



Learning+Skills Council

Module

7

The clerk to the corporation



Development materials for governors of further education colleges

Governor
Training Materials

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ACRA The Association of College Registrars and Administrators is a national organisation which is part of the Association of Colleges and which provides professional support to business managers and clerks. The services for clerks include seminars, conferences and network meetings to share good practice and become familiar with new initiatives.

fforwm The Association of Welsh Colleges is a national organisation representing all further education colleges in Wales and providing a range of services to its members

KPMG is the leading firm of auditors and advisers to the education sector in the UK. The national advisory practice for governance is based in the Birmingham office.

LSDA The Learning and Skills Development Agency is one of the leading research and development organisations operating in the field of post-16 education. Its mission is to be a strategic national resource for the development of policy and practice in post-16 education and training.

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Project Management: Nick Barclay,
Learning and Skills Development Agency

Open Learning Management: Penny Mares Associates
info@pennymares.co.uk

Editorial Team: Penny Mares, Barbara MacDonald,
Philip Coyne, Sheila White, Felicity Kendall

Pack and page design and typesetting: Leech Design
info@leechdesign.co.uk

Photographs: Martin Jenkinson
mail@pressphotos.co.uk

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evaluation form in the front of
Using the materials to:

Governor Training Materials
Co-ordinator,
Learning and Skills Development
Agency
Regent Arcade House,
19-25 Argyll Street,
London W1F 7LS

Tel: 0207 297 9000
Fax: 0207 297 9001

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Module 7 The clerk to the corporation

For suggestions on how to get the most out of these self-study materials, see the booklet on Using the materials.

Introduction

This module looks at the role of the clerk. It is aimed at new and experienced governors and provides information to help you review and, where appropriate, improve the clerking arrangements for your governing body.

If the role of governors can be compared to that of non-executive directors, the clerk can be compared to the company secretary. In a well run governing body the clerk has a crucial role to play in supporting members, individually and collectively, and in helping to put in place high quality arrangements for the governance of a college. Sections 1 to 5 discuss the full range of responsibilities of the clerk, and how to resolve difficulties if the clerk queries a course of action taken by the governing body.

Inspection includes an examination of the clerking arrangements as part of the Learning and Skills Council (LSC) review of governance conducted by the Provider Financial Assurance team. Where governance is considered to be 'good' or better than 'good', reports often note that 'effective' or 'consistently high standards of clerking' are in place. Section 6 explains the process for reviewing the clerk's performance to help ensure that these high standards are achieved.

The governing body is required by the statutory instrument of government to appoint a clerk. Section 7 sets out the steps involved and shows how a well written job description and person specification can encapsulate the full range of responsibilities, qualities and skills discussed in earlier sections of the module. The final section of the module deals with ensuring the clerk's independence – a principle which is put into practice most effectively where governors have a sound understanding of the clerk's range of responsibilities.

Summary of changes to the 2002 edition

Under the new instrument and articles of government that came into effect on 1 April 2001, the governing body is responsible for all aspects of the clerk's employment, including matters relating to any other capacity in which the clerk is employed within the college. This responsibility cannot be delegated to the principal or to a committee. The instrument and articles of government set out the core responsibilities of the clerk but there is a much wider range of actual responsibilities over and above these statutory requirements.

New national inspection arrangements are outlined, which include a specific review of the quality of governance and clerking within post-16 education and training.

This edition of the *Governor Training Materials* includes more detailed discussion of the criteria for confidentiality of governing body papers and clarifies the provisions for temporary replacement of the clerk should he or she be unavailable.

Aims

By the end of this module you should be able to:

- outline the role and responsibilities of the clerk
- explain how to review the performance of the clerk (including arrangements for supporting the clerk) on an annual basis so as to ensure the governing body operates efficiently and effectively
- describe how to appoint a clerk (when the need arises) according to statutory requirements and acknowledged best practice
- ensure the independence of the clerk.

Contents

Mark the sections you want to study and tick them off as you complete them.

To do *Done*

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Section 1 Role and responsibilities of the clerk – overview |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 2 Servicing meetings |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 3 Minutes of meetings |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 4 Supporting committees and working groups |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 5 Resolving difficulties |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 6 Reviewing the clerk's performance |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 7 Appointing the clerk |
| <input type="checkbox"/> | <input type="checkbox"/> | Section 8 Ensuring the independence of the clerk |

Working on the self-study activities

These materials have been designed for flexible use. You can work through them with other governors in training and development sessions. You can also work through sections and activities in your own time and at your own pace if you find it difficult to attend organised training sessions. Governors who have used these materials point out how valuable it is to work on at least some of the suggested activities together with another governor or group of governors, as there is such potential to learn from each other's experience. For suggestions on how to organise this kind of support for yourself, see the booklet on *Using the materials*.

What you will need

To complete activities in this module you will need to get hold of the following documents from the clerk:

- the governance self-assessment report produced by your governing body
- the job description and person specification for your clerk
- copies of three or four governing body papers labelled as confidential in the past year, if available (some governing bodies make sparing use of confidential papers so there may be none)
- minutes of the last two or three governing body meetings.

Another valuable source of information is the *Guide for Clerks* produced by the Further Education Funding Council and the *Clerk Training Materials*, which form a professional development programme for clerks.

Where you need to make notes in response to activity questions, we suggest you do this in a notebook or on separate sheets of loose-leaf paper, and store the information you compile along with the module for future reference.

