



MORLEY COLLEGE LONDON

Code of Conduct

For Governing Body Members

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CODE OF CONDUCT FOR Governing Body members

1. INTRODUCTION

1.1 A Code of Conduct is a set of guidelines setting out the responsibilities, obligations and good practice for an organisation; it provides a structure for the responsibilities and expectations of Governing Body members .

1.2 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Governin g Body members , to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the Governing Body and the G.3 (o2 ph)12.4d 2.3 (r)6.a4 ()0.6 3 ()0.6 (w)2.3 (r)6ita (e)2

should have due regard to these purposes, aims and values when conducting the business of the Governing Body and considering the activities and proposed activities of the College.

3.4 The Governing Body recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, other educational institutions and the wider community. In particular, the Governing Body is committed to:

3.4.1 having close regard to the voice of the learner;

3.4.2 combating any discrimination within the College on the grounds of the characteristics protected by the Equality Act 2010; and

3.4.3 engaging with the communities that the College serves in order to understand and meet their needs.

3.5 The Governing Body is also committed to ensuring that it conducts its business in accordance with the highest ethical standards as set out in more detail in this Code.

4. DUTIES

4.1 Governors owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its best interests. The College's objects are set out in its Articles of Association and Governors should become familiar with them.

4.2 Governors must run the College and administer its assets in the best interests of current, and future, beneficiaries.

4.3 Each Governor owes the highest loyalty to the College.

5. STATUTORY ACCOUNTABILITY

5.1 Governors

College , or any duty which is material and which conflicts or may conflict with the interests of the Governing Body .

9.3 If an interest of any kind (including an interest of a business partner or of a spouse or partner of a Governor or of a close relative of the Governor or his or her partner or spouse) is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Governor's independent judgement, then:

9.3.1 the interest, financial or otherwise, should be reported to the Clerk;

9.3.2 the nature and extent of the interest should be fully disclosed to the Governing Body before the matter giving rise to the interest is considered;

9.3.3 if the Governor concerned is present at a meeting of the Governing Body , or any of its committees, at which such supply, contract or other matter constituting the interest is to be considered, he or she should:

(a) not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum for that meeting; and

(b) withdraw from that Governing Body or committee meeting where required to do so by a majority of the ,

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11. OPENNESS AND CONFIDENTIALITY

- 11.1 Because of the Governing Body's public accountability and the importance of conducting its business openly and transparently, Governors should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Governing Body. Accordingly, agendas, minutes and other papers relating to meetings of the Governing Body are normally available for public inspection when they have been approved for publication by the Chair.
- 11.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example, when the Governing Body considers sensitive issues or named individuals or for other good reasons. Such excluded items will be kept in a confidential folder by the Clerk, and will be circulated in confidence to Governors. Some confidential items are likely to be of a sensitive nature for a certain period of time only (for example information relating to a proposed commercial transaction or collaboration with another institution). The Governing Body should specify how long such items should be treated as confidential or, if this is not possible, such items should be regularly reviewed to consider whether the confidential status should be removed or whether the public interest in disclosure outweighs that confidential status and the item made available for public inspection. When considering such issues the Governors must also consider the College's publication scheme issued under the Freedom of Information Act 2000. Governors have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the College's Articles of Association.
- 11.3 It is important that the Governing Body and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Governors with a shared corporate responsibility for decisions. Governors should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Governing Body are satisfied should be dealt with on a confidential basis.
- 11.4 Governors should not make statements to the press or media or at any public meeting relating to the proceedings of the Governing Body or its committees without first having obtained the approval of the Chair or, in his or her absence, the Vice Chair. It is unethical for Governors publicly to criticise, canvass or reveal the views of other Governors which have been expressed at meetings of the Governing Body or its committees.

