463 241004 Mary.Scanlon.msp@s cottish.parliament.uk
	Note: Follow-up to Ministerial action could include: - Parliamentary Statement - Parliamentary debate - ECC committee			
SPADS [REDACTED]	NUS – Vonnie Sandlan, President	Wrote to Cab Sec on 22 May	[REDACTED]	[REDACTED]
	GCRB/STUC – Grahame Smith	Wrote to interim Chair, pressing	[REDACTED]	[REDACTED]

STAKEHOLDER PHONE CALLS – as @ 25/9/15

		for GCRB to approach government for an extension	
Glasgow politicians - Constituency			
Bill Kidd MSP, SNP	James Dornan MSP, SNP	Met Cab Sec 12/5 (with Bob Doris when he touched on concern about Clyde)	0141 339 3277 Bill.Kidd.msp@scottish.parliament.uk
Sandra White MSP, SNP	Paul Martin MSP, Lab		0141 632 5238 James.dornan.msp@scottish.parliament.uk
John Mason MSP, SNP		Wrote to Cab Sec, most recently on 27 April questioning timing of disciplinary proceedings given timing of SFC review	0141 339 7693 Sandra.White.msp@scottish.parliament.uk
			0141 564 1364 Paul.Martin.msp@scottish.parliament.uk
			0141 550 4327 John.mason.msp@scottish.parliament.uk
Glasgow politicians - Regional			
Bob Doris MSP, SNP			0141 353 0784 Bob.doris.msp@scottish.parliament.uk
Director			
GCRB interim chair - Ali Jarvis		Wrote to Cab Sec 10/8	
GCC - Education - Maureen McKenna		Resigned from GCRB Wrote to Perm Sec	
GCU - Pamela Gillies		Resigned from GCRB	
Chair, College Scotland – Hugh Hall		Performed his own role in informal mediation	

STAKEHOLDER PHONE CALLS – as @ 25/9/15

	<p>SCQF (Aileen Ponton, Chief Executive, is GCC board member) Sir Andrew Cubie</p> <p>GMB Scotland - Cal Waterson</p>	<p>Chair, Good Governance Group</p>	<p>[REDACTED]</p>
Deputy Director	<p>Chief Executive, College Scotland CEO - Shona Struthers</p> <p>Deputy Chair, Colleges Scotland – Liz McIntyre</p> <p>Chief executive, SFC – Laurence Howells</p>	<p>Wrote to GCRB about possible extension of non- staff member</p> <p>Lead, CS Principals Group</p> <p>Will receive letter</p>	<p>[REDACTED]</p>
	EIS (FE) National Officer – David Belsey	FE Lead	

Cabinet Secretary for Education and Lifelong Learning
Angela Constance MSP

F/T: 0300 244 4000
E: scottish.ministers@scotland.gsi.gov.uk



[REDACTED]
Chair
Glasgow Clyde College
Cardonald Campus
690 Mossspark Drive
Glasgow
G52 3AY



Thank you for the letter of 7 August to Aileen McKechnie, Director of Advanced Learning and Science, from Brodies, your Board's solicitors, which among other things, asks for a meeting with either Ms McKechnie or myself.

I should welcome a meeting with you, as chair of the Board, to discuss matters on Wednesday 2 September. Please contact my diary secretary, [REDACTED] at Cabsecell@scotland.gsi.gov.uk to arrange this.

ANGELA CONSTANCE

Cabinet Secretary for Education and Lifelong Learning
Angela Constance MSP

F/T: 0300 244 4000
E: scottish.ministers@scotland.gsi.gov.uk



Chair
Glasgow Clyde College
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690 Mossspark Drive
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September 2015

**SECTION 24 OF FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992 ("THE 1992 ACT")
BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE "(THE BOARD)"**

Thank you for the letter of 7 August to Aileen McKechnie, Director of Advanced Learning and Science, from Brodies, your Board's solicitors.

I should advise that having considered this and other relevant correspondence and material, it seems to me that the Board may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs. The reasons for this are set out in the attached Annex.

