



Department
for Business
Innovation & Skills

**A REVIEW OF FURTHER
EDUCATION AND SIXTH FORM
COLLEGE GOVERNANCE**

Report on findings and
recommendations

JULY 2013

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Foreword

The Government has promised to secure greater rigour and responsiveness in further education. To this end, it has freed colleges from central government control, and reinforced the increasingly important role of college governors in setting the strategic direction of their institutions. These changes give colleges greater autonomy – but they also bring increasing accountability to the students, employers and wider communities which they serve.

Many colleges have already seized this challenge, often in innovative ways. We need to go further, however, if we are to raise standards across the whole FE sector. Ofsted report that too many learners still attend colleges that are not good or outstanding, and there is clear evidence that high quality is usually synonymous with strong and effective leadership. We need to work together to ensure that every college is as good as the best, maintaining an unwavering commitment to rigour and a focus on raising standards.

Strong governance is at the heart of this aim, and is vital to every college's success. Governors have strategic oversight of their college; they lead the drive for improved standards in teaching and learning, holding Principals to account. Governors are also the guardians of public money, with responsibility for ensuring effective and efficient use of college resources.

This report recognises the commitment, energy and dedication governors bring to their role. It also recognises the special responsibilities and demands that come with assuming the role of Chair of Governors. The report accordingly sets out a series of recommendations which challenge the status quo, and which seek to support stronger governance and improved standards.

The Government and the Association of Colleges Governors' Council welcome and endorse this report, and are delighted to accept the recommendations respectively addressed to them. We would also like to encourage all colleges and others in the sector to act on the recommendations relevant to them, so that together we can achieve what we are all working towards – a world-class further education system, successful students, strong businesses and a prosperous future for all.

Matthew Hancock MP

Minister for Skills

Roger Morris

Chair, AoC Governors' Council

Introduction

1. The further education¹ (FE) governance project was commissioned by Matthew Hancock, Minister for Skills, to consider what more can be done to recognise, incentivise and reward good governance, to support improved standards in sixth form and further education colleges.
2. The project was led by the Department for Business, Innovation and Skills (BIS), supported by the Department for Education (DfE), and informed by an external advisory group². A virtual group of stakeholders³, including college governors and Principals, and representatives from the Sixth Form Colleges' Association, the Women's Leadership Network, the Institute for Government, the National Union of Students and the University and College Union were also invited to give their views and make suggestions for action by government and the FE sector to improve governance and drive up standards.
3. The project team has also consulted with the Higher Education Funding Council for England (HEFCE), the Charity Commission, the DfE Academies Team, the Department of Health and others to identify best practice in other sectors and consider how this can be applied to FE college governance.
4. The project focused on three key themes:
 - Recruitment and succession planning, including the make up of governing bodies;
 - Recognising the status and importance of governors, including through non-financial incentives; and
 - Remuneration for governors, taking account of current practice in other sectors and the Charity Commission's views.
5. The recent increased focus on the role of the governor within the policy context of the new freedoms and flexibilities for colleges has been welcomed and the report was considered timely.
6. A key theme throughout was the importance of good governance to all aspects of FE. In the sector in England there are approximately 8,000 individuals⁴ who are governors of further education and sixth form colleges; volunteers committed to the success of their institution. The governing body, together with the Principal, constitutes the highest level of decision making in the college, having overall responsibility for the strategic direction and financial health of the institution.
7. A consistent characteristic of successful colleges is strong leadership and management, and the importance of the governing body in achieving this cannot be overstated. Ofsted have highlighted the importance of the relationship between governors and college managers in ensuring a culture of accountability and success.

8. This report recognises the many examples of governance good practice that exist in colleges. It also acknowledges the progress already made to support strong governance, including the creation and ongoing development of the AoC Governance Library⁵ and the launch of *The English College's Foundation Code of Governance*⁶ (the Foundation Code). Further action is underway to develop governance support arrangements and this report will help inform that work.
9. The following pages set out the review findings, together with recommendations for action by the sector and central government.
10. We are very grateful to all those who contributed.