12. COMPLAINTS

- 12.1 In order to ensure that the affairs of the College are conducted in an open and transparent manner and that the College is accountable for its use of public funds but also to its employees, its students and the communities that it serves, it is important for there to be appropriate complaints procedures in place and for these to be well publicised. Governors are reminded of their specific responsibility under the Financial Memorandum to have in place a formal complaints procedure complying with SFA guidance to handle issues raised by students, employers and other third parties and of the legal requirements to have whistleblowing and staff grievance procedures.
- 12.2 Under the SFA's Financial Memorandum with colleges (clause 19.4), students, employers and other third parties have a right to make a complaint to the SFA in respect of the College or of any of its decisions. Governors in particular are reminded that under the SFA's Procedure for Dealing with Complaints about Providers of Education and Training) the SFA:

- x investigate complaints about quality or management of learning provision, undue delay or non-compliance with published procedures, poor administration by the Provider, equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter through the court or tribunals or other organisations),

by a 24+ Advanced Learning Loan, or matters subject of legal action or where legal proceedings are the most appropriate way of resolving the dispute.

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APPENDIX 1

The Seven Principles of Public Life

The following is an extract from the Second Report of the Nolan Committee on Standards in Public Life, May 1996

SELFLESSNESS

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2

Six Core Principles of Good Governance

The following is an extract from the Good Governance Standard for Public Services published by the Independent Commission on Good

AP PENDING 3

Summary of Main Responsibilities of Governors

General

Governors have a wide range of statutory responsibilities, for example under employment and health and safety legislation, under the Counter -terrorism and Security Act 2015 (the 'Prevent' duty to have regard to the need to prevent people being drawn into terrorism) and under the Equality Act 2010 (to avoid discrimination and promote equality).

Under regulations

Colleges are required to comply with a wide range of regulations, for example in relation to safeguarding and Special Educational Needs.

As company directors

A summary of directors' duties appears in Appendix 6.

As charity trustees

A summary of charity trustees' duties appears in Appendix 6.

Under the Articles of Association

Under Article 15.2, to exercise the powers of the company as set out in Article 4.2.

Governors may under Articles 15.3- 15.5 delegate many of their functions to committees and the principal or other senior staff, subject to the limitations in Article 15.6 and the Governing Body's written scheme of delegation.

Under the Financial Memorandum with the SFA

A summary of the Financial Memorandum appears as Appendix 5.

APPENDIX 4

Summary of main responsibilities of the Principal

1. Under Article 25.1 of the Articles of Association subject to the responsibilities of the Governing Body, the Principal shall be the Chief Executive of the College and shall be responsible for the academic and executive direction and management of the College, including financial management, organisation, structure, conduct and discipline.

2. Under HM Treasury's Regulations the Principal as Accounting Officer for the College shall be responsible for:

- (a) ensuring high standards of probity in the management of public funds, particularly regularity (dealing with public money in accordance with legal requirements), propriety (dealing with funds in accordance with Parliament's intentions) and value for money (through efficient and effective use of resources);
- (b) signing annual statements on regularity, propriety and compliance and submitting them to SFA;
- (c)

APPENDIX 5

Summary of Main Provisions of the Financial Memorandum with the Skills Funding Agency

Purpose

The SFA issues a financial memorandum for further education colleges, together with a version for sixth form colleges that recruit adult students. The EFA issues a funding agreement for provision of education to those aged 16 -19, in different versions for sixth form colleges and for further education colleges. The current versions of these documents came into force on 1 August 2016.

Since the Financial Memorandum was issued, the SFA has become an executive agency of the Department for Education (alongside the EFA).

Definitions

It should be noted that references to public funds include funds provided by HEFCE as well as those provided by the SFA.

Statutory framework

The conditions set out in the Financial Memorandum are intended to enable the Secretary of State for Education to carry out his functions under the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). ASCLA originally conferred these functions on the Chief Executive of Skills Funding but that post has been abolished by the Deregulation Act 2015.

Responsibilities of a Governing Body

Financial reporting

The SFA specifies the information to be contained in the governing body's financial statements.

Audited financial statements must be provided to the SFA within five months of the governing body's year end. The governing body must have an effective policy on risk management. The governing body must notify the SFA in writing if at any time there is a risk that

the financial statements are not a true and fair view of the financial position of the authority.

APPENDIX 6

A summary of charity law, company law and regulation as they apply to Morley College

1. BACKGROUND

1.1. Morley College Ltd (the "College") is

- x a company limited by guarantee whose object it is to operate Morley College ; and
- x a charity registered with the Charity Commission.

1.2. As the College combine s the features of companies, charities and (in many respects) publicly funded colleges , several sets of terminology are used, but they all refer to the same objects or persons. When referring to the College the following words are synonyms and interchangeable hereafter (unless otherwise stated):

- x College = company = trust = charity
- x governors = board members = directors = trustees
- x board of governors = board of trustees = board of directors = governing body
- x members = play a similar role to that of shareholders in a company limited by shares.

