



Code of Conduct

1. Introduction

- 1.1 This Code is intended as a guide for Corporation Members, to indicate the standards of conduct which are expected of them, to enable them to understand their legal duties and to assist them both in carrying out their duties and in their relationship with the Corporation and the Principal. This Code is therefore aimed at promoting effective and well informed governance, and is not intended to be a definitive or authoritative statement of the law.
- 1.2 In addition to this Code, Members are recommended to familiarise themselves with the following which will be supplied to them on appointment:-
- (a) the Instrument of Government;
 - (b) the Articles of Government;
 - (c) the NCG's Strategic Development Implementation Plan; and
 - (d) the Financial Memorandum entered into by NCG with the SFA.

Members are also recommended to familiarise themselves with the briefing about governance provided by the Learning and Skills Improvement Service at www.excellencegateway.org.uk

Appendices 1, 2 and 3 are attached to this Code for easy reference. They should not be read as an exhaustive statement of duties, powers or provisions, and Members should refer to the source documents listed above. If a Member is in doubt about the provisions of any of these documents, the Clerk should be consulted and, if necessary, legal advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Member of a corporate body and for any act or omission in that capacity rests with the individual Member.

- 1.3 This Code applies to every committee, working party or other subsidiary body of the Corporation to which Members may be appointed.
- 1.4 Acceptance of appointment as a Member of the Corporation will be construed as acceptance of this Code.
- 1.5 Without in any way limiting any of the specific provisions of this Code Members should, in all their dealings with and for the Corporation, know,

understand and adhere to the seven principles of public life; namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

2. Definitions

In this Code “NCG” is a trading name for Newcastle College Corporation, “Member”, “Chairman”, “Principal” and “Clerk” mean respectively the Member, Chairman, Chief Executive of NCG and Clerk to the Corporation for the time being of the Corporation. “SFA” means the Skills Funding Agency. All other definitions have the same meanings as given in the Instrument and Articles of Government, and words importing one gender will import all genders.

3. Powers

Members are responsible for taking decisions which are within the powers given to the Corporation by Sections 18 and 19 of the Further and Higher Education Act 1992. A summary of those powers is set out in Appendix 1. If a Member thinks that the Corporation is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk for advice.

4. Duties

4.1 Members owe a fiduciary duty to the NCG. This means that they should show the NCG the highest loyalty and, at all times, act in good faith in the best interests of the NCG. Each Member should act honestly, diligently and, subject to the provisions appearing in paragraph 7 of this Code relating to collective responsibility, independently.

4.2 Whatever decisions Members take at meetings of the Corporation and its committees must be for the benefit of the NCG as a whole and not for any improper purpose, or for personal motive. The “benefit of the NCG” can be taken to mean, first and foremost, the interests of its students and other users of NCG services, and the safeguarding of public funds. Members should have regard to those interests, and must not allow any sectional interest to take precedence. In particular, in accordance with clause 12(6) of the Instrument of Government, Members are not appointed as “representatives” or “delegates” of any outside body, and may not lawfully be bound by mandates given by others.

It is recognised that elected members are not representatives but nevertheless have a relationship with their electorate. It is also recognised that this relationship may lead to conflict. It is expected that all parties would put the interests of the NCG first and would do their utmost to ensure that conflict did not arise. In the event of failure, a decision would need to be taken in relation to the circumstances pertaining at the time.

- 4.3 Members must observe the provisions of the Instrument and Articles of Government (which are the Corporation's governing documents and are laid down by law) and in particular the responsibilities given to the Corporation by Article 3(1) of the Articles of Government. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out in Appendix 2.
- 4.4 Members should also have regard to the different, but complementary, responsibilities given by the Articles of Government to the Principal as the Chief Executive of NCG. Whereas it is the Corporation's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior post holders, it is the Principal's role to implement the Corporation's decisions, and to manage the NCG's affairs within the budgets and framework fixed by the Corporation which includes the preparation of annual estimates of income and expenditure for consideration by the Corporation.

By virtue of the Financial Memorandum between the SFA and the NCG, the Principal is designated as the accounting officer of the public funds made available to the NCG. The duties of an accounting officer are onerous and include a responsibility for ensuring that public funds are only spent on the purposes for which they are given and in compliance with any terms and conditions attached to them. These terms and conditions include those set out in the Financial Memorandum.

