

Understanding the staff governor as a member of a further education college governing body



Acronyms and interpretation of terms used:

'College Governing Body' means further education corporation

'Board' means further education corporation

'Corporation' means further education corporation

'Staff Governor' means staff member

Understanding the staff governor as a member of a further education college governing body

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Contents

04	Background
05	1. Introduction
05	2. Starting point
07	3. What the Instrument of Government provides
10	4. What the Articles of Government provide
11	5. Exploring the role of the staff governor
11	6. Some FAQs from staff governors
13	7. Conclusion
13	ANNEX

Context

Colleges are governed by governing bodies which are established by further education corporations. Further education corporations have legal personalities as exempt charities and thus governors are, in effect, trustees.

This document has been reviewed since the first edition in 2009 to take account of changes to legislation. Following the **Education Act 2011** which provided much more freedom and flexibility for governing bodies to determine their own governance arrangements, it is much harder to be definitive about arrangements for the staff governor(s). This document has retained reference to the Instrument and Articles 2007 for reference as some governing bodies will still be using these regulations. However, this document also points to the new flexibilities and, in such circumstances, readers should consult the clerk to the corporation for clarity regarding local governing body arrangements.

The Education Act 2011 confirmed the requirement for members of the governing body to include staff (and students). This document is intended to help staff governors to gain clarity and confidence so they can contribute as active members of the governing body. Good luck!



1. Introduction

- 1.1** The purpose of this document is to explain, explore and develop and role of the staff governor as a member of a further education corporation governing body.
- 1.2** This paper was originally informed by discussion with college governors (including staff governors), college staff and, in particular, participants who attended the LSIS staff governor events held on 19/20 January 2009 in London and Leeds respectively. Further advice was provided to LSIS by interested parties including trade unions, clerks, the Association of Colleges, staff governors, and governors on 22 June 2009. This version has been updated to take account of the Education Act 2011 which primarily came into effect on 1 April 2012.
- 1.3** There remain a number of misconceptions about the role of staff governor. The source(s) of these misconceptions is/are not important although they share in common a restrictive approach to the contribution of staff governors compared to other governors on the further education corporation governing body. This paper will explore these common misconceptions and offer guidance to achieve better working practice.
- 1.4** A key assumption in this paper is governor inclusivity and the importance of achieving the highest standards of college governance through the active participation of **all** members of the governing body. Staff governors, although likely to arise from a different search and recruitment route to the majority of governors, are full members of the governing body.
- 1.5** This paper makes clear which statements derive from the Instrument and Articles of Government and the rest is informed opinion and interpretation..
- 1.6** This paper now uses Schedule 12 of the Education Act 2011 – Instruments and Articles of Government Parts 1 & 2 as a starting point accepting that many further education corporations will still be using a version of the standard version of the Instrument and Articles of Government issued on 17 December 2007 for use from 1 January 2008 onwards.
- 1.7** Readers should note that the revisions to the Instrument and Articles of Government by the Education Act 2011 have produced a significantly reduced statutory framework.
- 1.8** If unsure about which version of the Instrument and Articles of Government is operational for your governing body, ask the clerk to the corporation.

2. Starting point

- 2.1** The Instrument and Articles of Government for further education corporations form the starting point for consideration of the governance of colleges. This paper will concentrate on the specific issues associated with Staff Governors but there will also be reference to the commonalties applying to all members of a college governing body.

2.2 The Instrument of Government (2007) stated

(Instrument 12 [6])

“Every member shall act in the best interests of the Corporation and shall not be bound to speak or vote by mandates given by any other body or person.”

2.3 All members of the governing body are covered by the same expectation of independent thinking in the best interests of the FE corporation. Readers should note that this expectation is now in the Instrument of Government but may be placed within the FE corporation’s standing orders (if the governing body decides to do so). Readers should also note that where a governing body has adopted the **English Colleges’ Foundation Code of Governance**, this matter is addressed in paragraph 1.6.

2.4 The governing body (FE corporation) now has the following **core** responsibilities (as expressed in Schedule 12 of the Education Act 2011) as follows:

“The responsibilities of the body (i.e. governing body) must include

- (a) in the case of a sixth form college corporation (as listed in the annex) the preservation and development of the education character and mission of the institution and the oversight of its activities;
- (b) in the case of any other sixth form college corporation, a

further education (FE) corporation or a governing body, the determination and periodic review of the educational character and mission of the institution and oversight of its activities;

- (c) in any case, the effective and efficient use of resources, the solvency of the institution and the body and the safeguarding of their assets.”