I also note that despite repeated requests for information, some information requested of the Board (including approved minutes of all relevant Board meetings) have not yet been provided.

I should advise that one possible outcome of my consideration could involve making an order under section 24 of the 1992 Act to remove you and other board members.

Before I reach any conclusion, I should welcome your comments on the Annex which outlines my concerns, together with any proposals for Board action (if you consider that is warranted). Please attach, where appropriate, any supporting material. I should welcome your comments no later than [time] on [date] [3 days later].

As you know, the SFC sent the Scottish Ministers the report of its review of the Board under section 7C(7) of the 2005 Act. Given the concerns that have been raised by the Board about the SFC's report, I should advise that the Scottish Ministers have not relied on the

SFC's report. You should not infer from this any view of the Scottish Ministers on this report. The Scottish Ministers have simply concluded that there is enough other evidence to inform their consideration.

If you, as Chair of the Board, and any other Board members would wish to meet me before [same date] September 2015 to discuss matters, please contact my diary secretary, [REDACTED], at Cabsecell@scotland.gsi.gov.uk to arrange this.

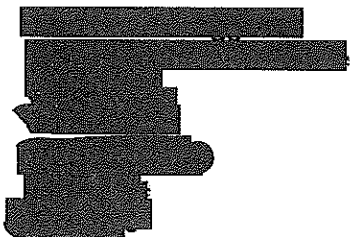
I am writing in similar terms to the other members of the Board.

I am also copying this letter and its Annex to: the Interim Chair of the Glasgow Colleges' Regional Board (GCRB); the chief executive of the Scottish Funding Council; and the Board's solicitors, Brodies.

ANGELA CONSTANCE

Cabinet Secretary for Education and Lifelong Learning
Angela Constance MSP

F/T: 0300 244 4000
E: scottish.ministers@scotland.gsi.gov.uk



9 September 2015

Dear [REDACTED]

**SECTION 24 OF THE FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992
("THE 1992 ACT")
BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE ("THE BOARD")**

I refer to previous correspondence including the Board's solicitors' letters of 7 August 2015 and 3 September 2015.

Having considered this and other relevant correspondence and material, it seems to me that the Board may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs. The reasons for this are set out in the attached Annex.

Please note that in light of the concerns expressed by the Board about the SFC report sent to the Scottish Ministers under section 7C(8) of the 2005 Act, that report has not informed Ministers' consideration of this matter. You should not infer from this any view of the Scottish Ministers on this report.

I note that despite repeated requests for information, some information requested of the Board (including approved minutes of all relevant Board meetings) has not yet been provided. I note, but do not necessarily accept, the explanations set out in letters from Brodies dated 17 July and 7 August for not providing some of this information. While I am grateful for sight of the report, *Investigation into the Processes and Expenditure Associated with Legal and Management and Consultancy Services*, I note that it does not contain all the information we sought in relation to the commissioning of services.

I am considering what action requires to be taken to address the issues. One possible outcome is Scottish Ministers making an order under section 24 of the 1992 Act to remove the chair and other board members.

Victoria Quay, Edinburgh EH6 6QQ
www.gov.scot



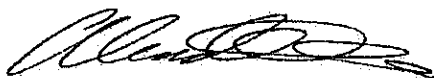
Before I reach any conclusion, I request your comments on the matters set out in the Annex, together with any proposals for Board action if you consider that is warranted. Please attach, where appropriate, any supporting material.

Given the nature of the issues set out in the Annex and representations which have been made to me, and in particular my concern over the effects of the current position on a new intake of students at the College, I require your response as a matter of urgency. I therefore seek your comments no later than 1700 on Monday 14 September.

If you and any other Board members wish to meet me before 14 September 2015 to discuss matters, please contact my diary secretary, [REDACTED] at Cabsecell@scotland.gsi.gov.uk to arrange this.

I am writing in similar terms to the other members of the Board (excluding the Principal).

I have written in similar terms to the Board's Chair and have copied that letter and its Annex to: the College's Deputy Principal, the Interim Chair of the Glasgow Colleges' Regional Board (GCRB); the Chair of the Scottish Funding Council; and the Board's solicitors, Brodies.