1. Recruitment and Succession Planning

Background

11. In his 2011 annual report⁷, Her Majesty's Chief Inspector of Education, Children's Services and Skills registered his concern about standards within colleges, with too high a proportion being judged as only satisfactory. Since that point, and on various occasions, he has commented on the key role of governors in raising standards. Increasingly therefore the challenge facing governors is that of quality improvement.
12. The legislative and policy reforms outlined in *New Challenges New Chances*⁸ gave colleges a wide range of freedoms and flexibilities, reducing central control and putting responsibility firmly on the shoulders of colleges themselves. This changed landscape means an expanded role for governors, giving them collective responsibility for developing a diverse college sector, working with schools, academies, independent training providers, universities, businesses, local government and the voluntary sector.
13. The Foundation Code is a framework that requires (on a comply-or-explain basis) governing bodies to ensure they have the mix of skills and experience needed to achieve their evolving strategy effectively. Governing bodies are required by regulation to set out their membership in their Annual Reports, but although there have been systematic surveys in at least one area, there is not at present a national database which can provide a picture of the composition and diversity of governing bodies across the sector.
14. Governing bodies are generally responsible for recruiting new governors and have freedom on how, where and when to do so. They are expected under the Foundation Code to publish clear rules for governor appointments. Anecdotal evidence and existing surveys suggest variations in recruitment practices. There is evidence from *A Review of Governance and Strategic Leadership in English FE*⁹ (the Schofield Report) and elsewhere that some colleges have struggled to recruit suitably qualified governors, especially from minority groups, or with financial skills, or among those of working age.
15. The report *Key Challenges for FE College Governance and Priorities for Development: An LSIS Perspective*¹⁰ (An LSIS Perspective) agreed that there was room for greater diversity on governing bodies. There has also been some criticism of an over-representation of older white males on governing bodies. Colleges need to ensure diversity of gender, ethnicity, age and disability, and a balance in terms of length of service and background. Desirable qualities include professional finance qualifications, legal training, understanding of vocational sectors served by the college, and academic experience.
16. The Foundation Code expects governing bodies to acknowledge the value of refreshing their membership. It also expects governing bodies to have regard to a norm of two terms of office (i.e. 8 years) established in the 1990s (the Nolan Code¹¹),

with any re-appointment beyond that expected to be subject to particular scrutiny and justification. Ofsted reports have noted some correlation between failure to refresh governing bodies (or replace long-serving Chairs) and poor quality performance.

17. *An LS/S Perspective* identified the existence at some colleges of a “polite consensus” that failed to challenge the status quo. The report also found that some colleges exhibit weak performance management and self-assessment of governance, and at others there were under-developed succession planning processes in place, especially for the Chair.

Findings

18. A survey of colleges in the East of England¹² conducted this year by the Association of Colleges in the Eastern Region (ACER) found that 33% of governors and 24% of Chairs were female. A 2012 survey¹³ conducted by the Women’s Leadership Network (WLN) showed corresponding figures of 38% for governors and 20% for Chairs. Female representation on college governing bodies is noticeably higher than on private sector boards (currently 13.2% for FTSE 250 companies¹⁴), but women remain under-represented in general and especially at Chair level.
19. Research indicates that ethnic minorities are also under-represented on governing bodies, especially when considering independent governors¹⁵. The ACER survey found that over 90% of independent governors are of white ethnicity. In the same colleges 29% of student governors are from BME (Black and Minority Ethnic) backgrounds.
20. Both the WLN and ACER surveys found that the average age of governors was high. In the ACER survey 77% of independent governors were aged over 45.
21. 21% of independent governors and 50% of Chairs surveyed by ACER had served as a governor for 9 years or longer. While some colleges applied a limit of two 4-year terms to governor roles the majority (18 out of 34) did not have a defined maximum length of service.
22. There is currently no norm for the duration of a chairmanship, although some in the sector have suggested 5 years. Few Chairs are recruited directly from outside the governing body, and there is evidence that at some colleges Chairs are staying on longer than they would choose because of difficulties in identifying a willing successor from within the governing body.
23. The WLN survey found that only 2 out of 85 governors surveyed had been selected following a competitive interview. The most common method of recruitment was as a result of an approach by the Corporation’s Search Committee. This could reflect the targeting of individuals with combinations of desired skills that would be unlikely to be identified through public advertising, but the risk is that many potentially strong governors, including perhaps from minority backgrounds, are unaware of the opportunities. An in-depth analysis of the findings of the ACER and WLN surveys is presented in Annex C.

