

DCG

INSTRUMENT OF GOVERNMENT

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Interpretation of the terms used

1. In this Instrument of Government:

- (a) "the Clerk" means the Clerk to the Corporation;
- (b) "the Corporation" means any further education corporation to which this Instrument applies;
- (c) "the institution" means the institution which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992;
- (d) "this Instrument" means this Instrument of Government;
- (e) "meeting" includes a meeting at which the members attending are present in more than one room, provided that by the use of video-conferencing facilities it is possible for every person present at the meeting to communicate with each other ;
- (f) "necessary skills" means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have;
- (g) "parent member", "staff member" and "student member" have the meanings given to them in clause 2;
- (h) any reference to "the CEO" shall include a person acting as Chief Executive;
- (i) "the Secretary of State" means the Secretary of State for Education;
- (j) "staff matters" means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
- (k) "the students' union" means any association of students formed to further the educational purposes of the institution and the interests of students, as students;
- (l) a "variable category" means any category of members whose numbers may vary according to clauses 2 and 3.

Composition of the Corporation

2. (1) The Corporation shall consist of:

- (a) up to twelve members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions under article 3 of the Articles of Government;
- (b) the CEO of the institution;
- (c) at least one member who is a member of the institution's staff (with the number being settled by the Corporation from time to time) and has a contract of employment with the institution and who has been both nominated and elected by staff in such manner as staff approve from time to time and approved by the Corporation ("staff member"); and
- (d) at least one member who is a student at the institution (with the number being settled by the Corporation from time to time) and has been both either nominated and elected by their fellow students, or if the Corporation so decides, by a recognised association representing such students and in either case approved by the Corporation ("student member").

(2) A person who is not for the time being enrolled as a student at the institution, shall nevertheless be treated as a student during any period of authorised absence from the institution for study, travel or for carrying out the duties of any office held by that person in the institution's students' union.

Appointment of the members of the Corporation

3.
 - (1) The Corporation is the appointing authority in relation to the appointment of its members in category 2(1)(a) above.
 - (2) If the number of members falls below the number needed for a quorum, the Corporation shall immediately appoint members sufficient to form a quorum.
 - (3) Where the office of any member becomes vacant the relevant appointing authority shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy.

Appointment of the Chair and Vice-Chair

4.
 - (1) The members of the Corporation shall appoint a Chair, and if the Corporation determine from time to time a Vice-Chair, from among themselves.
 - (2) Neither the CEO nor any staff or student member shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair or Vice Chair in their absence.
 - (3) If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the members present shall choose someone from among themselves to act as Chair for that meeting.
 - (4) The Chair and Vice-Chair shall hold office for such period as the Corporation decides.
 - (5) The Chair or Vice-Chair may resign from office at any time by giving notice in writing to the Clerk.
 - (6) If the Corporation is satisfied that the Chair or Vice Chair (as the case may be) is unfit or unable to carry out the functions of office, it may give written notice, removing the Chair or Vice Chair (as the case may be) from office and the office shall then be vacant.
 - (7) At the last meeting before the end of the term of office of the Chair or Vice Chair (as the case may be), or at the first meeting following the Chair's or Vice Chair (as the case may be) resignation or removal from office, the members shall appoint a replacement from among themselves.
 - (8) Unless the Corporation otherwise resolve from time to time at the end of their respective terms of office, the Chair and Vice-Chair shall be eligible for reappointment subject to any maximum terms of office approved by the Corporation from time to time.

Appointment of the Clerk to the Corporation

5.
 - (1) The Corporation shall appoint a person to serve as its Clerk. The Chair, Vice Chair and CEO may not be appointed as Clerk.
 - (2) In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the Chair, Vice Chair and CEO may not be appointed as temporary Clerk.

(3) Any reference in this Instrument to the Clerk shall include a temporary Clerk appointed under paragraph (2).

(4) Subject to clause 12, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.

(5) The Clerk may also be a member of staff at the institution.

Persons who are ineligible to be members

6. (1) No one under the age of 18 years may be a member, except as a student member.

(2) The Clerk may not be a member.

(3) A person who is a member of staff of the institution may not be, or continue as, a member, except as a staff member or in the capacity of CEO.