Section 1 Role and responsibilities of the clerk – overview

The clerk is appointed by the governing body. The clerk's line of accountability, as its officer, is to the governing body through the chair. The governing body, not the principal, is responsible for the appointment, dismissal and terms of employment of the clerk; this includes any other capacity in which he or she is employed within the college. This responsibility of the governing body cannot be delegated to a committee or to the principal (instrument of government clause 7 and articles of government clause 5(7)(e)).

The role of the clerk is to ensure that:

- the business of the governing body is conducted smoothly and efficiently
- the governing body operates within its powers
- the governing body follows agreed and proper procedures.

The role of the clerk generally covers the activities of the governing body, its committees and any *ad hoc* group established on a short-term basis to progress specific issues.

Five core responsibilities of the clerk are set out in the instrument and articles of government.

Five core responsibilities of the clerk

- 1 To receive written notice that a member has been disqualified from continuing to hold the office of a member of the governing body (instrument of government clause 8(9)).
- 2 To receive written notice that the chair or vice-chair wishes to resign their position on the governing body (instrument of government clause 6(5)).
- 3 To receive written notice that a member wishes to resign from membership of the governing body (instrument of government clause 10).
- 4 To maintain a register of the financial interests of members and to make this available during normal office hours at the college to any person wishing to inspect it (instrument of government clause 11(3)).
- 5 To summon meetings of the governing body by sending to members written notice of the meeting and the proposed agenda at least seven calendar days before the meeting (instrument of government clause 12).

The actual responsibilities of the clerk are wider than those listed above. They vary according to the needs of the individual governing body, but should complement the role and responsibilities of the principal (the chief executive) in the overall process of governance. They include:

- providing advice and briefings to the governing body and acting as the reference point for enquiries
- briefing governors (and college managers) on new developments in governance including the financial memorandum and the audit code of practice
- determining the annual calendar of meetings and cycle of business, summoning meetings, preparing agendas, reports and minutes of meetings
- advising the governing body on issues relating to its membership
- maintaining records on attendance and quoracy
- establishing a proper scheme for delegation of matters to a committee or the principal and keeping under review standing orders and terms of reference of the committees
- helping governors develop performance indicators to assess their own effectiveness
- leading on the development of the governors' self-assessment report and action plan
- supporting the governing body during inspection and the audit of governance
- issuing letters of appointment for new governors
- maintaining the register of members' interests (other than financial – see point 4 above)
- facilitate identifying governor training needs, including the induction of new members
- monitoring the public interest disclosure procedure, suggesting amendments and, where required by the governing body, acting as lead assessor in reviewing the proposed disclosure

- acting as administrative support for the appointment, suspension or dismissal of senior postholders and setting up a selection panel or special committee as appropriate
- holding all records of the governing body.

In addition, the clerk is increasingly expected to oversee the governing body's exercise of its powers, ensuring that they are not exceeded, and to be a source of professional advice, liaising closely with the chair and the principal on governance matters.

(For more information on governor training see *Module 1 Introduction*, Section 8 'Governor training' and on whistleblowing see *Module 8 The audit committee*, Section 7 'Fraud and irregularities'.)

Supporting the governing body in the annual review of its performance

National inspection arrangements include a specific review by the Provider Financial Assurance team of the LSC of the quality of governance and clerking and the effectiveness of the clerk in supporting the governing body (so that, for example, business is conducted smoothly, efficiently and effectively). An annual review by the governing body of its own performance is both a valuable process in its own right and an important part of a college's overall quality assurance arrangements.

The clerk's role in the self-assessment process varies. In many colleges, the clerk prepares a checklist of issues for governors to review individually, in small groups or as a corporate body. Another approach is to provide governors with the opportunity to grade activities and the associated policies and procedures on the inspection grading scale. Self-assessment should lead to:

- a list of strengths and weaknesses in the governance of your college
- an action plan to address the weaknesses
- a proposed grade for governance (using the inspection grading scale).

The governing body, supported by the clerk, needs to be realistic about strengths and weaknesses. Practices which can be seen in virtually every college cannot really be included in the list of strengths. Strengths which **are** noteworthy may include:

- the active role of the governing body in formulating and monitoring the strategic plan
- the close scrutiny of student retention and achievement
- rigorous arrangements for ensuring the solvency of the institution.

The clerk can help the governing body in the self-assessment process (including the allocation of a grade) by monitoring governance reviews across the sector. By reviewing other college inspection reports your clerk can help you get an impression of your own governing body's strengths and weaknesses.

Activity Developing your understanding of the clerk's role

Has this overview raised any queries or issues in your mind about your own clerk's role and responsibilities? If it has, note these down on a separate sheet.

Viewpoint

We suggest you add to your sheet of queries and notes as you work through the module. At the end of the module you can decide which you want to follow up. Then use the 'Action planner' in *Using the materials* to note what further information you need, and what action you will take to follow up issues.

Section 2 Servicing meetings

This section covers the clerk's role in formulating agendas, deciding on confidential items, preparing reports and dealing with minutes.

Formulating agendas for meetings of the governing body

The clerk is responsible for preparing the first draft of the agenda for meetings of the governing body. The bulk of the items are likely to be derived from the annual cycle of business, the minutes of the last meeting and the schedule of 'outstanding matters' kept by the clerk. (For more information about how the agenda should be tied in to the annual cycle, see *Module 2 Strategy and educational character*, Section 6 'Using meetings to monitor the college's strategic plan'.)

