


# CODE OF CONDUCT

# FOR GOVERNORS

Approved by Search & Governance Committee 12 February 2020

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# LEICESTER COLLEGE

# CODE OF CONDUCT FOR GOVERNORS

## 1. INTRODUCTION

1.1 This Code is intended as a guide, to indicate the standard of conduct and accountability which is expected of Governors, 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 Principal/Chief Executive. This Code is therefore aimed at promoting effective, well informed and accountable college governance, and is not intended to be a definitive or authoritative statement of the law or good practice.

1.2 By accepting appointment to the Governing Body, each Governor agrees to accept the provisions of this Code. All governors are asked to read and sign the attached form to confirm they have read and will comply with this Code of Conduct.

## 2. INTERPRETATION

In this Code:

2.1 'College' means this College;

2.2 'CE of Skills Funding' means the Chief Executive of the Education and Skills Funding Agency for England or any successor body;

2.3 'Governing Body' means the further education corporation which was established for the purpose of conducting the College;

2.4 'Governor', 'Chair', 'Principal/CEO' and 'Director of Governance and Policy' mean respectively the Member of the Corporation of the College, the Chair of the Governing Body, the Principal/CEO of the College and the Director of Governance and Policy who acts as Clerk to the Governing Body;

2.5 all other definitions have the same meanings as given in the College's Instrument and Articles of Government.

## 3. BACKGROUND AND OTHER INFORMATION

3.1 In addition to this Code, Governors are recommended to familiarise themselves with the following documents which can be found in the induction pack or which are available from the Director of Governance and Policy:

3.1.1 the College's Instrument and Articles of Government;

3.1.2 The College's Standing Orders;

3.1.3 the College's Strategic Plan;

3.1.4 the Funding Agreement entered into by the College with the CE of Skills Funding;

3.1.5 the principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely:

- *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.

3.2 Appendices 1 (Responsibilities of Governors), and 2 (Responsibilities of FE and sixth-form corporation boards and governors) are attached to this Code for reference. They should not be read as an exhaustive statement of duties, powers or provisions, and Governors should refer to the source documents listed above, and those in the induction pack. If a Governor is in doubt about the provisions of this Code or any of the source documents, the Director of Governance and Policy should be consulted and, if necessary, professional advice should be obtained.

3.3 Ultimate responsibility for the appropriateness of conduct as a Governor of the College and for any act or omission in that capacity rests with the individual Governor.

3.4 This Code applies to every committee or working party of the Governing Body and to every subsidiary company or joint venture of the College to which Governors may be appointed.

## 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. Each Governor should act honestly, diligently and (subject to the provisions appearing in paragraph 13 of this Code relating to collective responsibility) independently. The actions of Governors should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.

4.2 Decisions taken by Governors at meetings of the Governing Body and its committees to achieve the College's strategic objectives must accord with College values and not be for any improper purpose or personal motive. Decisions taken must always be for the benefit of the College, its students and staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, Governors must not be bound in their speaking and voting by mandates given to them by other bodies or persons.

4.3 Governors must observe the provisions of the College's Instrument and Articles of Government and in particular the responsibilities given to the Governing Body by the College's 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 1.

4.4 Governors should comply with the Standing Orders to ensure that the Governing Body conducts itself in an orderly, fair, open and transparent manner and must keep those Standing Orders under periodic review.

4.5 Governors should also have regard to the different, but complementary, responsibilities given to the Principal/CEO. Whereas it is the Governing Body's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior postholder, it is the Principal/CEO's role to implement the Governing Body's decisions, and to manage the College's affairs within the budgets and framework fixed by the Governing Body. Governors should work together so that the Governing Body and the Principal/CEO perform their respective roles effectively.

## 5. ACCOUNTABILITY

5.1 Accountability involves an agreed process for giving account of one's actions and being held to account; a systematic approach to put that process into operation; and a focus on explicit results or outcomes.

5.2 Governors should recognise that real accountability is concerned not only with reporting on or discussing actions already completed, but also with engaging with stakeholders to understand and respond to their views as the College plans and carries out its activities.

## 6. STATUTORY ACCOUNTABILITY

6.1 Governors are collectively responsible for observing the duties set out in the Funding Agreement in force at the time. A copy of this document can be obtained from the Director of Governance and Policy.

6.2 Although the Education and Skills Funding Agency is the main provider of funds to the College, Governors should note that they are also responsible for the proper use of income derived from other sources, such as the Office for Students (OfS) and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit.