2.5 However, the governing body of your FE Corporation may still be operating to the following version until the governing body decides to make any variations.

(Article 3 [1])

- 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 the annual estimates of income and expenditure;
- e) 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

- f) setting a framework for the pay and conditions of service of all other staff.”

2.6 In case of any doubt, the staff governor should assume participation in the collective responsibility in 2.4 or 2.5 above. ‘Collective responsibility’ is where all members of the governing body abide by the decisions of the majority of members (sometimes expressed by a vote).

2.7 There is a new form of words established by the Education Act 2011 which applies to one of the responsibilities of the further education corporation governing body.

“An Instrument must require the body to publish arrangements for obtaining the views of staff and students on the matters for which the body are (sic) responsible in 2.4 (a) or (b) above”

N.B. There can be circumstances where it may not be possible for the staff governor to fulfil all governing body responsibilities fully, given the college employment position held by the staff governor, especially in relation to staffing matters. More is provided on this topic later.

3. What the Instrument of Government provides

(a) Defining the staff governor

3.1 The Instrument of Government (2007) establishes that all FE corporations shall consist of

(Instrument 2 [1] {e})

“At least one and not more than three members who are members of the institution's staff and have a contract of employment with the institution and who have been nominated and elected (in accordance with the arrangements described in the Instrument of Government).”

3.2 It is important to understand the expression ‘nominated and elected’ in relation to the staff governor. In the circumstances of a vacancy the clerk to the corporation will, in each college, make arrangements for the nomination of those who wish to be considered for the position of staff governor. Where more than one person is nominated, the clerk to the corporation will make arrangements for an election (usually through a ballot) to identify the staff governor to be recommended to the board for appointment. It should be noted that the Articles of Government do not require the search committee to advise on the appointment of the staff governor; the outcome of the staff governor election could be taken directly to the board.

- 3.3** The Education Act 2011 (Schedule 12) states that “members (of the governing body to) include staff ... of the institution...” This implies that defining the number and type of staff governor is a matter for the governing body. Details may be included within the Standing Orders of the FE corporation. It will be for the governing body to define ‘staff’ for the purposes of being considered as a staff governor.
- (b) Representative of staff**
- 3.4** It is important to be clear that the Staff Governor who has been ‘nominated and elected’ by college staff and appointed by the governing body is a governor in their own right and should **not** be considered as a staff representative. The nature of a ballot of the nominated staff to identify the person to be elected as staff governor can feel like a political process with manifestos and hustings. This must be avoided to ensure the elected person complies with 2.2. above. Also, college staff must not be given the impression that they have elected a candidate who will deliver a particular agenda to a constituency of the college staff. The election process is simply to differentiate between those staff nominated for the position of staff governor. Many clerks now arrange a ballot by electronic vote accompanied by a personal profile (not political statement) of the candidates. This method tends to increase the participation rate in the ballot.
- (c) Appointing authority (Instrument 5 [3] 2007)**
- 3.5** The appointing authority is the FE corporation governing body in relation to the appointment of its members. The Instrument of Government (2007) lists the circumstances in which the ‘appointing authority’ may decline to appoint a person as a Staff Governor and the Education Act 2011 expects the FE corporation to establish its eligibility criteria of persons for membership of the governing body.
- (d) Chair or vice chair of the corporation (Instrument 6 [2] 2007)**
- 3.6** It should be noted that neither the principal nor any staff (or student) member can be appointed as chair or vice chair of the corporation or to act as chair in their absence.
- (e) Termination of membership (Instrument 10 [3] 2007)**
- 3.7** Any person who is a member of the governing body by virtue of being a member of staff at the institution shall cease to hold office upon ceasing to be a member of staff. A vacancy would then arise for the position of Staff Governor on the governing body.
- (f) Holding interests relating to the institution – pay and conditions (Instrument 11 [5] 2007)**
- 3.8** The Instrument of Government is clear on the position of the staff governor in relation to consideration of pay and conditions of all staff or all staff in a particular class.