The draft agenda is likely to include:

- when and where the meeting is to be held (especially if the governing body does not always meet on the same site)
- the issues to be addressed (a provisional list)
- action to be taken on each item (decision, adoption of a recommendation from a committee or noting)
- notice of which items (if any) are confidential.

The agenda should also invite members to declare if they have an interest in any item. (For more information see *Module 1 Introduction*, Section 5 'Integrity in working practices'.)

Arrangements for deciding the final agenda vary. Options include a meeting between the chair, the principal and the clerk (to which others such as the vice-chair and/or the chairs of the main committees may be invited) or an exchange of drafts by email, fax or post with subsequent discussions by telephone. The essential thing to remember is that it is the governing body's agenda, not the principal's, the chair's or the clerk's. It is, however, a team effort to develop the agenda on behalf of the governing body.

There should be a mechanism for members to suggest items for inclusion on the agendas of future meetings. This could be included in the standing orders.

Standing orders may also be used to set out the timetable for issuing agendas and supporting reports. The instrument of government states that the agenda will be issued at least seven calendar days before a meeting. Some governing bodies arrange for reports to be circulated further in advance to enable members to prepare for

meetings. This should not preclude the subsequent circulation of papers if this is in the interests of the governing body.

Activity How helpful are your governing body's agendas?

Work through the questions below. Can you identify ways in which the preparation of your governing body's agendas could be improved?

<i>Question</i>	<i>Answer</i>	<i>Notes</i>
Is the agenda clear on where and when the meeting is to be held?		
If you need to submit apologies for absence is the contact number for the clerk clearly stated on the agenda papers?		
Are the agenda items listed in a logical order?		
Is it clear what action needs to be taken on each item?		
Is there a mechanism or list for reminding governors of outstanding matters from previous meetings?		
Does the agenda include a reminder of the agreed calendar for governing body meetings?		
Is a set time allocated to each item so that big issues can be given the time they need?		
If a report is to be presented, does the agenda indicate who is to present it?		
Is there an opportunity to raise other items of business?		
Are related items grouped together in a logical way?		

Viewpoint

Getting these sorts of details right at the agenda stage makes a difference to the smooth running of meetings. This activity may provide you with useful suggestions to discuss with your own clerk.

Grouping related items helps to deal with business efficiently. Some governing bodies group agenda items according to themes (e.g. governance, curriculum and standards, finance, audit, personnel and remuneration, development and training of governors and clerk, national and regional initiatives). Another approach is to divide the agenda into items for decision, items for information and noting, and confidential items.

Confidential papers

According to the instrument of government (publication of minutes and papers – clause 17) all papers received by the governing body are available for public inspection unless an item concerns:

- a named person employed at or proposed to be employed at the institution
- a named student at, or candidate for admission to, the institution
- the clerk to the governing body
- any matter which, by reason of its nature, the governing body are satisfied should be dealt with on a confidential basis.

The decision to label a paper as confidential should be made by the clerk in consultation with the chair and the report's author, during the preparation of the agenda.

An item relating to a member of staff or a student should not automatically be regarded as confidential – it is necessary to exercise common sense. The fourth point above enables the governing body to decide with the clerk's advice what other items are confidential. An example would be a plan to sell surplus land, where the anticipated value and arrangements for disposal would be commercially sensitive. To ensure a consistent approach, the criteria for confidentiality should be set out in the standing orders of the governing body. These criteria should include the points listed in clause 17 of the instrument of government and might also extend the following:

- information provided in confidence by a third party who has not authorised its disclosure
- financial or other information relating to procurement decisions, including information relating to the college negotiating position, during the course of those negotiations
- information relating to the negotiating position of the college in employee relations matters, during the course of those negotiations
- information relating to the financial position of the college where the governing body is satisfied in good faith that disclosure might harm the college or its competitive position
- legal advice received from or instructions given to the college legal advisors
- information planned for publication in advance of that publication
- matters not otherwise covered above, but considered to be commercially sensitive.

The governing body and clerk must be able to justify a decision to classify a report as confidential – it is not enough that the subject matter is contentious. There is also an obligation on individual members to respect the status of confidential documents.

It is increasingly regarded as good practice to review all confidential minutes and decisions of the governing body on an annual basis. In doing this thought should be given to whether the information referred to in the confidential minute would cause harm and/or embarrassment to any individual or organisation, including the college, if released for the public record. As a further general guideline, a recommendation for an item to remain confidential might be taken where the information concerns a named person (living or dead), or someone who could be identified from the information contained in the minute.

There are set rules for the publication of papers in advance and for the proceedings at meetings (see clauses 12 and 14, respectively, of the instrument of government). The clerk should be able to advise on these matters.

Reports

Tabling papers or reports at meetings should be avoided as it means that governors do not have adequate time to consider them. An effective clerk plays a key role at all stages in preparing and distributing reports to support agenda items:

- preparing an annual cycle of governing body business for the information of both governors and college managers which also sets a timetable to ensure that reports are ready in time to circulate at least seven calendar days before the meeting
- clarifying who is to author the report (the principal can delegate responsibility for college management papers)
- providing advice to authors (e.g. on house style, wording of recommendations, etc.)
- agreeing with the principal the protocol for approving college reports before they are circulated
- arranging for the copying, collating and circulating of documents.

These arrangements vary from college to college, and according to the sensitivity of the particular issue.

