

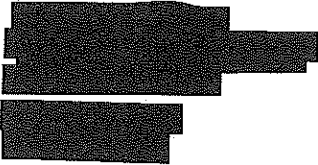
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9. The Scottish Ministers consider that in light of the above, the Board may have mismanaged its affairs in terms of section 24(1)(a)(v) of the 1992 Act.

**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]

**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.

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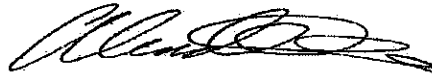
Before I reach any conclusion, I request your comments on the matters set out in the Annex, together with any proposals for Board action if you consider that is warranted. Please attach, where appropriate, any supporting material.

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.

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:**

¹[http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014_Goodpracticeincollegegovernance/Code of Good Governance for Scotland's Colleges.pdf](http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014_Goodpracticeincollegegovernance/Code%20of%20Good%20Governance%20for%20Scotland's%20Colleges.pdf)

²[http://www.sfc.ac.uk/web/FILES/Guidance Governance/Financial Memorandum with the College Sector - 1 December 2014.pdf](http://www.sfc.ac.uk/web/FILES/Guidance%20Governance/Financial%20Memorandum%20with%20the%20College%20Sector%20-%201%20December%202014.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).

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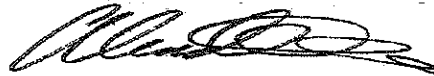
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(ii) *Financial requirements in relation to delegated financial limits to expenditure*

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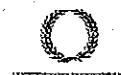
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students' association. It is therefore clearly important to college governance that there is a functioning students' association able to make these appointments. Students' associations cannot function without the active participation of students. The 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).

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



3 July 2015

Dear 

SFC REPORT OF REVIEW INTO GOVERNANCE AND MANAGEMENT OF GLASGOW CLYDE COLLEGE

1. The Scottish Funding Council ("the SFC") has provided to the Scottish Ministers its report of its review into aspects of the governance and management of the Board of Management of Glasgow Clyde College ("the Board") under section 7C(7) of the Further and Higher Education (Scotland) Act 2005. I attach a copy of the SFC's report and its accompanying document **Report of Fact Finding Exercise to Support the Scottish Funding Council's Review of Processes, Procedures and Governance at Glasgow Clyde College**¹.

Confidential Nature of Report

2. I would stress that under the Code of Conduct for Board Members adopted by the College, you must always respect the confidential nature of information and comply with a requirement to keep such information private. The SFC's report is sent to you in strictest confidence and must not be given to anyone else.

SFC Findings, Recommendations and Possible Outcomes

3. The SFC finds that the Board has mismanaged its affairs and recommends as an appropriate response, the Scottish Ministers exercise their powers under section 24 of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act") to remove the chair of the Board. Under that section (reproduced at the Annex for ease of reference) the Scottish Ministers may, by order, remove any or all members of the Board (except the principal).

¹ The SFC has redacted certain parts of its report and its accompanying document. The reasons for this are explained in the SFC paper which is also attached.

Such an order usually requires to be laid before Parliament for 28 sitting days before coming into force. However, this rule can be breached if Ministers consider that necessary.

4. While the SFC's report recommends the removal of the chair as a proportionate response to its perceived failure of the Board, this is but one possible response if Ministers conclude that there has been board failure on any of the grounds set out in section 24(1) of the 1992 Act, having considered the SFC's report, your comments and all other relevant material. Other possible recourses include:

- the removal of all board members (other than the principal); or a subgroup of board members, with or without including the chair
- implementing a board development plan (as an alternative or in addition to the above).

5. I should add that the SFC recommends that the Scottish Government should consider *suspending* the chair of the Board, pending the completion of a formal process of removal. I can advise that the Scottish Ministers have no powers to suspend the chair of the Board.

Ministers' Consideration

6. Ministers are not obliged to seek your views on matters such as this. With that said, before Ministers reach any conclusion on what action to take, if any, I should welcome your comments on the SFC's report, including on its findings and recommendations. Please attach, where appropriate, any supporting material. I stress again this report and its accompanying document are given to you in strictest confidence.

7. In framing any comments, I should advise that among the matters Ministers will consider are whether the Board:

- a) failed or is failing to meet any of the provisions in the SFC **Financial Memorandum with Fundable Bodies in the College Sector²** or the **Code of Good Governance for Scotland's Colleges³**.
- b) permitted or is permitting its chair to act in an executive capacity.
- c) failed or is failing to conduct its affairs properly, including by not giving reasonable notice for meetings, not preparing agendas in advance or not properly recording discussions or decisions.
- d) failed to constitute properly a Disciplinary Committee.