24. The average size of a governing body according to the WLN survey is 17.8 members, of which on average 13 were independent. The Grant Thornton review of the top 100 charities *The Science of Good Governance*¹⁶ found that most charity boards have 10-15 trustees, with the average size being 13. The Grant Thornton review also noted that the average FTSE 350 company has 9.5 board members. Although more research is required, it appears that FE governing bodies are significantly larger than their equivalents in similar organisations. Consideration should be given as to whether the size of FE governing bodies is helpful in fulfilling their duties or tends to discourage debate and timely and effective decision-making.
25. A number of colleges have not yet fully adopted the Foundation Code and even where they have, it is in the initial stage and the principles are not always firmly embedded. Research recently conducted by LSIS (Clerking in the New Era report¹⁷) into the role of the college clerk shows that, of the colleges in the survey, 88% of clerks said their Boards have received papers on the adoption of the Code. This indicates that awareness and adoption of the Code is growing. There may be scope to develop the Code further, e.g. in identifying (flexible) norms for the duration of governorships and chairmanships, and to do more in sharing good practice across the sector.

Consultations

26. The Network for Black Professionals / Black Leadership Initiative has been supporting colleges to address race equality by identifying and running targeted programmes for BME governors. They believe there is a good case for developing a bespoke mentoring programme based on the Black Leadership Initiative model for all governors which will enhance understanding of diversity particularly around race and gender.
27. To support the recruitment and placement of skilled school governors and address a lack of training for Chairs of governors, DfE has funded the governor recruitment charity School Governors' One Stop Shop (SGOSS) and licensed leadership development training for Chairs and aspiring Chairs through the National College for Teaching and Leadership.
28. SGOSS services are free and their average time to fill a governor post is 3 months. SGOSS currently work with some FE colleges and BIS are exploring with them the potential for extending this service more widely.

Recommendations

Recommendation	Responsible
<p>1. The AoC, with support from the Education and Training Foundation and the Sixth Form Colleges' Association, to establish a comprehensive database to record and monitor trends in the composition of FE governing bodies.</p>	<p>AoC Governors' Council, Education and Training Foundation and Sixth Form Colleges' Association</p>
<p>2. Governing bodies should be expected in the corporate governance section of their Annual Reports to discuss the composition, size and diversity of the board, and their thinking on how it might be developed, together with their policies on recruitment and succession planning of governors and Chairs. Good practice models to be catalogued in the AoC Governance Library.</p>	<p>Colleges and AoC</p>
<p>3. AoC to develop a governor recruitment facility on the Governance Library platform to act as a resource for individuals interested in becoming governors, for organisations wishing to encourage their staff to take on governor roles, and for colleges wishing to recruit new governors.</p>	<p>AoC</p>
<p>4. BIS to work with SGOSS to explore the potential to extend SGOSS services to more FE colleges.</p>	<p>BIS</p>
<p>5. An early review of the Foundation Code to include clear expectations on the duration of governorships and chairmanships and to set out succession planning based on corporate best practice.</p>	<p>AoC Governors' Council and Sixth Form Colleges' Association</p>
<p>6. The role of governor to be more widely publicised both nationally and by colleges themselves to ensure there is a wider and more diverse audience of potential governors. A two-page document summarising the governor role, impact and benefits to be jointly developed by BIS and the AoC and to be shared with institutions to support governor recruitment. See Annex A for document.</p>	<p>AoC Governors' Council, BIS, Colleges and Sixth Form Colleges' Association</p>

2. Recognising the Status and Importance of Governors

Background

29. The prime motivation for volunteering as a governor is the desire to contribute to the success of the college, students and wider community, and most governors do this without thought or desire for reward.
30. To enable governors to do their jobs effectively it is important that they are clear on their responsibilities and are being effectively supported and incentivised.
31. A variety of incentives exist to support governance. These include awards to individual governors based on outstanding performance e.g. Honours and invitations to Royal Garden Parties. Recognition of the collective performance of governing bodies is made through Ofsted reports that give outstanding or good grades for college performance in leadership and management, and Skills Funding Agency financial health gradings.
32. There are further opportunities to recognise strong governance and raise the governor profile through ministerial speeches and events; government publications; the introduction of the new Chartered Status scheme; and improved use of existing awards.