If the clerk does not receive a report in time, the agenda and other supporting documents should be circulated with a note that the outstanding report is 'to follow'. There are inevitably some occasions when it is appropriate for the governing body to receive a late paper, especially if this avoids the need for an additional meeting. One strategy for dealing with such occasions is to provide reading time at the beginning of the meeting.

However, where the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the clerk are to be considered, the chair, and not the clerk, should send members of the governing body a copy of the agenda item together with any relevant papers (see instrument of government clause 12(4)) at least seven calendar days before the meeting.

Activity How are your reports dealt with?

- 1 Review the items that have been classified as confidential by your governing body in the last year. From reading this section, do you think the classification was appropriate in every case?

Note down any items that you think may have been inappropriately classified.

- 2 How often are reports sent out late or tabled at meetings?

Often From time to time Rarely Never

Viewpoint

This activity may have highlighted scope for improving the way that your confidential papers and reports are dealt with. If it has, work out a proposal to put to the clerk or chair.

Section 3 Minutes of meetings

This section covers the purpose of minutes and how they are processed.

Purpose of minutes

The minutes of a meeting constitute a formal record of proceedings. They help demonstrate to others that the governance of the college is being conducted properly. They are a public record and a means of informing the college community (staff and students), members of the public, auditors and inspectors about issues addressed by the governing body. As a formal record, they might be called for by a court or tribunal.

Minutes should be comprehensible to someone who was not at the meeting. They should contain sufficient information to stand alone as a summary of business without the need to refer to other documents.

Minutes should demonstrate that a decision took into account relevant factors and also that it was not influenced by irrelevant considerations. There are no circumstances when a governing body can take a decision without minuting it.

Checklist: Keeping and using minutes

Please tick or cross as appropriate

The minutes include:

- date of the meeting
- who was there (the list should distinguish between governors, the clerk and others in attendance)
- who arrived late or left early
- apologies for absence
- declarations of interest.

- Discussions are summarised into the main factors considered and the decisions reached (the amount of discussion summarised is likely to vary from one governing body to another).
- Discussions on very important or controversial issues are recorded in more detail.
- Dissent from a majority decision is recorded where appropriate.
- Decisions are clearly noted at the end of each item to aid future reference.
- The minutes make it clear who is to take the action agreed and by when.
- The minutes are usually confirmed as a correct record at the next meeting without the need for amendments.
- I use the minutes of meetings as a valuable reference document.

Activity How useful are the minutes of your meetings?

Compare the above checklist of good practice for keeping and using minutes with the minutes of recent meetings of your governing body. Use the checklist to review possibilities for improvement.

Viewpoint

You should be able to tick most of the boxes in the checklist. If not, discuss with the clerk or chair what improvements are needed. This kind of activity could usefully become part of the governing body's annual review.

Processing minutes

The clerk prepares draft minutes which are then forwarded to the chair to clear for publication. They may also be circulated to other people such as the principal or senior college managers. Any of these may suggest improvements to clarify meaning but no-one can suggest changes which **alter** the meaning of the minutes unless the chair and clerk agree that the draft is incorrect.

If the clerk is unhappy with a suggested change this is discussed with the chair. If this does not resolve the issue, it must be raised at the meeting when the minutes are

presented for approval. For example, if the clerk advises the meeting that a particular approach is contrary to the instrument of government or standing orders, the minutes should say so. If there is a request to delete this from the draft, the clerk has a duty to make this known to the governing body when the minutes are considered.

The chair clears the draft minutes which are then in the public domain and may be circulated, preferably labelled as 'approved draft' or 'unconfirmed' minutes.

The minutes may be circulated straight away or held until the despatch of the agenda for the next meeting. Practice varies but the arrangements should be agreed and consistent.

It is good practice to circulate draft minutes within the college, for example via notice boards or an intranet site.

Finally the draft minutes are presented to the next meeting of the governing body. The governing body is asked to confirm their accuracy. Amendments may be accepted and the minutes are then signed and dated by the chair. Separate appendices to the minutes and separate confidential minutes are also signed and dated.

Anyone who has received draft minutes should be told of amendments to the confirmed minutes. This may mean displaying the revised version on notice boards and ensuring that the intranet site is updated. If the change is not substantial, it may not be necessary to re-circulate the minutes to all governors.

Although minutes can be amended, decisions taken at previous meetings **cannot** be changed without the decision being an agenda item at a subsequent meeting.

Activity How are amendments dealt with at your meetings?

Work through the following questions.

- When the governing body considers a change to the minutes, do governors ask themselves if the amendment actually helps the process of efficient and effective governance?
- A decision to change the minutes is only valid if taken by a majority of members at a quorate meeting. Is this always the case?
- Is the change clearly stated in the minutes?
- Do governors sometimes try to use this process to reverse a previous decision?

Viewpoint

The process for amending minutes of previous meetings is sometimes fraught for governing bodies. Governors should avoid getting bogged down in the details of amendments that do not really make a great deal of difference. Remember that this process cannot be used to reverse a previous decision. If there is a case for reviewing a decision, this must be done elsewhere in the meeting in line with statutory arrangements.

Section 4 Supporting committees and working groups

The clerk is responsible for supporting the committees and working groups which help to progress the work of the governing body. Figure 1 lists the range of committees and other groups in place across the sector. Apart from the statutory audit, search and special committees, it is up to individual governing bodies to decide what arrangements are most appropriate to meet local needs.