8. I should welcome your comments by 17 July 2015.

9. In addition to the information I required by 7 July 2015 in my letter of 30 June 2015 to the Board chair, I also request, under section 12(6) of the 1992 Act, that the Board provide to us the following information by 17 July 2015, as that information is required in order for the Scottish Ministers to exercise their powers and perform their duties under Part 1 of that Act –

²[http://www.sfc.ac.uk/web/FILES/Guidance Governance/Financial Memorandum with the College Sector - 1 December 2014.pdf](http://www.sfc.ac.uk/web/FILES/Guidance%20Governance/Financial%20Memorandum%20with%20the%20College%20Sector%20-%201%20December%202014.pdf)

³[http://www.sfc.ac.uk/web/FILES/GUI SFCGD182014 Goodpracticeincollegegovernance/Code of Good Governance for Scotlands Colleges.pdf](http://www.sfc.ac.uk/web/FILES/GUI%20SFCGD182014%20Goodpracticeincollegegovernance/Code%20of%20Good%20Governance%20for%20Scotlands%20Colleges.pdf)

- a) A copy of the agenda of every meeting of the Board held in 2015 up to the date of this letter
- b) A copy of the minute (or draft minute, where appropriate) of every meeting of the Board held in 2015 up to the date of this letter.
- c) A copy of any document concerning the commissioning of any service in 2015 up to the date of this letter by the chair for either (a) himself in his capacity as chair or (b) for the Board.

10. I am writing in similar terms to other members of the Board. I am also copying this letter and its attachments to the Interim Chair of the Glasgow Colleges' Regional Board (GCRB) for information. For the avoidance of doubt, I have advised the GCRB Interim Chair that she can circulate in hard copy the SFC report and its accompanying document to other members of the GCRB, but only in the strictest of confidence.

Yours sincerely



AILEEN McKECHNIE
Director of Advanced Learning and Science

SECTION 24 OF THE FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992

24 (1) This section applies where -

(a) it appears to the Scottish Ministers that the board of management of any college of further education -

(i) have committed or are committing a serious breach of any term or condition of a grant made to them under section 12 or 12B of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act");

(ii) have committed or are committing repeated breaches of such terms or conditions;

(iii) have failed, or are failing, to provide or secure the provision of education of such standard as the Scottish Ministers consider appropriate;

(iv) have failed, or are failing, to discharge any of their duties properly; or

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Advanced Learning and Science Directorate
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T: 0300 244 1264
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██████████
Scottish Credit and Qualifications Framework
39 St Vincent Place
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G1 2ER



3 July 2015

Dear ██████████

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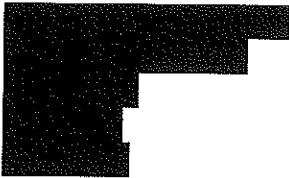
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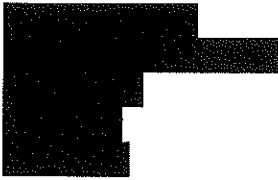
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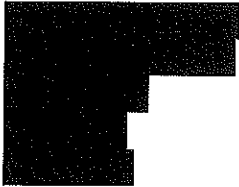
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9. In addition to the information I required by 7 July 2015 in my letter of 30 June 2015 to the Board chair, I also request, under section 12(6) of the 1992 Act, that the Board provide to us the following information by 17 July 2015, as that information is required in order for the Scottish Ministers to exercise their powers and perform their duties under Part 1 of that Act –

²⁹[http://www.sfc.ac.uk/web/FILES/Guidance Governance/Financial Memorandum with the College Sector - 1 December 2014.pdf](http://www.sfc.ac.uk/web/FILES/Guidance%20Governance/Financial%20Memorandum%20with%20the%20College%20Sector%20-%201%20December%202014.pdf)

³⁰[http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014 Goodpracticeincollegedgovernance/Code of Good Governance for Scotland's Colleges.pdf](http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014_Goodpracticeincollegedgovernance/Code%20of%20Good%20Governance%20for%20Scotland's%20Colleges.pdf)

- bb) A copy of the agenda of every meeting of the Board held in 2015 up to the date of this letter
- cc) A copy of the minute (or draft minute, where appropriate) of every meeting of the Board held in 2015 up to the date of this letter.
- dd) A copy of any document concerning the commissioning of any service in 2015 up to the date of this letter by the chair for either (a) himself in his capacity as chair or (b) for the Board.

10. I am writing in similar terms to other members of the Board. I am also copying this letter and its attachments to the Interim Chair of the Glasgow Colleges' Regional Board (GCRB) for information. For the avoidance of doubt, I have advised the GCRB Interim Chair that she can circulate in hard copy the SFC report and its accompanying document to other members of the GCRB, but only in the strictest of confidence.

Yours sincerely



AILEEN McKECHNIE
Director of Advanced Learning and Science