It is the responsibility of the Principal to ensure (so far as possible) that the Corporation at all times acts in a way which is compatible with the Financial Memorandum.

Members should work together so that the Corporation and the Principal perform their respective roles effectively.

- 4.5 Members are collectively responsible for observing the duties set out in the Financial Memorandum which the NCG has entered into with the SFA as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum is set out in Appendix 3.
- 4.6 Although the SFA is the provider of significant funds to the NCG, Members should note that they are also responsible for the proper use of income derived from other funding bodies, such as the Higher Education Funding Council for England (HEFCE), and the European Union (EU).

5. Skill, Care, Diligence and Fairness

A Member should in all his or her work for the NCG exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Members act as agents of the Corporation, for

example, when functions are delegated to a Committee of the Corporation or the Chairman.

The Members are under an obligation when taking decisions to act reasonably with regard to natural justice. This is particularly relevant if the Corporation is required to take difficult decisions quickly which might mean that essential procedural safeguards could be overlooked or a full consideration curtailed. Decisions of the Corporation can be the subject of legal challenge in the courts and, in personnel issues, subject to scrutiny in Employment Tribunals.

6. Conflicts of Interest

- 6.1 Like other persons who owe a fiduciary duty, Members should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.
- 6.2 Members are reminded that under clause 11(1) of the Instrument of Government they must not take or hold any interest in any of the NCG's properties or receive any remuneration (as distinct from payment of travelling or subsistence allowances) for their services (save as a member of the NCG's staff) without the written approval of the Secretary of State for Education & Skills.
- 6.3 Members are also reminded that under clause 11 of the Instrument of Government they must disclose to the Corporation any financial interest which they have, or may have, in:-
 - (a) the supply of work or goods to or for the purpose of the NCG;
 - (b) any contract or proposed contract concerning the NCG; or
 - (c) any other matter relating to the NCG.
- 6.4 However, an interest does not have to be financial for the purposes of disclosure. If it is likely or, if publicly known, perceived as being likely to interfere with the exercise of a Member's independent judgement, then the interest, financial or otherwise, should:-
 - (a) be reported to the Clerk; and
 - (b) be fully disclosed to the Corporation before the matter giving rise to the interest is considered.

Members should withdraw from the part of the meeting at which the matter giving rise to the interest is considered, and on no account may vote nor be counted in the quorum present at such meeting in relation to the matter.

- 6.5 Members must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity. Any offer or any such offer or receipt of gifts, hospitality or benefits should immediately be reported to the Clerk.
- 6.6 The Clerk will maintain a Register of Members' Interests which will be open for public inspection. Members should routinely disclose to the Corporation all business interests, financial or otherwise, which they or their spouses, children or other close relatives may have, and the Clerk will enter such interests on the Register. Members must inform the Clerk whenever their circumstances change and interests are acquired or lost.
- 6.7 There are, in addition, further rules which govern the extent to which Members who are also members of staff or student members can vote or participate in meetings of the Corporation (clauses 14(5), (6), (7), (8) and (9) of the Instrument of Government).

7. Collective Responsibility

- 7.1 The Corporation operates by Members taking majority decisions at quorate meetings. Therefore a decision of the Corporation, even when it is not unanimous, is a decision taken by the Member collectively and each individual Member has a duty to stand by it.
- 7.2 If a Member disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Member strongly disagrees, he or she should consult the Chairman and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Member should refer to clause 12(4) of the Instrument of Government as to the powers to call a special meeting and, if appropriate, exercise them, requesting the Clerk to circulate the Member's views in advance to the other Members. Alternatively, the Member may decide to offer his or her resignation from office, after consulting the Chairman.

8. Confidentiality

- 8.1 Because of the Corporation's public accountability, the Member should ensure that, as a general principle, students and staff of the NCG have free access to information about the proceedings of the Corporation. Accordingly, in accordance with clause 17 of the Instrument of Government, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved by the Chairman.
- 8.2 There will be occasions when the record of discussion and decisions will not be made available for public inspection, for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in a confidential

folder by the Clerk and will be circulated in confidence to Members and must not be divulged by any Member to any person. However, Staff and Student Members may not have access to minutes dealing with matters in respect of which they are required to withdraw from meetings under clauses 14(5), 14(8) or 14(9) of the Instrument of Government.