6.3 The Education and Skills Funding Agency is responsible and accountable to Parliament for ensuring that the uses to which they put funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Principal/CEO, as accounting officer for the College, is also directly responsible and accountable to Parliament, through the Committee of Public Accounts, for the effective stewardship by the College of public funds. The Principal/CEO may be required to appear before the Committee of Public Accounts, alongside the chief reporting officer for the Education and Skills Funding Agency, to give an account of the use made by the College of such funds. The Governing Body is accountable to Parliament for ensuring the financial health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law.

6.4 Board members are charity trustees and must also comply with charity legislation and case law.

## 7. ENSURING THE SOLVENCY OF THE COLLEGE

7.1 Governors have duties as charity trustees to, amongst other things, ensure good financial management of college corporations. Those duties are all the more important in the event that a college corporation encounters financial difficulty that could result in financial crisis and insolvency. A company (or other organisation) is insolvent when it cannot pay its debts. This could mean:

- it cannot pay bills when they become due
- it has more liabilities (including contingent and prospective liabilities) than assets on its balance sheet

7.2 Governors have obligations to act to ensure that they do not allow the College corporation or company to continue to trade when insolvent if this damages the interests of creditors.

## 8. FIT AND PROPER TEST

8.1 As charity trustees, Governors are Expected to fulfil the ‘fit and proper’ tests for trustees. Appendix 3 provides the fit and proper test statements.

8.2 Any concerns about a governor's ability to meet the requirements of this test at any point should be referred to the Director of Governance and Policy.

## 9. PUBLIC SERVICE VALUES

9.1 Public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on the Nolan principles set out above, and the recognition that students and other users of the College's services come first. These are a requirement of being a Governor, and should underpin all decisions taken by the Governing Body.

## 10. SKILL, CARE AND DILIGENCE

10.1 A Governor should in all his or her work for the College 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 Governors act as agents of the College, for example, when functions are delegated to a committee of the Governing Body or to the Chair. Governors should be careful to act within the terms of reference of any committees on which they serve.

## 11. POWERS

11.1 Governors are responsible for taking decisions which are within the powers given to the Governing Body by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992. A summary of those powers is set out in Appendix 2. If a Governor thinks that the Governing Body is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Director of Governance and Policy for advice.

## 12. CONFLICTS OF INTEREST

12.1 Governors owe their primary allegiance to the Governing Body and the College. Whatever their category of membership governors should bring no mandate from external sources. Like other persons who owe a fiduciary duty, Governors 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 Governing Body. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

12.2 Declarations of interest is a standing item on all agendas. Under the College's Instrument of Government governors must disclose to the Corporation the nature and extent of any interests. The Instrument of Government (Instrument 10) states they must disclose to the Governing Body any direct or indirect financial interest they have, or may have, in the supply of work or goods to or for the purposes of the College; or in any contract or proposed contract concerning the College; or in any other matter relating to the College; or any interest of a type specified by the Corporation in any matter relating to the College.

12.3 If an interest is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Governor's independent judgement, then the interest, financial or otherwise, should:

12.3.1 be reported to the Director of Governance and Policy; and
12.3.2 be fully disclosed to the Governing Body before the matter giving rise to the interest is considered.

12.4 Governors should withdraw from that part of the meeting at which the matter giving rise to the interest is considered, and on no account may vote in relation to the matter.

12.5 Governors 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 receipt of such gifts, hospitality or benefits should immediately be reported to the Director of Governance and Policy in line with the Gifts and Hospitality Policy.

12.6 The Director of Governance and Policy will maintain a Register of Governors' Interests which will be published on the College website. Governors must disclose routinely to the Governing Body all business interests, financial or otherwise, which they may have, and the Director of Governance and Policy will enter such interests on the Register. Governors must give sufficient details to allow the nature of the interests to be understood by enquirers. Governors should inform the Director of Governance and Policy whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Governors should have regard to the meaning given to "interest" in this Code.

12.7 Further information is set out in the Conflicts of Interest Policy.

## 13. COLLECTIVE RESPONSIBILITY

13.1 The Governing Body operates by Governors taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Governing Body, even when it is not unanimous, is a decision taken by the Governors collectively and each individual Governor has a duty to stand by it, whether or not he or she was present at the meeting of the Governing Body when the decision was taken.