(4) Paragraph (3) does not apply to a student who is employed by the Corporation in connection with the student's role as an officer of a students' union.

(5) A person shall be disqualified from holding, or from continuing to hold, office as a member, if that person is adjudged bankrupt or is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Insolvency Act 1986, or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement. That period of disqualification shall continue until such bankruptcy or composition or arrangement is discharged.

(6) A person shall be disqualified from holding, or from continuing to hold, office as a member if:

- (a) that person has been convicted, whether in the United Kingdom or elsewhere, of any offence (except a road traffic offence not involving death or personal injury or driving under the influence of alcohol or drugs) unless the Corporation resolve otherwise; or
- (b) that person is no longer eligible to be a charity trustee; or
- (c) that person has been a member of a further education body which has become insolvent ; and
- (d) the conduct of the governor is deemed to be unfit to be involved in the management of an FE body
- (c) that person is certified by a registered medical practitioner as being physically or mentally incapable of discharging his or her duties as member and will remain so for 3 months or more and the Corporation resolves to remove that member from office; or
- (d) that person is unfit or unable to discharge his or her functions as a member or his or her conduct calls himself or herself or the institution in to disrepute and the Corporation resolves to remove that member from office; or
- (e) that person without the consent of the Corporation is absent from meetings of the Corporation for 6 months or more and the Corporation resolves to remove that member from office; or
- (f) that person breaches the code of conduct applying to members of the Corporation from time to time and the Corporation resolves to remove that member from office.

(7) Upon a member of the Corporation falling in to any of the categories set out in paragraph (6) above the member shall immediately give notice of that fact to the Clerk.

The term of office of a member

7. (1) A member of the Corporation shall hold and vacate office in accordance with the terms of the appointment approved by the Corporation from time to time, but the length of the term of office shall not exceed four years.
- (2) Members retiring at the end of their term of office shall be eligible for reappointment, and clause 3 shall apply to the reappointment of a member as it does to the appointment of a member but so that the maximum term of office of a member shall be eight years, with the exception of extenuating circumstances agreed by the Corporation.
- (3) Paragraph (2) is subject to any rule or bye-law made by the Corporation under article 22 of the Articles of Government concerning the number of terms of office which a person may serve.

Termination of membership

8. (1) A member may resign from office at any time by giving notice in writing to the Clerk.
- (2) Upon a member becoming disqualified from being a charity trustee under the Charities Act 2011 (as amended from time to time) they shall cease to be a member with immediate effect and shall notify the Clerk as soon as they become aware of such disqualification.

Any person who is a member of the Corporation by virtue of being a member of the staff at the institution, including the CEO, shall cease to hold office upon ceasing to be a member of the staff and the office shall then be vacant.

- (3) A student member shall cease to hold office:
- (a) at the end of the student's final academic year, or at such other time in the year after ceasing to be a student as the Corporation may decide; or
 - (a) if expelled from the institution,

and the office shall then be vacant.

Members not to hold interests in matters relating to the institution

9. (1) A member to whom paragraph (2) applies shall:
- (a) disclose to the Corporation the nature and extent of the interest; and
 - (b) if present at a meeting of the Corporation, or of any of its committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, not take part in the consideration or vote on any question with respect to it and not be counted in the quorum present at the meeting in relation to a resolution on which that member is not entitled to vote; and
 - (c) withdraw, if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, where required to do so

by a majority of the members of the Corporation or committee present at the meeting.

(2) This paragraph applies to a member who:

- (a) has any financial interest, except for interests already declared, in:
 - (i) the supply of services or work to the institution, or the supply of goods for the purposes of the institution;
 - (ii) any contract or proposed contract concerning the institution; or
 - (iii) any other matter relating to the institution; or
- (b) has any other interest of a type specified by the Corporation in any matter relating to the institution.

(3) This clause shall not prevent the members considering and voting upon proposals for the Corporation to insure them against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

(4) Where the matter under consideration by the Corporation or any of its committees relates to the pay and conditions of all staff, or all staff in a particular class, a staff member:

- (a) need not disclose a financial interest; and
- (b) may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that 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
- (c) 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.

(5) The Clerk shall maintain a register of the interests of the members which have been disclosed and the register shall be made available during normal office hours at the institution to any person wishing to inspect it.