ANGELA CONSTANCE

Reasons for considering that the Board of Management of Glasgow Clyde College ("the Board") may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs

1. The Scottish Ministers consider that the Board may be failing in relation to the following grounds of section 24(1)(a) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"):
 - a) repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") (section 24(1)(a)(ii) of the 1992 Act);
 - b) mismanaging their affairs (section 24(1)(a)(v) of the 1992 Act).
2. The nine key principles of public life are set out in paragraph A.2 of the *Code of Good Governance for Scotland's Colleges*¹ ("the Code") and include "accountability and stewardship, openness and leadership".
3. Paragraph D.1 of the Code provides that the chair of the board is responsible for the leadership of the board and ensuring its effectiveness in all aspects of its role. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members and fostering constructive relationships between board members. Paragraph D.12 provides that the chair and the principal have a shared responsibility to provide leadership for the college.
4. Paragraph D.3 of the Code provides that the whole board is collectively responsible and accountable for all board decisions. Paragraph A.3 of the Code provides that board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves. Paragraph A.5 provides that the board provides overall strategic leadership of the college.

Potential Repeated Breaches of Terms and Conditions of SFC Grant (section 24(1)(a)(ii) of the 1992 Act)

5. Compliance with the Code and the *Financial Memorandum with Fundable Bodies in the College Sector*² ("the Financial Memorandum") are terms and conditions of the grant made by the Scottish Funding Council ("the SFC") to the Board under section 12 of the 2005 Act.
6. The Scottish Ministers consider that there may be failures by the Board in the following respects:

(i) **Governance:**

¹http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014_Goodpracticeincollegegovernance/Code_of_Good_Governance_for_Scotlands_Colleges.pdf

²http://www.sfc.ac.uk/web/FILES/Guidance_Governance/Financial_Memorandum_with_the_College_Sector_-_1_December_2014.pdf

(a) It appears that there has been no Principal in place for over six months. Paragraph D.6 of the Code underlines the importance of this role by requiring the Board to appoint a Principal as chief executive of the college. However, during the period of the Principal's suspension, it appears that the Deputy Principal has not assumed the powers of Principal as foreseen under paragraph 14 of Appendix 4 to the College's document entitled *Constitution and Articles of Governance of the Board of Management of Glasgow Clyde College* ("the College document"). In these circumstances, there appears to be no clarity as to who is to carry out the role of Principal in relation to the functions and duties set out in the Code and Financial Memorandum.

(b) Paragraph C.3 of the Code provides that the Board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely. Ministers consider that there may be a number of failings in relation to Board decision-making processes. It appears that:

- Inadequate notice was given to members of matters to be discussed at certain meetings of the Board in 2015; inadequate time was therefore given to members to consider those matters ahead of such meetings. In particular, Ministers have concern over the Board's decision to make detailed changes - with no advance notice - to the College document; and its decision to make associated arrangements concerning the setting up of a disciplinary panel and an appeal committee at a meeting that members had been informed was for the purpose of discussing issues with senior representatives of the Scottish Government, the SFC and the Glasgow Colleges' Regional Board.
- A number of meetings have taken place without agendas. Alongside apparent deficiencies in the recording of agreed decisions, actions and discussions in the minutes, this leads Ministers to have concerns about the transparency and clarity of Board business.
- Minutes of meetings were not routinely approved at the next available meeting, and appear often to have been held over to the quarterly ordinary meetings. The Board was therefore at risk at some meetings of having no agreed common understanding of the discussion and agreement at its previous meeting. Without such an understanding the Board appears to have impaired its ability properly to inform itself.
- The arrangements to cover the functions of the Board Secretary appear inadequate. The post of Board Secretary is currently vacant at what is a crucial time for the College, given the suspension of the Principal. Additionally, when the previous Board Secretary was in post she was not present at certain meetings that considered governance matters. This is particularly important given the Board Secretary's role to advise and support the Board, Chair and executive team in relation to governance matters, as set out paragraphs D.14 and D.15 of the Code.