Figure 1 Examples of governing body committees

<i>Must have</i>	<i>Should have</i>	<i>Likely to have</i>	<i>May have</i>
Audit	Appraisal of the principal	Finance	Estates
Search	Appraisal of the clerk	Personnel/	Student
Special	Remuneration	Employment	disciplinary
	Staff disciplinary (appeals)		(appeals)
	Standards (quality)		Governance (avoid overlap with search)
			Curriculum (avoid overlap with standards)
			Equal opportunities
			Student affairs
			Planning or strategic planning

Some governing bodies have considered or moved to the corporate policy governance model proposed by John Carver (see *Module 2 Strategy and educational character*, Section 1 'Introduction to strategy and educational character'). This is a model favoured by some but not all colleges. One key element of this model is to streamline by adopting the statutory minimum number of committees. (For more information about committee structure see *Module 1 Introduction*, Section 4 'The composition of the governing body and its committees'.)

The checklist below outlines some of the ways in which the clerk can support the work of committees and working groups.

Checklist: Clerk's support for committees and working groups

The clerk's role is to:

- plan and publicise the annual cycle of business in advance of the year
- prepare a timetable of meetings to accommodate the commitments of governors serving on more than one committee
- keep committees and other groups to terms of reference approved by the governing body so that:
 - decisions are taken where allowed and not unnecessarily referred to the governing body
 - recommendations are forwarded to the governing body when necessary
- ensure that committees and other groups do not exceed the responsibilities delegated to them by the governing body and co-ordinate work with other committees where required (for example, the personnel committee may propose a new policy with financial implications that needs to be reviewed by the finance committee before a decision can be made)
- work closely with the principal and other senior managers on the forward planning and co-ordinating of committee work
- prepare minutes of committee and working group meetings promptly for presentation to the next meeting of the governing body, to ensure good communication and co-ordination of issues.

Deputy and temporary clerks

The appointment of a nominated **deputy** clerk is not covered in the instrument and articles of government although there is provision for the appointment of a **temporary** clerk should the need arise (instrument of government clause 7). Arrangements vary, but a governing body needs to consider what would happen if the clerk was taken ill or was not available. It is important to provide for continued support and governing bodies should consider whether there is scope to appoint a member of staff to be the designated deputy clerk or what arrangements need to be made to appoint a temporary clerk when necessary.

Using the deputy or temporary clerk to support committees is a valuable way of enhancing their development.

Activity Deciding committee support arrangements

Now that you have looked at the kind of support the clerk can provide, think about the committee support that is in place for your governing body.

- 1 Are there ways in which the support available to committees could be improved?
- 2 Are there any areas where better communication or co-ordination is needed between committees or between a committee and the governing body?
- 3 Is there a satisfactory level of administrative support available to the clerk?

Viewpoint

If these questions have made you aware of issues or potential for improvements in the clerking support for your own governing body or committees, decide how you will follow these up.

Section 5 Resolving difficulties

The clerk is responsible for advising the governing body on proper procedure and, if necessary, intervening when it appears that the governing body is acting inappropriately or beyond its powers. The clerk is also responsible for maintaining the register of members' interests and monitoring the procedure for disclosing interests. The clerk has a responsibility to act as a whistleblower if it appears that there are irregularities in the way that the governing body carries out its powers and duties, or in the way it follows rules and procedures. (The clerk's whistleblowing role may link to that of the audit committee, which has a responsibility to report suspicions of fraud or irregularity to the full governing body – see *Module 8 The audit committee*, Section 7 'Fraud and irregularities'.)

Activity Options for resolving difficulties

The advice of the clerk is generally respected and accepted, but what if an occasion arose where the advice of the clerk was overruled and the clerk or some governors were concerned that the proper conduct of the governing body could be put at risk? What would you do if this situation arose in your governing body?

Viewpoint

Ideally every governing body should have in place a system for resolving these sorts of difficulties. This should include guidance on what a concerned governor should do in this situation. A framework for this kind of system is suggested on the next page.

Suggested framework for resolving difficulties

Stage 1 Acknowledge the need for a protocol to resolve difficulties between the clerk and the governing body or chair, if these arise.

Stage 2 Agree the formal steps that the clerk should take if the difficulty cannot be resolved informally. For example, the clerk could:

- put in writing reasons for the concern and send to the chair and the principal
- inform the chair of the audit committee if the issue comes under the terms of reference of that committee
- report the concern to the relevant committee or the governing body and ask that this be recorded in the publicly available minutes
- consult the auditors.

The clerk may need to obtain legal advice if the disagreement is about the legality of an action. The governing body may need to provide a budget allocation for this.

Stage 3 Agree steps to pursue the matter externally (only as a last resort). For example the governing body could agree that the clerk has authorisation to make a formal approach to the LSC in cases where the disagreement is over the legality of an action or the governing body exceeding its powers. The clerk should inform the chair if this step is taken.

The financial memorandum states that a governing body cannot suspend or dismiss a clerk who is acting within their role and queries or challenges the governing body's actions with good reason. A governing body which acts within the instrument and articles of government and follows good governance practice is unlikely to come into conflict with its clerk – but it is good practice to have a procedure for this in place, just in case.

Section 6 Reviewing the clerk's performance

This section looks at appraisal and training and development for the clerk.

Appraisal

Appraisal is a process which allows individuals and those with whom they work to review their performance, their strengths and weaknesses, areas for improvement, training and development needs, and targets to aim for in the future. Because of the pace of change in post-16 education and training and the need continually to improve the governance process, an annual appraisal of the clerk's performance is recommended.