13.2 If a Governor disagrees with a decision taken by the Governing Body, his or her first duty is to have any disagreement discussed and minuted If the Governor strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Governing Body when it next meets If no meeting is scheduled, the Governor should refer to the power of the Chair or any five Governors under the College's Instrument of Government to call a special meeting and, if appropriate, exercise it, requesting the Director of Governance and Policy to circulate the Governor's views in advance to the other Governors. Alternatively, as a final resort, the Governor may decide to offer his or her resignation from office, after consulting the Chair.

## 14. CONFIDENTIALITY

14.1 Because of the Governing Body's public accountability, 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.

14.2 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 and for other good reasons. Such excluded items, will be kept in a confidential folder by the Director of Governance and Policy, and will be circulated in confidence to Governors. However, staff and student 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 Instrument of Government.

14.3 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 Chai or members of any committee of the Governing Body are satisfied should be dealt with on a confidential basis.

14.4 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 their 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.

## 15. ATTENDANCE AT MEETINGS

15.1 A high level of attendance at meetings is expected so that Governors are able to perform their functions effectively and efficiently.

15.2 As set out in the Standing Orders, the minimum expected attendance at Corporation and Committee meetings is 80%.

15.3 If at any time the Corporation is satisfied that any member

- is unfit or unable to discharge the functions of a member; or
- has failed to meet the requirements for attendance specified by the Corporation, without the permission of the Corporation,

the Corporation may by notice in writing to that member remove the member from office.

## 16. GOVERNANCE DEVELOPMENT

16.1 Governors must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including workshops and special/development meetings. New Governors will have access to a mentor if requested. Governors have access to a comprehensive range of resources aimed at assisting them in their duties through the induction pack. A range of nationally developed training and development materials are available online and face to face; governors are encouraged to take up further opportunities for development including attending national and regional meetings and conferences.

16.2 In order to promote more effective governance, Governors will carry out an annual review of the performance by the Governing Body of its duties and responsibilities, as part of a continuing and critical process of self-evaluation. This will involve participation in a self-assessment process at both Committee and Board level.

16.3 To facilitate a regular effectiveness assessment of individual members of the governing body, as required by the Code of Good Governance for English Colleges, Governors should participate in a process agreed by the Corporation. This will include annual meetings with the Chair. Governance attendance and engagement will also be reviewed by the Search and Governance Committee and will inform discussions about succession planning and board membership.

16.4 The Governing Body should seek to ensure that all Governors are appointed on merit, in accordance with an open selection procedure carried out by the College's Search and Governance Committee. In the main, governors, are drawn widely from the community which the College serves, having regard to provisions relating to the membership of the Governing Body in the College's Instrument of Government and the need for continuity, balance and a range of appropriate skills and interests.

## 17. REVIEW

17.1 This document will be reviewed every three years by the Search and Governance Committee.

**APPENDIX 1**

## SUMMARY OF MAIN RESPONSIBILITIES OF GOVERNORS UNDER THE ARTICLES OF GOVERNMENT

### *Responsibilities*

Under Article 3(1) of the College's Articles of Government the Governing Body 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) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
(c) approving the quality strategy of the institution;
(d) the effective and efficient use of resources, the solvency of the institution and the Corporation and safeguarding their assets;
(e) approving annual estimates of income and expenditure;
(f) 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
(g) setting a framework for the pay and conditions of service of all other staff.

### *Responsibilities which must not be delegated*

Article 6 and 7-(1) of the Articles of Government prohibits the Governing Body from delegating the following:

(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 the Clerk's appointment in the capacity of a member of staff); and
(f) the modification or revocation of the Instrument of Government or the Articles.
(g) the consideration of the case for dismissal, and
(h) 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.

"Senior Post" means the post of Principal/CEO and such other senior posts as the Governors may determine for the purposes of the Articles.

# FURTHER EDUCATION CORPORATIONS AND SIXTH-FORM COLLEGE CORPORATIONS: GOVERNANCE GUIDE

## Responsibilities of FE and sixth-form corporation boards and governors

**Full guidance here**

FE and sixth-form college corporations are the legal entities that operate one or more colleges.

The status of your corporation is both:

- a statutory corporation established under the Further and Higher Education Act 1992 (FHEA 1992)
- an exempt charity

Your corporation is established under the FHEA 1992 for the charitable purpose of advancing education.

A FE or sixth-form college is an activity through which your corporation achieves its charitable purpose. Your college is not a separate legal entity from your corporation.

**Responsibilities of FE and sixth-form corporation boards and governors**

**CORE FUNCTIONS**

The core functions of your corporation board include:

- setting and communicating your college's educational character, strategy and goals
- holding executive leaders to account for the educational performance and quality of your college, and for the performance of staff
- exercising effective control to ensure that funds and assets are protected and legal obligations are met.