(Instrument 11 [5] 2007)

“The Instrument states, in these circumstances, a Staff Governor

- (i) need not disclose a financial interest; and
- (ii) may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum for the meeting, provided that in so doing, the staff member acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body, but
- (iii) shall withdraw from the meeting if the matter is under negotiation with staff and the staff member is representing any of the staff concerned in those negotiations.”

N.B. ‘Best interests of the corporation’ maybe defined as the collectively agreed and board-approved direction and performance expectations for the college/group. This ambition must be set in the context of the responsibilities of the governing body.

3.9 It is important that the clerk to the corporation is formally notified of any staff representational role played by the staff governor. Such roles will include acting as an office holder for a recognised trade union or acting as an adviser to a recognised trade union. It may be helpful to consult the clerk to the corporation and the college’s

head of human resources at the earliest opportunity.

3.10 The staff governor, like all other governors, is required to make a declaration of interests for the board’s Register of Interests – which the clerk to the corporation is required to maintain.

3.11 This detail may vary where governing bodies resolve to amend the Instrument of Government (2007).

(g) Withdrawal from meetings (Instrument 14 [5 a,b,c,d] 2007)

3.12 There are three circumstances when a staff governor shall withdraw from part of a corporation meeting or any of its committees. Details are provided at Annex C.

3.13 There is also reference in the Instrument of Government (2007) to a circumstance where withdrawal of the staff governor(s) may be required by a resolution of the other members present. The Instrument states:

(Instrument 14 [5] {d} 2007)

“...a member of the Corporation who is a member of staff at the institution... shall withdraw

{d} if so required by a resolution of the other members present, from that part of any meeting of the Corporation or any of its committees, at which staff matters¹ relating to any member of staff holding a post senior to that member’s are to

¹ ‘Staff matters’ are defined in the Instrument of Government as ‘remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff’.

be considered, except those relating to the pay and conditions of all staff or all staff in a particular class.”

3.14 Readers should note that all of the above arrangements may be varied by the governing body under the terms of the Education Act 2011. Details may be included in the Standing Orders.

**(h) Minutes of meetings
(Instrument 15 [4] 2007)**

3.15 It is useful to note that separate minutes will be taken by the clerk to the corporation of those parts of meetings from which the staff governor(s) have withdrawn. There is no entitlement to see the minutes of that part of the meeting.

(i) Advice on governance arrangements

3.16 In all matters relating to the procedure and practice of college governance, advice and interpretation should be requested from the clerk to the corporation. This is especially so in relation to the Instrument and Articles of Government and the Standing Orders.

3.17 Additional sources of advice include:

- the Association of Colleges;
- the Learning and Skills Improvement Service;
- trade unions associated with the further education sector; and
- Department for Business, Innovation and Skills.

4. What the Articles of Government (2007) provide

4.1 There is no specific reference to the staff governor within the model Articles of Government. It should be assumed that the provisions of the Articles of Government apply equally to all governors (unless specified). However there are some points of clarification which are worth making in relation to the operation of the Articles of Government (2007):

- A staff governor may serve as a member of the Search Committee;
- A staff governor may serve as a member of the Audit Committee (unless the member of staff holds a post of seniority in relation to finance, risk and core college systems);
- A staff governor may serve on the Selection Panel for the principal or senior postholder (subject to the personal interest where it is not appropriate for the staff governor to participate in a Selection Panel to select his/her line manager).

4.2 It is useful to note that the Articles of Government permit the making of local regulations – Standing Orders – regarding the government and conduct of the institution. There may be additional advice on the role and practice of the staff governor determined locally by a governing body.

Such determination should not be restrictive or contrary to the spirit or intention of the Instrument and Articles of Government i.e. the desire for staff to be members of the governing body. If there are matters of concern, these should be raised with the clerk to the corporation.

5. Exploring the role of the staff governor

- 5.1** Staff governors can sometimes find the development of an identity for their role on the governing body as difficult to separate from the 'day job'. This task is worth working out from the start with the clerk to the corporation, principal and chair of the corporation. The composition of FE corporation governing bodies has been constructed by the Department of Business, Innovation and Skills to achieve a mix of membership from within the college i.e. principal, staff governor, student governor, and also from outside the college. This should be a rich mix of expertise and experience which can develop good governance practices to achieve the responsibilities and priorities of the FE corporation.
- 5.2** Questions of working governance practice should be discussed with the clerk to the corporation who is the adviser to the corporation on matters of governance practice.
- 5.3** Staff governors should seek to avoid crossing the line from governance to accounting for how something works or doesn't work in college. This simply encourages all present to see

the staff governor as a member of staff to be quizzed on operational details of the 'day job'.