(c) There appears to have been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. This appears to have been prompted in part by the exclusion of the student members from a Board meeting on 23 February 2015 which in turn appears to have resulted from a misreading of a provision of the College's constitutional document (the provision reflected a statutory provision which was repealed in 2003 and was not in compliance with the Code). Paragraph B.1 of the Code provides the following in relation to student engagement: *"The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions"*. Paragraph B.2 provides that *"the board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience."* (See paragraph 8(e) below for further discussion.)

(ii) *Financial requirements in relation to delegated financial limits to expenditure*

(d) It appears to Ministers that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. Appendix A to Part 3 of the Financial Memorandum sets a limit of such expenditure at £25,000. Any such expenditure incurred beyond that requires the prior written approval of the SFC. The total cost of the action incurred by the Board was significantly more than three times this limit.

7. **The Scottish Ministers consider that, in light of the above, the Board may have committed repeated breaches of the terms and conditions of the grant made to the Board under section 12 of the 2005 Act, in terms of section 24(1)(a)(ii) of the 1992 Act.**

Potential Mismanagement of Affairs (section 24(1)(a)(v) of the 1992 act)

8. The Scottish Ministers consider there may be failures by the Board in the following respects; some of these matters are matters that may also constitute a breach of terms and conditions of SFC grant (as noted above):

(a) It appears that there has been no Principal in place for over six months and, in the absence of the Principal or an acting Principal, there does not appear to be any clarity as to who is to carry out the role of Principal in relation to the functions and duties set out in the Code and Financial Memorandum. The apparent absence, at a general level, of a well-managed disciplinary process has contributed to the problems of discontinuity of leadership following the Principal's suspension. (See paragraph 6(i)(a) above for further discussion.)

(b) It appears that governance concerns raised by the Principal by email dated 18 February 2015 immediately prior to her suspension have not been considered by the Board. This email advised the Board that the Principal intended to seek advice from the College's solicitors on "*governance issues in relation to propriety, processes, procedure, conflicts of interest and behaviours*". The Board minutes record no Board discussion of the concerns raised by the Principal in her email. In particular, there is no record of any discussion about seeking further details of the Principal's concerns.

(c) The Board have apparently failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. (See paragraph 6(d) above for fuller discussion.)

(d) There appears to have been improper delegation of functions to an individual Board member in relation to the disciplinary process following the suspension of the Principal. It appears that the Board invested authority in a single board member (who is not the chair) to decide whether there was sufficient evidence for the Board to proceed to formal disciplinary action in relation to the suspension of the Principal and that single member made this decision. This would appear to be contrary to section 12(4) of the 1992 Act.

(e) There appears to have been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. In the current year, individual students were unwilling to put themselves forward for election as Board members to replace the outgoing student members, and the planned election was postponed. Student board membership is integral to the proper functioning of a board of management. Paragraph 3A(2)(e) of Schedule 2 to the 1992 Act requires the board to include two student members nominated by the

students' association. It is therefore clearly important to college governance that there is a functioning students' association able to make these appointments. Students' associations cannot function without the active participation of students. The fact that no student stood for election in academic year 2014/15 has made it more difficult to ensure the continued operation of the College's Students' Association from the start of academic year 2015/16. The full impact of this is not yet known. (See also paragraph 6(c) above).

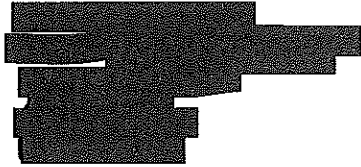
9. The Scottish Ministers consider that in light of the above, the Board may have mismanaged its affairs in terms of section 24(1)(a)(v) of the 1992 Act.

Scottish Government
September 2015



Cabinet Secretary for Education and Lifelong Learning
Angela Constance MSP

F/T: 0300 244 4000
E: scottish.ministers@scotland.gsi.gov.uk



9 September 2015

Dear [REDACTED]

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("THE 1992 ACT")
BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE ("THE BOARD")**

I refer to previous correspondence including the Board's solicitors' letters of 7 August 2015 and 3 September 2015.