The articles of government were amended on 1 April 2001 to include a specific responsibility of the governing body for the appraisal of the clerk both in his or her role as clerk and in any other capacity in which the clerk is employed by the college (articles of government clauses 3 and 5)

Activity How does your governing body appraise the clerk's performance?

Work through the questions below. If you are not sure of the answers, find out from the clerk or chair.

- Has your governing body arranged for the appraisal of the clerk?
- Who carries out the appraisal?
- How often does it take place?
- Is a formal record of the appraisal agreed and kept by the appraiser and the clerk?
- Does the appraisal include the setting of targets for the next year or longer?
- Is the governing body told when the appraisal takes place and about the outcome?
- Is there a mechanism for a mid-year review of progress?

Viewpoint

There is no single model of good practice for governing bodies – different colleges have different needs. However the list below summarises some useful principles.

Principles for appraisal of the clerk

The governing body has responsibility for arranging the appraisal of the clerk and senior postholders. The principles are similar for both. (See also *Module 6 Human resources*, Section 3 'The governing body and senior postholders'.)

The clerk should be appraised at least once a year. The governing body should decide the best time of year. An appraisal late in the summer term or early in the autumn term allows the clerk and appraiser to reflect on the previous year and to prepare the work programme for the following twelve months.

- Appraisal should not be conducted by the principal alone and must include other members of the governing body.
- It is good practice to make a formal record of an appraisal interview. This should be signed by all parties as a correct record and used to help monitor progress.
- Appraisal is an ideal opportunity to discuss the work programme for the clerk for the following twelve months and, if appropriate, beyond.
- The governing body should be told that appraisal has taken place and informed of the outcome. Governors should decide whether the personal targets agreed with the appraiser are to be made public or kept confidential.

Training and development

Annual appraisal should identify the general training and development needs of the clerk. A training budget of say £1000 will enable the clerk to address these and seek training on other important issues that arise during the year. The value to the governing body in keeping up to date and developing good practice repays this investment.

Activity What are your clerk's training and development needs?

Do you know what courses, seminars or briefings the clerk has attended in the last year?

Do you know if there is a specific budget for the clerk's training and development?

Do you know if the clerk belongs to a professional association that provides support or training?

Viewpoints

The governing body is the clerk's employer. As a member of the governing body you should satisfy yourself that the training and development needs of the clerk are being met. A number of organisations provide courses, seminars and briefings which may benefit your clerk. For more information see 'Useful resources' in the booklet on *Using the materials*. All clerks in colleges that are members of the Association of Colleges (AoC) belong to the Association of College Registrars and Administrators (ACRA). This is a national organisation, part of the AoC, which provides professional support, networks and development opportunities for clerks and business support managers in post-16 education and training.

Remember that governance is a dynamic process. The clerk needs to keep up to date with new developments to assist the governing body in responding to changing circumstances.

Section 7 Appointing the clerk

The articles of government provide the governing body with a framework for appointing the principal and other senior postholders, but not the clerk. If your governing body has not developed a framework of its own, this section provides ideas to enable the governing body to put one in place for the next time a new clerk is appointed. This framework should cover recruitment options, the job description, person specification, hours required and other contractual terms, support available, interviewing and, finally, induction and appraisal during the probationary period.

Who can be considered for the post?

According to the instrument of government the clerk cannot be a member of the governing body. It may be inappropriate to consider someone who has recently served on the governing body for the post. Arrangements vary but governing bodies generally have four options:

- a senior college manager who undertakes the role of clerk on a separate basis from their college duties
- a full-time college employee (not a senior manager) who undertakes the role of clerk on a separate basis from their college duties
- a full-time or part-time clerk with no other college duties
- an external appointment (such as a local solicitor, a local authority school governing body service or a person contracted to perform clerking services).

The appropriate choice for your governing body will be influenced by past and present experience of what works well and your priorities. You may, for example, prefer someone who has a detailed understanding of the post-16 education and training sector, or someone who is located in the college for quick access to information and advice, or who is able to help governors to identify best practice and strive for excellence.

Another essential consideration is the independence of the clerk. We return to this in Section 8.

Job description

The job description should set out clearly and thoroughly the responsibilities of the clerk.

An example is given in the next activity.

Activity Deciding the job description

Get hold of a copy of your clerk's job description. Compare the content of the job description with the example below.

Work through the responsibilities in the sample and then:

- put a ✓ against items similar to those on your list
- put a ? beside the points that don't appear on your list but which you think should do
- put a * beside any points that you are unclear about.

Sample job description

Provision of advice

- To provide advice on the role, function and constitution of the governing body (and its committees/*ad hoc* working parties) in line with:
 - the instrument and articles of government
 - the financial memorandum
 - the audit code of practice
 - the standing orders of the governing body
 - the terms of reference and standing orders of the committees of the governing body
 - the financial regulations and financial procedures of the college (this may be in liaison with the head of finance).
- To provide briefings for the members of the governing body and, in particular, the chair of the governing body and the chairs of the committees.
- To attend all meetings of the governing body and its committees/*ad hoc* working parties.
- To act as the reference point for all enquiries relating to the governing body.

Meetings of the governing body (and its committees/*ad hoc* working parties)

- To determine the dates of meetings and establish an annual cycle of business.
- To summon meetings having regard to the provisions of the instrument of government and the approved standing orders.

Agendas and reports

- To prepare agendas for meetings and to arrange the distribution of documents to members and other interested parties.
- To prepare reports on governance and other issues falling within the terms of reference of the clerk.