(6) No member shall without the consent of the Charity Commission or other principal regulator of the institution from time to time be paid for acting as a member except that :

- (a) Members may be paid reasonable expenses for attendance at meetings of the Corporation and any committee thereof;
- (b) Members may be beneficiaries of the institution;
- (c) Members may have an interest in contracts for services, work or goods approved in accordance with paragraph 9(1) above.

Meetings

10. (1) The Corporation shall meet at least once in every term, and shall hold such other meetings as may be necessary.

(2) Subject to paragraphs (4) and (5) and to clause 13(4), all meetings shall be called by the Clerk, who shall, at least seven calendar days before the date of the meeting, send to the members of the Corporation written notice of the meeting and a copy of the proposed agenda.

(3) If it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk, the Chair shall, at least seven calendar days before the date of the meeting, send to the members a copy of the agenda item concerned, together with any relevant papers.

(4) A meeting of the Corporation, called a "special meeting", may be called at any time by the Chair or at the request in writing of any five members.

(5) Where the Chair, or in the Chair's absence the Vice-Chair, decides that there are matters requiring urgent consideration, the written notice convening the special meeting and a copy of the proposed agenda may be given within less than seven calendar days.

(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.

(7) Members may participate in any meeting irrespective of where any member is or how the members communicate with each other but so that such members shall be required to be able to hear each other. If members participate in a meeting when they are not all in the same place then they may decide that meeting is treated as taking place wherever any of them is.

(8) Any decision that could be made by a meeting of the Corporation or any committee thereof shall be capable of being validly made if a resolution in writing is signed to that effect by all persons eligible to be at the relevant meeting.

(9) Any meeting or communication with a member of the Corporation or any committee thereof shall be capable of being made by electronic means (as defined in section 1168(3) to (6) (inclusive) Companies Act 2006).

Quorum

11. (1) Meetings of the Corporation shall be quorate if the number of members present is at least 30% of the total number of members appointed under paragraph 2(1)(a) above.

(2) If the number of members present for a meeting of the Corporation does not constitute a quorum, the meeting shall not be held.

(3) If during a meeting of the Corporation there ceases to be a quorum, the meeting shall be terminated at once.

(4) If a meeting cannot be held or cannot continue for lack of a quorum, the Chair may call a special meeting as soon as it is convenient.

Proceedings of meetings

12. (1) Every question to be decided at a meeting of the Corporation shall be decided by a majority of the votes cast by members entitled to vote on the question. Voting can be carried out by electronic means, but must be ratified at a subsequent quorate meeting.

(2) Where, at a meeting of the Corporation, there is an equal division of votes on a question to be decided, the Chair of the meeting shall have a second or casting vote.

- (3) A member may not vote by proxy.
- (4) No resolution of the members may be rescinded or varied at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.
- (5) Except as provided by procedures made pursuant to rules and bye-laws as specified in the Articles of Government, a member of the Corporation who is a member of staff at the institution, including the CEO, shall withdraw:
 - (a) from that part of any meeting of the Corporation, or any of its committees, at which staff matters relating solely to that member of the staff, as distinct from staff matters relating to all members of staff or all members of staff in a particular class, are to be considered;
 - (b) from that part of any meeting of the Corporation, or any of its committees, at which that member's reappointment or the appointment of that member's successor is to be considered;
 - (c) from that part of any meeting of the Corporation, or any of its committees, at which the matter under consideration concerns the pay or conditions of service of all members of staff, or all members of staff in a particular class where the member of staff is acting as a representative (whether or not on behalf of a recognised trade union) of all members of staff or the class of staff (as the case may be); and
 - (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 matters relating to any member of staff holding a post senior to that member's are to be considered, except those relating to the pay and conditions of all staff or all staff in a particular class.
- (6) Except as provided by rules or bye laws made under the Articles of Government, a student member shall withdraw from that part of any meeting of the Corporation or any of its committees, at which a student's conduct, suspension or expulsion is to be considered.
- (7) In any case where the Corporation, or any of its committees, is to discuss staff matters relating to a member or prospective member of staff at the institution, a student member shall:
 - (a) take no part in the consideration or discussion of that matter and not vote on any question with respect to it; and
 - (b) where required to do so by a majority of the members, other than student members, of the Corporation or committee present at the meeting, withdraw from the meeting.
- (8) The Clerk:
 - (a) shall withdraw from that part of any meeting of the Corporation, or any of its committees, at which the Clerk's remuneration, conditions of service, conduct, suspension, dismissal or retirement in the capacity of Clerk are to be considered; and
 - (b) where the Clerk is a member of staff at the institution, the Clerk shall withdraw in any case where a member of the Corporation is required to withdraw under paragraph (5) above.
- (19) If the Clerk withdraws from a meeting, or part of a meeting, of the Corporation or a committee of the Corporation whether under paragraph