Having considered this and other relevant correspondence and material, it seems to me that the Board may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs. The reasons for this are set out in the attached Annex.

Please note that in light of the concerns expressed by the Board about the SFC report sent to the Scottish Ministers under section 7C(8) of the 2005 Act, that report has not informed Ministers' consideration of this matter. You should not infer from this any view of the Scottish Ministers on this report.

I note that despite repeated requests for information, some information requested of the Board (including approved minutes of all relevant Board meetings) has not yet been provided. I note, but do not necessarily accept, the explanations set out in letters from Brodies dated 17 July and 7 August for not providing some of this information. While I am grateful for sight of the report, *Investigation into the Processes and Expenditure Associated with Legal and Management and Consultancy Services*, I note that it does not contain all the information we sought in relation to the commissioning of services.

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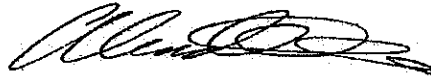
Before I reach any conclusion, I request your comments on the matters set out in the Annex, together with any proposals for Board action if you consider that is warranted. Please attach, where appropriate, any supporting material.

Given the nature of the issues set out in the Annex and representations which have been made to me, and in particular my concern over the effects of the current position on a new intake of students at the College, I require your response as a matter of urgency. I therefore seek your comments no later than 1700 on Monday 14 September.

If you and any other Board members wish to meet me before 14 September 2015 to discuss matters, please contact my diary secretary, [REDACTED] at Cabsecell@scotland.gsi.gov.uk to arrange this.

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ANGELA CONSTANCE

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- a) repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") (section 24(1)(a)(ii) of the 1992 Act);
- b) mismanaging their affairs (section 24(1)(a)(v) of the 1992 Act).

2. The nine key principles of public life are set out in paragraph A.2 of the *Code of Good Governance for Scotland's Colleges*¹ ("the Code") and include "accountability and stewardship, openness and leadership".

3. Paragraph D.1 of the Code provides that the chair of the board is responsible for the leadership of the board and ensuring its effectiveness in all aspects of its role. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members and fostering constructive relationships between board members. Paragraph D.12 provides that the chair and the principal have a shared responsibility to provide leadership for the college.

4. Paragraph D.3 of the Code provides that the whole board is collectively responsible and accountable for all board decisions. Paragraph A.3 of the Code provides that board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves. Paragraph A.5 provides that the board provides overall strategic leadership of the college.

Potential Repeated Breaches of Terms and Conditions of SFC Grant (section 24(1)(a)(ii) of the 1992 Act)

5. Compliance with the Code and the *Financial Memorandum with Fundable Bodies in the College Sector*² ("the Financial Memorandum") are terms and conditions of the grant made by the Scottish Funding Council ("the SFC") to the Board under section 12 of the 2005 Act.

6. The Scottish Ministers consider that there may be failures by the Board in the following respects:

- (i) *Governance:*

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²http://www.sfc.ac.uk/web/FILES/Guidance_Governance/Financial_Memorandum_with_the_College_Sector_-_1_December_2014.pdf

(a) It appears that there has been no Principal in place for over six months. Paragraph D.6 of the Code underlines the importance of this role by requiring the Board to appoint a Principal as chief executive of the college. However, during the period of the Principal's suspension, it appears that the Deputy Principal has not assumed the powers of Principal as foreseen under paragraph 14 of Appendix 4 to the College's document entitled *Constitution and Articles of Governance of the Board of Management of Glasgow Clyde College* ("the College document"). In these circumstances, there appears to be no clarity as to who is to carry out the role of Principal in relation to the functions and duties set out in the Code and Financial Memorandum.

(b) Paragraph C.3 of the Code provides that the Board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely. Ministers consider that there may be a number of failings in relation to Board decision-making processes. It appears that:

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Scottish Government
September 2015



Cabinet Secretary for Education and Lifelong Learning
Angela Constance MSP

F/T: 0300 244 4000
E: scottish.ministers@scotland.gsi.gov.uk



9 September 2015

Dear [REDACTED]

**SECTION 24 OF THE FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992
("THE 1992 ACT")
BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE ("THE BOARD")**

I refer to previous correspondence including the Board's solicitors' letters of 7 August 2015 and 3 September 2015.