Findings

33. There is a feeling within the sector that the role of college governor often lacks status within the local community. Both Baroness Sharp's report¹⁸ and *An LSIS Perspective* identified shortcomings with how colleges are horizontally accountable to their local communities.
34. The Autumn Statement¹⁹ made clear that government expects close working between colleges and Local Enterprise Partnerships (LEPs), with LEPs represented on college boards and colleges on LEP boards, so that colleges are able to shape and respond to the economic needs of their communities. Whilst the sector generally supports the ambition, there are questions about the practicality in areas where a college spans several LEPs or where a LEP has several colleges in its area. Where this is the case, alternative approaches are being considered to ensure effective links and close working.
35. The Foundation Code states that governing bodies should ensure that decision-making processes are transparent, properly informed, rigorous and timely. It recommends that the governing body's business should be conducted to allow open discussion and debate.

36. Governors have to assimilate a large amount of information, data and statistics to operate effectively. In doing this they are dependent on the senior management team's support and the effectiveness of the clerk. For new governors this is a steep learning curve, especially in understanding the approach and metrics used for assessing quality e.g. value added. Most agree that it takes 2-3 years before a new governor is fully comfortable in the role.
37. Governors also need to understand and act on developments in government education policy. Some governors report difficulties in keeping abreast of the range of information and have highlighted the importance of government issuing timely updates on key policy changes, with a clear outline of the rationale behind the changes and the direct implications for colleges and their governors.
38. The further education sector currently receives approximately 30 Honours per year (in the New Year and Queen's Birthday Honours lists) of which typically 5-8 are awarded to governors (see Annex C for details). In addition, BIS currently receives an annual central allocation of spaces at Royal Garden Parties for distribution, of which a proportion are allocated to the FE sector.
39. The event for chairs of governing bodies hosted by the Skills Minister at Lancaster House in January 2013 was warmly received and more events to recognise governors and encourage networking between colleges, both on a national and regional scale, would be welcomed.
40. Recent examples of Ministers writing directly to Chairs have improved awareness of policies and enhanced the status and self-perception of Chairs. It has also been suggested the Minister could begin writing to all governors, via the clerks. In addition to improving communication with governors this would also support the status of clerks within the institution, as recommended by LSIS's recent *Clerking in the New Era* report.

Consultations

41. The Honours nomination process currently relies heavily on nominations generated by the various sector bodies. In recent years there has been a shortage of "outstanding" nominations. Some key stakeholders in the FE system, including teams within BIS itself, are not typically engaged in the process. It should also be noted that Honours only recognise individual and not collective achievement.
42. The AoC currently uses its Chief Executive's Newsletter to encourage Honours nominations. In the HE sector HEFCE send a personalised and more detailed email/letter to all Vice Chancellors with guidance on how to compile a successful nomination.
43. Outside of the Honours system outstanding governance is not greatly recognised. Suggestions to address this include the introduction of an AoC Beacon Award for governance, or support towards nominating governing bodies for other existing third sector awards such as the Queen's Award for Voluntary Service or the Big Society Awards.

44. Comparable awards in other sectors include the National Governors' Association bi-annual governance awards, which recognise outstanding governing bodies and clerks in schools, and the Independent Academies Association best practice awards which recognise, share and pay tribute to the outstanding work that takes place right across the Academies Programme.
45. Ofsted's revised Common Inspection Framework will continue to include a measure for effectiveness of leadership and management.
46. The new Chartered Status award will include leadership within its evaluation criteria.
47. It is not always clear that governing bodies and individual governors are demonstrating as fully as they might how they are using their authority and power to influence the economic and social wellbeing of their communities.
48. There is view that a single statement setting out the role and status of governors would support understanding about the value and authority that comes with the governor role – see Annex A for a short paper outlining the governor role.

Recommendations

Recommendation	Responsible
<p>1. Better co-ordination between government departments and key stakeholders to encourage the sector to identify outstanding FE and Sixth Form College governors for potential reward through the Honours system. Awards should not be limited to Chairs and should also consider, for example, Chairs of sub-committees.</p>	<p>AoC Governors' Council, BIS, DfE and Colleges</p>
<p>2. The AoC to develop plans to establish a Beacon Award for governance.</p>	<p>AoC</p>
<p>3. The AoC to work with the Education and Training Foundation to bring together in one easily accessible place all available advice and guidance for governing bodies, including statutory and regulatory requirements. This will need to be resourced on an ongoing basis to ensure sustainability.</p>	<p>AoC Governors' Council and Education and Training Foundation</p>
<p>4. Government to keep under review how it can improve the way it currently consults and communicates with college governors on changes to policy.</p>	<p>BIS and DfE</p>
<p>5. Development of high profile case studies and documentation explaining the role of governors, the benefits of being a governor and the importance to economic and social wellbeing. Make this information available through college websites, business websites and newsletters.</p>	<p>AoC Governors' Council, Colleges and Sixth Form Colleges' Association</p>
<p>6. Seek out opportunities to use ministerial speeches, events and articles to communicate and celebrate the importance and achievements of college governors.</p>	<p>BIS and DfE</p>
<p>7. Ministers to write to college Chairs on relevant policy issues and developments on a timely and regular basis (perhaps termly), and invite responses. Minister to also write to all college governors, via the clerks, where appropriate.</p>	<p>BIS and DfE</p>
<p>8. Consider holding further annual governor recognition events and explore options for additional</p>	<p>BIS,</p>