(9) above or otherwise, the Corporation shall appoint a person from among themselves to act as Clerk during this absence.

Minutes

13. (1) Written minutes of every meeting of the Corporation shall be prepared, and, subject to paragraph (2), at every meeting of the Corporation the minutes of the last meeting shall be taken as an agenda item.
- (2) Paragraph (1) shall not require the minutes of the last meeting to be taken as an agenda item at a special meeting, but where they are not taken, they shall be taken as an agenda item at the next meeting which is not a special meeting.
- (3) Where minutes of a meeting are taken as an agenda item and agreed to be accurate, those minutes shall be signed as a true record by the Chair of the meeting.
- (4) Separate minutes shall be taken of those parts of meetings from which staff members, the Group CEO, student members or the Clerk have withdrawn from a meeting in accordance with clause 12 and such persons shall not be entitled to see the minutes of that part of the meeting or any papers relating to it.

Public access to meetings

14. The Corporation shall decide any question as to whether a person should be allowed to attend any of its meetings where that person is not a member.

Copies of the Instrument of Government

15. A copy of this Instrument shall be given free of charge to every member of the Corporation and at a charge not exceeding the cost of copying or free of charge to any other person who so requests a copy, and shall be available for inspection at the institution upon request, during normal office hours, to every member of staff and every student.

Change of name of the Corporation

16. The Corporation may change its name with the approval of the Secretary of State.

Indemnity

17. The members shall be entitled to be indemnified out of the assets of the Corporation against any liability properly incurred by that member for acting as member including negligence, default, breach of duty or breach of trust by that member in relation to the institution subject to any limitations imposed by law from time to time. Indemnity will exclude any members charged with / found guilty of fraud.

Notices

18. Any notice given by post shall be made by first class pre paid post and shall be deemed to be delivered on the business day following its posting. Notices served by hand or by electronic means shall be deemed to be delivered on the business day of delivery or if not a business day then the next business day.

Application of the seal

19. The application of the seal of the Corporation shall be authenticated by:
- (a) the signature of the Chair, the CEO or of some other member authorised either generally or specially by the Corporation to act for that purpose;
and
 - (b) the signature of any other member.

ARTICLES OF GOVERNMENT

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Interpretation of the terms used

1. In these Articles of Government:

- (a) any reference to "the CEO" shall include a person acting as CEO;
- (b) "the Articles" means these Articles of Government;
- (c) "Chair" and "Vice-Chair" mean respectively the Chair and Vice-Chair of the Corporation appointed under clause 6 of the Instrument of Government;
- (d) "the Clerk" has the same meaning as in the Instrument of Government;
- (e) "the Corporation" has the same meaning as in the Instrument of Government;
- (f) "parent member", "staff member" and "student member" have the same meanings as in the Instrument of Government;
- (g) "the Secretary of State" means the Secretary of State for Business, Innovation and Skills;
- (h) "senior post" means the post of CEO, Deputy CEO and Clerk;
- (i) "the staff" means all the staff who have a contract of employment with the institution;
- (j) "the students' union" has the same meaning as in the Instrument of Government.

Conduct of the institution

2. The institution shall be conducted in accordance with the provisions of the Instrument of Government, these Articles, any rules or bye-laws made under these Articles and any trust deed regulating the institution.

Responsibilities of the Corporation, the CEO and the Clerk

3. (1) The Corporation shall be responsible for the following functions:

- (a) the preservation and development 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, 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.