Having considered this and other relevant correspondence and material, it seems to me that the Board may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs. The reasons for this are set out in the attached Annex.

Please note that in light of the concerns expressed by the Board about the SFC report sent to the Scottish Ministers under section 7C(8) of the 2005 Act, that report has not informed Ministers' consideration of this matter. You should not infer from this any view of the Scottish Ministers on this report.

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I am considering what action requires to be taken to address the issues. One possible outcome is Scottish Ministers making an order under section 24 of the 1992 Act to remove the chair and other board members.

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Before I reach any conclusion, I request your comments on the matters set out in the Annex, together with any proposals for Board action if you consider that is warranted. Please attach, where appropriate, any supporting material.

Given the nature of the issues set out in the Annex and representations which have been made to me, and in particular my concern over the effects of the current position on a new intake of students at the College, I require your response as a matter of urgency. I therefore seek your comments no later than 1700 on Monday 14 September.

If you and any other Board members wish to meet me before 14 September 2015 to discuss matters, please contact my diary secretary, [REDACTED] at Cabsecell@scotland.gsi.gov.uk to arrange this.

I am writing in similar terms to the other members of the Board (excluding the Principal).

I have written in similar terms to the Board's Chair and have copied that letter and its Annex to: the College's Deputy Principal, the Interim Chair of the Glasgow Colleges' Regional Board (GCRB); the Chair of the Scottish Funding Council; and the Board's solicitors, Brodies.



ANGELA CONSTANCE

Reasons for considering that the Board of Management of Glasgow Clyde College ("the Board") may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs

1. The Scottish Ministers consider that the Board may be failing in relation to the following grounds of section 24(1)(a) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"):

- a) repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") (section 24(1)(a)(ii) of the 1992 Act);
- b) mismanaging their affairs (section 24(1)(a)(v) of the 1992 Act).

2. The nine key principles of public life are set out in paragraph A.2 of the *Code of Good Governance for Scotland's Colleges*¹ ("the Code") and include "accountability and stewardship, openness and leadership".

3. Paragraph D.1 of the Code provides that the chair of the board is responsible for the leadership of the board and ensuring its effectiveness in all aspects of its role. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members and fostering constructive relationships between board members. Paragraph D.12 provides that the chair and the principal have a shared responsibility to provide leadership for the college.

4. Paragraph D.3 of the Code provides that the whole board is collectively responsible and accountable for all board decisions. Paragraph A.3 of the Code provides that board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves. Paragraph A.5 provides that the board provides overall strategic leadership of the college.

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5. Compliance with the Code and the *Financial Memorandum with Fundable Bodies in the College Sector*² ("the Financial Memorandum") are terms and conditions of the grant made by the Scottish Funding Council ("the SFC") to the Board under section 12 of the 2005 Act.

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**Scottish Government
September 2015**

Cabinet Secretary for Education and Lifelong Learning
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9 September 2015

Dear 

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("THE 1992 ACT")
BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE ("THE BOARD")**

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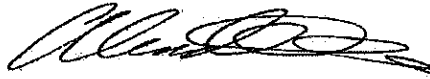
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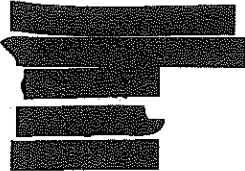
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I am considering what action requires to be taken to address the issues. One possible outcome is Scottish Ministers making an order under section 24 of the 1992 Act to remove the chair and other board members.

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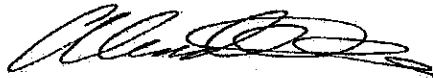
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Given the nature of the issues set out in the Annex and representations which have been made to me, and in particular my concern over the effects of the current position on a new intake of students at the College, I require your response as a matter of urgency. I therefore seek your comments no later than 1700 on Monday 14 September.