- 8.3 It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Members with a shared corporate responsibility for decisions. Members should keep confidential any matter which, by reason of its nature, the Chairman or the Members or the chairman of members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.
- 8.4 Members should not make statements to the press or media or at any public meeting (i.e. any meeting with individuals who are not members of the Corporation) relating to the proceedings of the Corporation or its committees without first having obtained the approval of the Chairman or, in his or her absence, the Vice Chairman. It is unethical for Members publicly to criticise, canvass or reveal the view of other Members which have been expressed at meetings of the Corporation or its committees.

9. Attendance at Meetings

- 9.1 A high level of attendance at meetings of the Corporation is required so that Members can perform their functions properly.

10. Governance Development

- 10.1 Members are encouraged to obtain a thorough grounding in their duties and responsibilities by participating in the Corporation's induction and training programmes, including regular refresher workshops.
- 10.2 In order to promote more effective governance, Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing process of self evaluation.

11. Default

In the event of mismanagement or breach of duty, the Secretary of State for Business, Innovation and Skills may intervene in the Corporation and may remove all or some of the Members and/or amend the Instrument of Government. The Secretary of State also has an overriding power to direct the way the Corporation should act.

Appendix 1

Summary of The Powers of The Corporation

Principal Powers

Under Section 18 of the Further and Higher Education Act 1992 a further education corporation may:-

- (a) provide further and higher education; and
- (b) provide secondary education to persons who would, if they were pupils at a school, be in the fourth key stage;
- (c) provide secondary education (as defined in Section 2(2B) of the Education Act 1996);
- (d) participate in the provision of secondary education at a school; and
- (e) supply goods or services in connection with the provision of education.

These powers are known as the Corporation's "principal powers". A further education corporation may not provide education of the kind listed in (b), (c) or (d) above unless they have consulted with the local education authorities.

Supplementary Powers

Under Section 19 of the 1992 Act a further education corporation may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers conferred by Section 18 of the Act, including in particular the following:-

- (a) the provision of facilities necessary or desirable in connection with its principal powers including residential accommodation, recreational facilities for students and staff, and facilities to meet the needs of students having learning difficulties;
- (b) the power to acquire and dispose of land and other property;
- (c) the power to enter into contracts, including in particular:-
 - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers; and
 - (ii) contracts with respect of carrying on by the Corporation of any such activities;
- (d) subscribe for or otherwise acquire shares in or securities of a company;

- (e) the power to borrow such sums as the Corporation think fit for the purposes of carrying on any activities they have power to carry on or to meet any liability transferred to them under Sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage charge of other security in respect of any land or other property of the Corporation. This power may not be exercised without the consent of the SFA, which may give its consent for a particular borrowing or for borrowing of a particular class;
- (f) power to invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on;
- (g) power to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
- (h) power to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.

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

Appendix 2

Summary Of Responsibilities Of Corporation Members

Responsibilities

Under Article 3(1) of the Articles of Government the Corporation shall be responsible for:-

- (a) the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
- (b) approving the quality strategy of the institution;
- (c) the effective and efficient use of resources, the solvency of the institution and the Corporation and safeguarding their assets;
- (d) approving annual estimates of income and expenditure;
- (d) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk (including where the Clerk is, or is to be appointed as, a member of staff, the Clerk's appointment, grading, suspension, dismissal and determination of pay in the capacity of a member of staff); and
- (e) setting a framework for the pay and conditions of service of all other staff.

“Senior Post” means the post of Principal and such other posts as the Members determine for the purposes of the Articles.

Responsibilities which must not be delegated

Articles 9 and 10 of the Articles of Government prohibits the Corporation from delegating as follows:-

- (a) the determination of the educational character and mission of the institution;
- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets;
- (d) the appointment of the Principal or holder of a senior post;
- (e) the appointment of the Clerk (including where the clerk is, or is to be, appointed as a member of staff, his appointment or (save in one limited circumstance) dismissal in his capacity as a member of staff); and

- (f) the modification or revocation of the Articles of Government;
- (g) the consideration of the case for dismissal and the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation.