2. CHARITY LAW

Duties of charity trustees

14.4 The governors of the College are also trustees of the charitable trust and, as charity trustees, have the following duties:

- 14.4.1 a duty to comply with the governing document (the Memorandum and Articles of Association);
- 14.4.2 a duty to act in the best interest of beneficiaries – both current and future – including students;
- 14.4.3 a duty to avoid conflicts of interest;
- 14.4.4 a duty to safeguard assets;
- 14.4.5 a duty not to profit unless specifically authorised by the governing document or authorised in some other way (for example by statute or by the Charity Commission);
- 14.4.6 a duty to serve without payment and not receive any personal benefit;
- 14.4.7 a duty of care/duty of prudence –

Conflicts of Interest

14.5

14.6 This duty to avoid conflicts of interests also relates to persons connected with the governors (e.g. business associates and family members). There are a number of different definitions of “connected persons” but it would be prudent to construe the term widely to avoid any appearance of impropriety.

14.7 The Charity Commission guidance refers to a number of types of conflicts of interests, including:

2.1.1 a direct financial gain or benefit;

14.7.1 an indirect financial gain or benefit;

14.7.2 a gain other than a financial one; and

14.7.3 a conflict of loyalties or conflict of duties.

14.8 A conflict of loyalty or conflict of duties could exist if a governor was also:

14.8.1 an employee of a funder of the College (unless appointed under statute such as by the Secretary of State); or

14.8.2 an employee of a company providing services to the College; or

14.8.3 an employee or governor of a college or other educational establishment seeking to provide some of the same services as the College to some of the same communities.

14.9 There is a general obligation on governors to declare, avoid and take action in relation to conflicts of interests.

14.10 Governors should maintain a register of interests. The register should be updated at least annually but it is good practice to include the disclosure of interest as a standard item at board meetings.

14.11 The Charity Commission requires every charity to maintain a conflict of interest policy which should deal with a number of matters including procedures for declaring and recording conflicts of interest and dealing with a conflict once it has been declared.

14.12 After a conflict of interest is disclosed, the trustees will need to deal with the conflict appropriately. It may be helpful to categorise conflicts as follows:

14.12.1 the conflict is so serious and/or frequent that the trustee should resign;

14.12.2 the conflict is serious enough to warrant steps being taken by the board, e.g. the conflicted trustee should not attend the meeting of trustees or receive any papers relating to the meeting;

14.12.3 the trustee withdraws from the meeting while the issue is being discussed

Annual returns and accounts by registered charities

14.21 Trustee Annual Reports - Registered charities must prepare trustees' annual reports, to be made available on request. The duty to file accounts and the trustees' annual report with the Charity Commission applies to all registered charities whose gross yearly income exceeds £25,000. The trustees' annual report and accounts should be filed online.

14.22 Annual return form - the duty to complete and file the annual return with the Charity Commission applies to all registered charities whose gross yearly income exceeds £10,000. Each registered charity receives an annual return form from the Charity Commission shortly after its financial year end. In all cases the annual return should be completed online. The annual return gives the Charity Commission basic financial details, and details of contacts, trustees, activities and of the charity's classification.

14.23 The trustees' annual report and accounts must be sent to the Charity Commission within 10 months of the end of the charity's financial year .

No distribution of profits to non-charitable Members

14.24 The profits of a charity may not be distributed to its members unless the members are charities themselves. Unlike a commercial company, which may distribute end of year

A duty to promote the success of the company

- 15.11 A director must act in the way he /she considers, in good faith, would be most likely to promote the success of the company to achieve its purposes (i.e. objects), and in doing so have regard (amongst other matters) to:
- 15.11.1 any long term consequences;
 - 15.11.2 the interests of the company's employees;
 - 15.11.3 the need to foster business relationships with customers, suppliers and others;
 - 15.11.4 any impact on the community and environment;
 - 15.11.5 the desirability of maintaining a reputation for high standards of business conduct; and
 - 15.11.6 the need to act fairly as between members of the company.
- 15.12 This duty is similar to the duty owed by the governors as charity trustees – promoting the objects of the charity.