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ANGELA CONSTANCE

Reasons for considering that the Board of Management of Glasgow Clyde College ("the Board") may have committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and may have mismanaged its affairs

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- b) mismanaging their affairs (section 24(1)(a)(v) of the 1992 Act).

2. The nine key principles of public life are set out in paragraph A.2 of the *Code of Good Governance for Scotland's Colleges*¹ ("the Code") and include "accountability and stewardship, openness and leadership".

3. Paragraph D.1 of the Code provides that the chair of the board is responsible for the leadership of the board and ensuring its effectiveness in all aspects of its role. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members and fostering constructive relationships between board members. Paragraph D.12 provides that the chair and the principal have a shared responsibility to provide leadership for the college.

4. Paragraph D.3 of the Code provides that the whole board is collectively responsible and accountable for all board decisions. Paragraph A.3 of the Code provides that board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves. Paragraph A.5 provides that the board provides overall strategic leadership of the college.

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5. Compliance with the Code and the *Financial Memorandum with Fundable Bodies in the College Sector*² ("the Financial Memorandum") are terms and conditions of the grant made by the Scottish Funding Council ("the SFC") to the Board under section 12 of the 2005 Act.

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(a) It appears that there has been no Principal in place for over six months. Paragraph D.6 of the Code underlines the importance of this role by requiring the Board to appoint a Principal as chief executive of the college. However, during the period of the Principal's suspension, it appears that the Deputy Principal has not assumed the powers of Principal as foreseen under paragraph 14 of Appendix 4 to the College's document entitled *Constitution and Articles of Governance of the Board of Management of Glasgow Clyde College* ("the College document"). In these circumstances, there appears to be no clarity as to who is to carry out the role of Principal in relation to the functions and duties set out in the Code and Financial Memorandum.

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(c) There appears to have been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. This appears to have been prompted in part by the exclusion of the student members from a Board meeting on 23 February 2015 which in turn appears to have resulted from a misreading of a provision of the College's constitutional document (the provision reflected a statutory provision which was repealed in 2003 and was not in compliance with the Code). Paragraph B.1 of the Code provides the following in relation to student engagement: *"The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions"*. Paragraph B.2 provides that *"the board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience."* (See paragraph 8(e) below for further discussion.)

(ii) Financial requirements in relation to delegated financial limits to expenditure

(d) It appears to Ministers that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. Appendix A to Part 3 of the Financial Memorandum sets a limit of such expenditure at £25,000. Any such expenditure incurred beyond that requires the prior written approval of the SFC. The total cost of the action incurred by the Board was significantly more than three times this limit.

7. The Scottish Ministers consider that, in light of the above, the Board may have committed repeated breaches of the terms and conditions of the grant made to the Board under section 12 of the 2005 Act, in terms of section 24(1)(a)(ii) of the 1992 Act.

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8. The Scottish Ministers consider there may be failures by the Board in the following respects; some of these matters are matters that may also constitute a breach of terms and conditions of SFC grant (as noted above):

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students' association. It is therefore clearly important to college governance that there is a functioning students' association able to make these appointments. Students' associations cannot function without the active participation of students. The fact that no student stood for election in academic year 2014/15 has made it more difficult to ensure the continued operation of the College's Students' Association from the start of academic year 2015/16. The full impact of this is not yet known. (See also paragraph 6(c) above).

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Scottish Government
September 2015



Cabinet Secretary for Education and Lifelong Learning
Angela Constance MSP

F/T: 0300 244 4000
E: scottish.ministers@scotland.gsi.gov.uk



[REDACTED]
Scottish Credit and Qualifications Framework
39 St Vincent Place
Glasgow
G1 2ER



9 September 2015

Dear [REDACTED]

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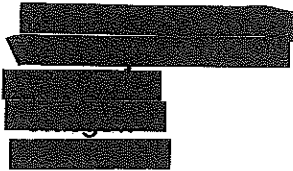
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**Scottish Government
September 2015**

Cabinet Secretary for Education and Lifelong Learning
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F/T: 0300 244 4000
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LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

9 September 2015

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- Minutes of meetings were not routinely approved at the next available meeting, and appear often to have been held over to the quarterly ordinary meetings. The Board was therefore at risk at some meetings of having no agreed common understanding of the discussion and agreement at its previous meeting. Without such an understanding the Board appears to have impaired its ability properly to inform itself.
- The arrangements to cover the functions of the Board Secretary appear inadequate. The post of Board Secretary is currently vacant at what is a crucial time for the College, given the suspension of the Principal. Additionally, when the previous Board Secretary was in post she was not present at certain meetings that considered governance matters. This is particularly important given the Board Secretary's role to advise and support the Board, Chair and executive team in relation to governance matters, as set out paragraphs D.14 and D.15 of the Code.