Minutes

- To prepare minutes of meetings, to consult the chair (and others) on the accuracy of the draft and to circulate in line with an agreed timetable.

Membership of the governing body

- To advise the governing body of expected and actual vacancies.
- To liaise with individuals and bodies on the membership in line with the wishes of the search committee and the governing body.
- To prepare and issue letters of appointment on behalf of the governing body.
- To monitor the attendance of members having regard to the instrument of government and the standing orders and to advise the governing body accordingly.

Standing orders

- To draft and keep under review the standing orders and to suggest to the governing body possible improvements and amendments to meet changed circumstances.

Terms of reference of the committees, etc.

- To keep under continuous review the terms of reference of the committees, working parties, etc. To suggest to the governing body possible improvements and amendments to meet changed circumstances.

Code of conduct of the governing body

- To arrange for an annual review (more often if thought to be appropriate) of the code of conduct.

Register of members' interests

- To maintain the register of members' interests and to make this available for review by interested parties.

Correspondence, statements, etc.

- To conduct correspondence on behalf of the governing body.
- To act as the reference point for all enquiries relating to the work of the governing body.
- To make statements on behalf of the governing body on issues relating to the governance of the college in accordance with the arrangements specified in the code of conduct.

Governing body seal

- To be responsible for the proper use of the governing body seal.

Public interest disclosure procedure

- To monitor the provisions of the public interest disclosure procedure and to suggest to the governing body possible improvements/ amendments to meet changed circumstances.
- To carry out the role of a lead assessor for the purposes of the public interest disclosure procedure.

Miscellaneous

- To identify training needs and participate in the provision of training for members including arranging for members to attend external briefings and training courses.
- To arrange the induction programme for new members of the governing body.
- To support the governing body in the annual review of its performance.
- To make arrangements (through the head of finance) for governors and officers to have appropriate professional indemnity insurance cover.
- To liaise with internal and external auditors in the performance of their work and reporting to the governing body.
- To oversee the administration of the scheme of expenses available for governors.

Viewpoint

This activity should give you a clearer idea of the general range of responsibilities of the clerk, the actual duties of your own clerk, and responsibilities that might be added to a future job description. Ask your clerk if there are aspects of either job description that you do not understand. You will then need to consider how to raise these issues so that the governing body can decide if it wishes to amend the job description. A discussion with the chair could be a good starting point.

There are other factors that the governing body and those applying for the post need to be clear about:

- **hours required** – the workload of the clerk varies throughout the year. It is a series of peaks and troughs so the number of hours worked has to be flexible.
- **available support** – applicants need to know what secretarial, clerical or administrative support is available to them. There is no point appointing a highly trained professional who then spends much of their time typing and photocopying.
- **line management arrangements** – the governing body cannot delegate the appointment, dismissal or accountability of the clerk. The clerk is answerable to the governing body as a whole, and typically reports on a day-to-day basis to the chair. Reporting to the principal is inappropriate as it confuses the distinction between governance and management. However the governing body will want to ensure that the clerk liases with the principal on appropriate issues relating to the governance of the college and to ensure that a good working relationship exists between them.
- **notice period** – given the time that it may take to appoint a new clerk, thought needs to be given to the notice period. This could vary from two to three months, depending on local needs.
- **probationary period** – lengths of probationary periods and the arrangements for reviewing the performance of newly appointed clerks vary from college to college. Governing bodies need to agree both the length of the probationary period and the arrangements for review prior to advertising a vacant post.

Person specification

The person specification will help you to prepare the advertisement and the documentation to be sent to potential candidates. It will then help you choose candidates to interview and, eventually, the best person to appoint.

The person specification must be realistic. The governing body must be able to justify the characteristics it specifies for the clerk (for example, to an employment tribunal), especially those it deems 'essential' as opposed to 'desirable'. The specification should take into account the college's equal opportunities policy. Figure 2 sets out a possible framework for writing a person specification.

Figure 2 Framework for a person specification

<p>Characteristics <i>For example:</i> Able to work with people from a range of backgrounds Able to demonstrate excellent time management skills Strength of character Political awareness Good communication skills (written and verbal)</p> <p>Education and training <i>For example:</i> Educated to degree or professional qualification level (or equivalent) Attendance at relevant conferences and seminars during past two years</p> <p>Previous experience <i>For example:</i> Clerk or deputy clerk (or equivalent) role in the public or private sector Experience of working in the further education sector post-incorporation Management of staff (assuming that the clerk will have secretarial/clerical support)</p> <p>Health <i>For example:</i> Able to fulfil the functions and role of clerk as set out in the approved job description</p> <p>Special skills, etc. <i>For example:</i> Ability to interpret legislation and other legal documents Knowledge of relevant statutory and good practice arrangements Flexible approach to work – can respond to the peaks and troughs which occur during the year Understanding of the Public Interest Disclosure Act 1998 Experience of formulating agendas and preparing minutes Able to follow agreed policies and procedures Knowledge of the conduct of formal meetings Able to prepare briefing papers for governors and others on appropriate issues (e.g. changes to statutory powers or duties of the governing body, amendments to the terms of reference of a committee)</p>	<p><i>Essential or desirable</i></p>
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Making the appointment

The governing body should establish the appointment panel, bearing in mind equal opportunities issues such as gender balance. The chair, vice-chair and principal may be an appropriate panel. Some governing bodies also appoint an advisor. A clerk from another college, for example, could help the panel to test candidates' knowledge of governance. The selection process can include some form of role play or in-tray exercise on governance issues as well as a formal interview.