**SIX MAIN DUTIES**

As a member of the board, you are a governor and a charity trustee. You and your co-governors have six main duties under charity law:

### 1. Ensure your corporation carries out its purpose for the public benefit

You must ensure your corporation carries out the charitable purpose for which it was set up, and no other purpose.

Corporations can operate one or more colleges. Their principal powers include the provision of:

- further and higher education
- secondary education to students aged 14 and over
- goods or services in connection with the above

You should:

- ensure you understand your corporation's purpose and, with your co-governors, plan how this will be achieved
- understand, and be able to explain, how your corporation benefits the public
- be able to explain how your corporation's activities support its purpose

**2. Comply with your corporation's governing document and the law**

You must:

- comply with charity law and other laws and regulations that apply to your corporation
- comply with your corporation's instrument and articles of government

Your board can amend your corporation's instrument and articles in accordance with the procedure set out in that document. But your board must not make changes that:

- cause the corporation to cease to be a charity
- give a personal benefit to a governor, unless this has Charity Commission approval
- cause the instrument and articles to no longer comply with Schedule 4 of the FHEA 1992

**3. Act in your corporation's best interests**

You must:

- decide with your co-governors what will best enable your corporation to carry out its purpose
- make balanced and informed decisions with your co-governors
- avoid being in a position where your duty to your corporation conflicts with your personal interests
- not receive any benefit from your corporation, unless this is authorised and is in your corporation's interests

**4. Manage your corporation's resources responsibly**

You must:

- make sure your corporation's assets are used only to support its purpose
- avoid exposing your corporation to undue risk
- not overcommit your corporation
- take care when investing or borrowing
- comply with any restrictions on spending funds or selling land
- ensure effective and efficient use of resources

**5. Act with reasonable care and skill**

You:

- must take reasonable care in governing your corporation, making best use of your skills and experience, and taking appropriate advice when necessary
- should give enough time to your role, including preparing for and participating in meetings

**6. Ensure your corporation is accountable**

You must comply with accounting and reporting requirements. You should also:

- demonstrate that your corporation complies with the law and is run effectively
- ensure accountability in your corporation, especially where duties or tasks are delegated to staff.

**APPENDIX 3**

## FIT AND PROPER TEST

**Full document and guidance here**

- I am not disqualified from acting as a charity trustee
- I have not been convicted of an offence involving deception or dishonesty (or any such conviction is legally regarded as spent)
- I have not been involved in tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft
- I have not used arrangements notified under the Disclosure of Tax Avoidance Schemes ("DOTAS") rules in Part 7 Finance Act 2004 in respect of which a reference number has been issued under section 311 of Finance Act 2004, where the arrangements featured charitable reliefs or which used a charity, and where my tax position has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final.
- I have not used tax arrangements which have been successfully counteracted under the general anti-abuse rules (see Part 5 of Finance Act 2013 or section 10 National Insurance Contributions Act 2014, as enacted or as amended from time to time) where such counteraction has become final.
- I have not been actively involved in designing and/or promoting tax avoidance schemes featuring charitable reliefs or which used a charity, and I am not:
    - a promoter[1] named by HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation in Part 5 of Finance Act 2014, or
    - a promoter of any tax arrangements designed or intended to obtain for any person a tax advantage and such tax advantage has successfully counteracted by HMRC under the general anti-abuse rule (see Part 5 of Finance Act 2013 and section 10 National Insurance Contributions Act 2014 as enacted or as amended from time to time) and such counteraction has become final, or
    - a promoter of arrangements notified under DOTAS, in respect of which a reference number has been issued under section 311 of Finance Act 2004, and the tax position of all or any of the users of the arrangements has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final
- I am not an undischarged bankrupt
- I have not made compositions or arrangements with my creditors from which I have not been discharged
  2
- I have not been removed from serving as a charity trustee, or been stopped from acting in a management position within a charity
- I have not been disqualified from serving as a Company Director.
- I will at all times seek to ensure the charity's funds, and charity tax reliefs received by this organisation, are used only for charitable purposes

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1 The meaning of a 'promoter' in this context is explained in the Promoters of Tax Avoidance Schemes guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313987/Promoters_of_Tax_ Avoidance_Schemes_Guidance_v1_0.pdf




**I have received a copy of the Leicester College Corporation's Code of Conduct and agree to observe and act upon the contents**

**Signed:** ……

**(Please print name):** .....

**Date:** .....