(2) Subject to the responsibilities of the Corporation, the CEO shall be the Chief Executive of the institution, and shall be responsible for the following functions:

- (a) making proposals to the Corporation about the educational character and mission of the institution and implementing the decisions of the Corporation;
- (b) the determination of the institution's academic and other activities;
- (c) preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;

- (d) the organisation, direction and management of the institution and leadership of the staff;
 - (e) the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts; and
 - (f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.
- (3) The Clerk shall be responsible for the following functions:
- (a) advising the Corporation with regard to the operation of its powers;
 - (b) advising the Corporation with regard to procedural matters;
 - (c) advising the Corporation with regard to the conduct of its business; and
 - (d) advising the Corporation with regard to matters of governance practice.

The establishment of committees and delegation of functions generally

- 4.(1) The Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the CEO or Clerk and may delegate powers to:
- (a) such committees;
 - (b) the Chair, or in the Chair's absence, the Vice-Chair; or
 - (c) the CEO.
- (2) The number of members of a committee and the terms on which they are to hold and to vacate office, shall be decided by the Corporation.
- (3) The Corporation may also establish committees under collaboration arrangements made with other further education institutions or maintained schools (or with both), and such joint committees shall be subject to any regulations made under section 166 of the Education and Inspections Act 2006(4) governing such arrangements.

The audit committee

- 5(1) The Corporation shall establish a committee, to be known as the "audit committee", to advise on matters relating to the Corporation's audit arrangements and systems of internal control.
- (2) The audit committee shall consist of such persons and operate in such way as is approved by the Corporation from time to time subject to compliance with any criteria imposed on the Corporation by the Skills Funding Agency (or any successor body) from time to time.

Composition of committees

6. Any committee established by the Corporation may include persons who are not members of the Corporation.

Delegable and non-delegable functions

7. The Corporation shall not delegate the following functions:
- (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 holder of a senior post ; and
- (e) the modification or revocation of these Articles.

8.(1) The Corporation may not delegate:

- (a) the consideration of the case for dismissal; and
- (b) the power to determine an appeal in connection with the dismissal

of the holder of a senior post, other than to a committee of members of the Corporation.

(2) The Corporation shall make rules specifying the way in which a committee having functions under paragraph (1) shall be established and conducted.

9. The CEO may delegate functions to the holder of any other member of the senior leadership team of the institution from time to time other than:

- (a) the management of budget and resources; and
- (b) any functions that have been delegated to the CEO by the Corporation.

Chair and Vice-Chair's action

10. Both the Chair and in the Chair's absence the Vice Chair shall, on terms specified in rules and bye-laws from time to time, be empowered to act for the Corporation between meetings of the Corporation where action is required to be taken between such meetings.

Appointment and promotion of staff

11.(1) Where there is a vacancy or expected vacancy in a senior post the Corporation shall appoint a person on such terms as it shall approve following such procedure as it shall determine from time to time.

(2) It shall, without limiting the powers of the Corporation under article 11(1), be open to the Corporation to appoint an interim or temporary person to such senior post pending the appointment of a permanent person on such terms as are approved by the Corporation.

(3) Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff:

- (a) may be required to act in the place of any other senior post holder; and
- (b) if so required, shall have all the duties and responsibilities of such senior post holder during the period of the vacancy or temporary absence.

12 The CEO shall have responsibility for the appointment of all members of staff other than the Clerk.

Financial matters

13. The Corporation shall approve the policy by which the tuition and other fees payable to it are determined, subject to any terms and conditions attached to grants, loans or other payments paid or made by the Skills Funding Agency or any successor or other body.

Rules and bye-laws

14. The Corporation shall have the power to make rules and bye-laws relating to the government and conduct of the institution and these rules and bye-laws shall be subject to the provisions of the Instrument of Government and these Articles.

Copies of Articles of Government and rules and bye-laws

15. A copy of these Articles, shall be given free of charge to every member of the Corporation and at a charge not exceeding the cost of copying or free of charge, to any other person who requests a copy and shall be available for inspection at the institution upon request, during normal office hours, to every member of staff and every student.

Modification or replacement of the Instrument and Articles of Government

- 16.(1) Subject to paragraph (2), the Corporation may by resolution of the members modify or replace its instrument and articles of government, after consultation with any other persons who, in the Corporation's view, are likely to be affected by the proposed changes.
- (2) The Corporation shall not make changes to the instrument or articles of government that would result in the body ceasing to be a charity.

Dissolution of the Corporation

- 17.(1) The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.