Once appointed the new clerk needs an induction programme. This could be similar to arrangements for a new college manager, complemented by elements such as informal meetings with committee chairs so that chair and clerk can discuss how they will work in partnership in formal meetings.

Finally the governing body should agree arrangements for monitoring the clerk's performance during the probationary period, in order to identify any areas where support is required – for example it may emerge that a particular training course is useful in the early stages of the job.

Section 8 Ensuring the independence of the clerk

The governing body has a responsibility to ensure the independence of the clerk. This is an obvious consideration when appointing a new clerk. It is also a good idea for the governing body to review regularly the independence of the clerk, possibly as part of the governing body's annual self-assessment review of governance.

It is appropriate to review the independence of the clerk if they have another role in the college (e.g. senior manager, personal assistant or secretary to a senior manager or principal). Arrangements can normally be made to avoid any conflict of interest. In many public and private sector organisations the clerk or company secretary carries out several roles without compromising their independence. However, some roles within the college, such as director of finance, are **not** compatible with that of the clerk.

It is also appropriate to consider the question of independence if the clerk is a close relative or friend of the principal or member of the governing body.

Activity Is the clerk independent?

The clerk of Dibbledale college's governing body is also the head of personnel. A new governor wonders whether this dual responsibility could lead to a conflict of interest that compromises the clerk's independence.

What sort of arrangements should the governor expect to find in place to remove the potential conflict of interest?

What could the governor do to find out?

Viewpoint

It is not uncommon to find a clerk who is also head of personnel. One way to remove any conflict of interest is to arrange for the deputy clerk (if there is one – see Section 4) to take the lead in supporting the personnel or employment committees.

It would be entirely reasonable for a new governor to ask if there is a conflict of interest in this case. The most recent self-assessment report of the governing body should set out what arrangements have been made to ensure the clerk's independence. If it isn't clear from the report, the diplomatic approach would be to raise it with the chair informally.

Other management roles where there could be a tension are the head of estates and the management information system (MIS) manager or equivalent, who prepares funding claims.

It may be better to avoid appointing someone who is a relative or close friend of the principal or of a member of the governing body. This can be checked annually with the clerk as part of the declaration of interests process for the whole governing body. (For more information about declaration of interests see *Module 1 Introduction*, Section 5 'Integrity in working practices'.)

The independence of the clerk is central to good governance. It can be achieved by appointing a clerk who is committed to the role and the need to strive for excellence in all that is done on behalf of the governing body. Effective lines of communication (for example, between the clerk and the chair and vice-chair), self-assessment and appraisal will help to ensure this independence.

Activity Checking the independence of the clerk

How has your governing body considered the independence of the clerk?

Has the governing body put in place a formal procedure to ensure the clerk's independence?

Are there any issues relating to the independence of the clerk that need to be addressed by your governing body?

Has your clerk made a formal declaration in the register of interests?

Viewpoint

Note down any points that you need to follow up in the 'Action planner' in *Using the materials*.

Thinking about these questions has probably increased your awareness that the governing body needs a clear job description and full knowledge of the clerk's other responsibilities within the college to ensure independence.

Module review

This module has looked at the role of the clerk. If you have worked through the whole module you should now be confident that you can:

- outline the role and responsibilities of the clerk
- explain how to review the performance of the clerk (including arrangements for supporting the clerk) on an annual basis so as to ensure the governing body operates efficiently and effectively
- describe how to appoint a clerk (when the need arises) according to statutory requirements and acknowledged best practice
- ensure the independence of the clerk.

If you are not sure that you have achieved a particular goal, look back at the contents list in the Introduction to the module. You may find it useful to reread the relevant section.

Summary of key learning points

The summary for this module is presented in the form of a checklist on page 27 to enable you to draw together the information you have gathered during work on the module.

Where next?

You have now completed work on *Module 7 The clerk to the corporation*. If there are areas in which you need more guidance or information, they may be covered in other modules. Turn to 'Check your current knowledge and skills' in *Using the materials*. This self-assessment questionnaire will help you to decide which modules or sections of modules may help to fill these gaps. Tick the useful sections for further study.

If you cannot find the information you need within these materials, turn to the 'Action planner' in *Using the Materials*. Note down what further information, support or guidance you would like. The 'Action planner' gives advice on who may be able to help, and how.

Putting it into action

We hope that working through this module has raised useful questions, increased your awareness of issues and given you ideas for practical action that you would like to follow up. The 'Action planner' in *Using the Materials* contains a section where you can note down any questions or action points that you want to follow up within your own college.

Checklist: The clerk to the corporation

Put a tick or cross in the boxes as appropriate.

Clerk name:

Contact details: telephone fax

email

Address for correspondence

The job description for the clerk was last reviewed by the governing body on

The job description is due for review in (about)

Appraisal of the clerk is carried out by

How often?

- The governing body is informed in broad terms of the appraisal outcome.
- The clerk has access to staff development opportunities with an appropriate budget allocation.
- Governors are informed of the courses/seminars/briefings attended (e.g. through an annual statement).
- The clerk keeps up to date with best practice through participation in the network meetings organised through ACRA.

The governing body has ensured that:

- the clerk has sufficient time to carry out the role
- appropriate secretarial/administrative/clerical support is provided.

The independence of the clerk is secured by the following arrangements:

.....

The clerk to the corporation



commissioned by



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