- 5.4** The aim is to achieve a keen expression of engagement with the college governance agenda from the perspective of a member of staff as a staff governor (and whatever informs his/her opinion). Knowledge of the college and its operational setting should be a major asset for the corporation and the pursuit of its strategic direction.

6. Some FAQs from staff governors

- 6.1** The following cases are based on examples given by staff governors. The responses to the FAQs are not definitive but are intended to provide guidance in such circumstances.

Q **The principal requests you to meet with her before every board meeting**

As a staff governor you may wish to meet with the principal from time to time to discuss matters of college governance. However, you are not obliged to meet as suggested and, in particular, you are not expected to respond as if line-managed by the principal.

Q **The chair makes you feel unwelcome for the item – College Staff: Annual Pay Review**

You and the clerk to the corporation should make the chair of the corporation aware of the provisions of the

Instrument of Government and/or the governing body's Standing Orders on this matter.

Q The other staff governor wants to sit next to you at board meetings 'to get the line straight from the college staff'.

You are reminded that the Instrument of Government expects every member to act in the best interests of the corporation and not to be bound by mandates given by any other body or person. You should avoid informal efforts to 'agree a line' prior to meetings.

Q A report to the Standards Committee informs there are no problems with accreditation of the new Diploma in Music Technology but you believe (as a member of college staff) there are serious issues.

There may be general ways, as staff governor, to explore the assumptions in the report for clarification at the meeting. However, this is probably a matter to be raised (as a member of college staff) with your line manager outside the meeting. You should be sure of your facts (rather than the opinion of others).

Q Should the staff governor prepare a newsletter for college staff following governing body meetings?

No. It is usual to find that the governing body's Standing Orders (which include a code of conduct for governors) state that no governor is permitted to speak

on behalf of the governing body other than the chair of the governing body and/or any governor specifically delegated to do so. In any case the clerk to the corporation will prepare draft minutes for approval by the chair of the governing body or committee meeting. These approved draft minutes should be used as the record of a governance meeting.

Q What are the confidentiality reasons which may preclude a staff governor from parts of a meeting?

The usual confidentiality matters are:

- personal details (especially where there is a close connection between the individual and the staff governor); and
- business reasons (this would apply particularly where the aspect of the college under discussion was the area where the staff governor worked).

Q Is there a rule to help understand the distinction between 'governance' and 'management'?

Governance is concerned with – policy, strategy, approval, monitoring, reviewing, accountability.

Management is concerned with – proposing, implementing, informing, delivering.

6.2 If in doubt, ask your clerk to the corporation for advice.

7. Conclusion

As a member of the governing body the staff governor has a very important part to play alongside all other members of the governing body. There is no first and second class membership of the governing body. However, by virtue of employment at the college, it is possible that the staff governor cannot take part in all aspects of the governing body's business. These occasions are specified in the Instrument of Government and/or the Standing Orders and should be interpreted carefully according to circumstances and the necessities of due process.

ANNEX

The colleges given in the following list are currently covered by 'section 33J' of the Education Act 2011:

Aquinas College, Stockport
Cardinal Newman College, Preston
Carmel College, St Helens
Christ the King Sixth Form College, Lewisham
The College of Richard Collyer in Horsham
Holy Cross College, Bury
King Edward VI College, Nuneaton
King Edward VI College, Stourbridge
Loreto Sixth Form College, Manchester
Ludlow College, Shropshire
Notre Dame Sixth-Form College, Leeds
Palmer's College, Thurrock
Paston College, Norfolk
Peter Symonds College, Winchester
Prior Pursglove College, Guisborough
Sir John Deane's College, Cheshire
St Brendan's Sixth Form College, Bristol
St Charles Catholic Sixth Form College, Kensington
St Dominic's Catholic Sixth Form College, Harrow
St Francis Xavier Sixth Form College, London
St John Rigby Catholic Sixth Form College, Wigan
St Mary's College, Blackburn
Strode's College, Surrey
Xaverian College, Manchester

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