A duty to exercise independent judgment

- 15.13 A director must exercise independent judgement. This duty is not infringed by him/her acting in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors or by him/her acting in accordance with the Memorandum and Articles of the company.

A duty to exercise reasonable care, skill and diligence

- 15.14 In general the standard traditionally expected of a director in undertaking his /her duties on behalf of the company is the degree of skill and care that can be reasonably expected from a person of his /her knowledge and experience, so that if a director possesses a special skill or experience he/she is judged accordingly.
- 15.15 That traditional subjective test has given way to more onerous requirements and the standard now expected of a director is a mixture of both the subjective test set out above and an objective test of the standard which can reasonably be expected of a person carrying out the same job as the director. A director would be expected to meet whichever is the higher standard.

A duty to avoid conflicts of interest

- 15.16 A director must avoid a situation in which he /she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- 15.17 This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company's Articles allow that duty to be

A duty not to accept benefits from third parties

- 15.20 A director must not accept a benefit from a third party conferred by reason of him/her being a director or him/her doing (or omitting) anything as a director.
- 15.21 This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

A duty to declare an interest in a proposed transaction or arrangement

- 15.22 If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he /she must declare the nature and extent of that interest to the other directors, before the company enters into the transaction or arrangement.
- 15.23 A director need not declare an interest in the following cases:
- 15.23.1 if it cannot be reasonably regarded as likely to give rise to a conflict of interest; or
 - 15.23.2 if, or to the extent that, the other directors are already aware of it (or should reasonably be aware of it).

Fiduciary duties

- 15.24 In addition to duties owed to the company under the Companies Act 2006, there are broadly three types of fiduciary¹ duty which apply to directors:
- 15.24.1 a duty of good faith – a director must act bona fide in what he/she considers to be the best interests of the company;
 - 15.24.2 a duty not to fetter discretion – a director is not entitled to enter into any arrangement which fetters his/her future discretion; and
 - 15.24.3 a duty not to put himself/herself in a position of conflict, i.e. a conflict between his/her duty to the company and his/her personal interests.

Statutory duties

Loss of office payments (including in connection with take-over/change of control)

- 15.25 Any payments to a director for loss of office (as a director, employee or any other office including retirement), including non-cash benefits, must be disclosed to all members of the company and their approval must be sought if the amount or value of the payment exceeds £200.
- 15.26 Any payments to a director for loss of office in connection with a take-over or change in control of the company must be approved by the members.

Contracts with the company in which a director has an interest

- 15.27 A director must disclose any direct or indirect interest in a contract or proposed contract with the company.
- 15.27.1 Substantial property transactions

¹ A fiduciary is a person to whom power or property is entrusted for the benefit of another.

The approval of the company in general meeting is required for arrangements in respect of non-cash assets between a company and a director or persons "connected" with that director, e.g. family members or associated companies.

15.27.2 All transactions involving directors

The company is entitled to set aside any act or transaction entered into by it in circumstances where the board of directors has exceeded any limitation on its powers under the company's constitution, i.e. its Memorandum and Articles of Association and the parties to the transaction include either a director of the company (or its holding company) or a person connected with such a director.

15.27.3 Directors' loans

The general position is that loans by a company to its directors or the directors of its holding company are subject to prior member approval.

15.27.4 Wrongful trading

If a director knows or, taking account of his general knowledge, skill and experience ought to conclude, that there is no reasonable prospect of the company avoiding insolvent liquidation, the director has a duty to advise the Board of this and to ensure that every step is taken to minimise the loss to

Responsibilities under Education Laws and Regulations

16.5 Colleges are strictly regulated by statutes and regulations issued by the Department for Education, the SFA and the Office for Standards in Education. We set out below a non-exhaustive list of statutes applying to the College:

16.5.1 Further and Higher Education Act 1992

16.5.2 Education Act 2011;

16.5.3 Charities Act 2011;

16.5.4 Equality Act 2010;

16.5.5 Freedom of Information Act 2000 and Freedom of Information (Time for Compliance with Request) Regulations 2010

Other Statutory Responsibilities

16.6 It is important to realise that provisions of some statutes can apply to governors, for example, liability for health and safety and environmental offences may extend to

16.15 Liability under this statute can extend to governor s if the College