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

Appendix 3

Summary of Main Provisions of The Financial Memorandum of The Learning And Skills Council

The Financial Memorandum sets out the financial relationship between the Skills Funding Agency (SFA) and the NCG. The document specifies terms and conditions on which public funds will be paid by the SFA to the NCG.

The Memorandum is in two parts. Part 1 sets out the general terms and conditions applicable to all Colleges. Part 2 is specific to NCG and is subject to annual notification to the NCG by the SFA.

The main points to note in relation to Part 1 are as follows:-

(a) Duties and Responsibilities

The Corporation is responsible for:-

- ensuring that the NCG's funds are only used in accordance with the governing body's powers under the Further and Higher Education Act, the Learning and Skills Act, the Instrument and Articles of Government, the financial memorandum and any other conditions the SFA may from time to time impose.

The Principal is responsible for:-

- advising the governing body if, in his or her opinion, any action, policy or inaction does not satisfy the financial memorandum and, if the governing body decides to proceed despite the advice of the principal, to notify the Chief Executive of the Skills Funding Agency of the position.

The Clerk is responsible for:-

- the administrative support for the governing body's work, for advising on proper procedure and for intervening when the Clerk considers that the governing body is acting inappropriately or beyond its powers (Note: a procedure for the resolution of difficulties is included in the Standing Orders).

(b) Acquisition and Disposal of Land or Buildings

In general, the Corporation must consult the SFA on all transactions affecting land or buildings involving capital sums of more than £1.5 million or 5% of the College's annual revenue, whichever is the lower.

If the NCG is proposing to dispose of or lease or rent land and buildings which have been acquired by public funds, the SFA may require the NCG to surrender some or all of the proceeds. In any event, the SFA

would normally expect Colleges to apply the proceeds of asset sales to investment in fixed assets.

(c) Borrowing and Leasing

Under Section 19 of the Further and Higher Education Act 1992 (see Appendix 1) the NCG must obtain the consent of the SFA to any secured or unsecured borrowing proposal. The SFA has given a general consent to certain categories of borrowing.

Therefore, the NCG may enter into unsecured borrowing at any time without reference to the SFA provided that such borrowing does not exceed 5% of annual revenue as estimated in a manner prescribed by the SFA. However, the NCG must inform the SFA if the total of unsecured borrowing at any time exceed 5% and it must obtain the prior written consent of the SFA if it proposes that the level of unsecured borrowing shall exceed 5%.

The NCG may borrow up to a cumulative maximum of 5% of its annual revenue on a secured basis in order to finance the construction or purchase of buildings where those buildings only are offered as security.

(d) Accounts and Financial Management

The NCG must keep proper accounts and accounting records which are to be given to the SFA as specified by the SFA. The College is obliged to notify the SFA in writing if there is any significant deterioration in its financial position. The SFA may require the NCG to put a recovery or risk reduction plan in place if it concludes that there is a risk to the NCG's liquidity, service delivery or asset base.

(e) Audit

The Corporation is responsible for ensuring that the NCG has a sound system for internal control, has appointed an audit committee and has arranged to provide for audit to be carried out in accordance with the SFA's Audit Code of Practice.

(f) Major Changes

The College must notify the SFA's Chief Executive in writing of the changes in the position of:-

- Chair
- Principal
- Clerk

- if the Principal is absent for an extended period, the name of the person undertaking the Principal's obligations in that period.

(g) Information

The NCG is required to provide information the SFA requires in exercising its responsibilities and to meet European funding requirements at times and in the formats required by the SFA and its agents. All significant cases of fraud or irregularity must also be reported.

(h) Contingent Liabilities

The NCG is precluded from giving any guarantees, letters of comfort or indemnities incurring contingent liabilities other than in the normal case of commercial business dealings.

(i) Terminating Contracts of Employment by Agreement

The Memorandum sets out guidelines where payments are being made by Colleges when terminating contracts of employment by agreement, including early retirement. The general principle is that NCG must be able to demonstrate that such payments are regular, secure value for money and are affordable. Colleges should avoid spending public money on settlements where disciplinary action would have been more appropriate. Colleges are encouraged to establish a framework and procedure for determining any such settlements.

(j) Penalties

The SFA may take further action against any Corporation acting in breach of the Memorandum, including the withdrawal of funds.