(c) There appears to have been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. This appears to have been prompted in part by the exclusion of the student members from a Board meeting on 23 February 2015 which in turn appears to have resulted from a misreading of a provision of the College's constitutional document (the provision reflected a statutory provision which was repealed in 2003 and was not in compliance with the Code). Paragraph B.1 of the Code provides the following in relation to student engagement: "*The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions*". Paragraph B.2 provides that "*the board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience.*" (See paragraph 8(e) below for further discussion.)

(ii) Financial requirements in relation to delegated financial limits to expenditure

(d) It appears to Ministers that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. Appendix A to Part 3 of the Financial Memorandum sets a limit of such expenditure at £25,000. Any such expenditure incurred beyond that requires the prior written approval of the SFC. The total cost of the action incurred by the Board was significantly more than three times this limit.

7. The Scottish Ministers consider that, in light of the above, the Board may have committed repeated breaches of the terms and conditions of the grant made to the Board under section 12 of the 2005 Act, in terms of section 24(1)(a)(ii) of the 1992 Act.

Potential Mismanagement of Affairs (section 24(1)(a)(v) of the 1992 act)

8. The Scottish Ministers consider there may be failures by the Board in the following respects; some of these matters are matters that may also constitute a breach of terms and conditions of SFC grant (as noted above):

(a) It appears that there has been no Principal in place for over six months and, in the absence of the Principal or an acting Principal, there does not appear to be any clarity as to who is to carry out the role of Principal in relation to the functions and duties set out in the Code and Financial Memorandum. The apparent absence, at a general level, of a well-managed disciplinary process has contributed to the problems of discontinuity of leadership following the Principal's suspension. (See paragraph 6(i)(a) above for further discussion.)

(b) It appears that governance concerns raised by the Principal by email dated 18 February 2015 immediately prior to her suspension have not been considered by the Board. This email advised the Board that the Principal intended to seek advice from the College's solicitors on "*governance issues in relation to propriety, processes, procedure, conflicts of interest and behaviours*". The Board minutes record no Board discussion of the concerns raised by the Principal in her email. In particular, there is no record of any discussion about seeking further details of the Principal's concerns.

(c) The Board have apparently failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. (See paragraph 6(d) above for fuller discussion.)

(d) There appears to have been improper delegation of functions to an individual Board member in relation to the disciplinary process following the suspension of the Principal. It appears that the Board invested authority in a single board member (who is not the chair) to decide whether there was sufficient evidence for the Board to proceed to formal disciplinary action in relation to the suspension of the Principal and that single member made this decision. This would appear to be contrary to section 12(4) of the 1992 Act.

(e) There appears to have been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. In the current year, individual students were unwilling to put themselves forward for election as Board members to replace the outgoing student members, and the planned election was postponed. Student board membership is integral to the proper functioning of a board of management. Paragraph 3A(2)(e) of Schedule 2 to the 1992 Act requires the board to include two student members nominated by the

students' association. It is therefore clearly important to college governance that there is a functioning students' association able to make these appointments. Students' associations cannot function without the active participation of students. The fact that no student stood for election in academic year 2014/15 has made it more difficult to ensure the continued operation of the College's Students' Association from the start of academic year 2015/16. The full impact of this is not yet known. (See also paragraph 6(c) above).

9. The Scottish Ministers consider that in light of the above, the Board may have mismanaged its affairs in terms of section 24(1)(a)(v) of the 1992 Act.

**Scottish Government
September 2015**