Recommendation	Responsible
national and regional events to recognise good college governance and encourage networking.	DfE and AoC Governors' Council
9. Colleges to be more open and transparent by: consulting more fully (not just when legally required to); holding open meetings; publishing strategic objectives and performance data on college websites; publishing more information and data about what they do and how they do it; improving the quality and promptness of their Annual Reports.	Colleges
10. Sixth Form Colleges' Association to work with all stakeholders to ensure specific needs of Sixth Form Colleges are catered for.	Sixth Form Colleges' Association

3. Remuneration for Governors

Background

49. Under the current legislative framework all Further Education Corporations and Sixth Form College Corporations are established as exempt charities²⁰. Designated Institutions in England are currently set up as registered charities. Any charity, exempt or not, must apply to the Charity Commission for permission to remunerate governors.
50. There are examples of the Charity Commission agreeing remuneration for governors based on a clear and significant advantage to the institution being demonstrated.
51. There are contrasting views in the sector concerning the merits of remunerating governors for their services. Those in favour of remuneration argue the increased freedoms and flexibilities for colleges have expanded the role and time commitment required of governors.
52. Remuneration for governors is extremely unusual within higher education but not unknown.
53. A small proportion of charities currently remunerate at least one of their trustees, but most charities do not operate on the same scale as colleges.
54. Not all colleges currently pay expenses to governors; this is a recommended best practice by the Charity Commission and helps to make the role more accessible. Colleges do not require Charity Commission permission to process expenses (see Annex B for further information).

Findings

55. Discussions with stakeholders confirmed the divergence in views within the sector on remuneration. Few stakeholders opposed the principle of remunerating governors in special circumstances. In some of these circumstances a response from the Charity Commission will be required at short notice.
56. Stakeholders confirmed that the majority of colleges would welcome further guidance on the role of the Charity Commission, how to apply for permission to remunerate governors, and what expenses they are legally allowed to pay to governors.
57. The Charity Commission continues to advocate remuneration to trustees as the exception to the rule, although a recent report chaired by Lord Hodgson²¹ suggested relaxing the restrictions on charities with a turnover of above £1m per year.
58. There has been little research done into whether remuneration improves the quality of governance. One study of US charities by Francie Ostrower²² suggested it had little impact outside of increasing attendance of members, although this study was based upon self-assessment by charities.

59. Governance in the private sector is noticeably different in character, with non-executive director roles well remunerated, boards typically smaller in size and, in some cases, roles and responsibilities greater. NHS Foundation Trusts and Housing Associations have greater similarities with private sector models, although these organisations are not required to be registered charities and thereby operate under a different regulatory framework.

Consultations

60. The higher education sector has no current plans to introduce more widespread remuneration to governors. The few examples in the current systems tend to be due to legislative anomalies.
61. School governance in England is rooted firmly in the principle of voluntary service. Remuneration of academy governors is strongly discouraged. In schools, there is no legal power for schools, local authorities or the government to remunerate regular members of maintained school governing bodies for their duties as governors. In poor-performing schools the governing body may be replaced with an Interim Executive Board (IEB). Members of an IEB can be remunerated when it is in the best interest of the school, although to date no such remuneration has been offered.
62. The Charity Commission made clear there are a range of mechanisms in place to ensure governors can access appropriate funding to support their role without seeking special permission, however, these are not widely understood. The mechanisms are more inclusive than many realise, and can include payment of childcare or care of dependants as a legitimate expense.
63. It is also clear that there is a lack of understanding about the arrangements for seeking permission to remunerate governors or cover the costs of loss of earnings. The Charity Commission have agreed requests for remuneration in the past, contingent on there being a compelling case put forward. BIS has produced a document with advice from the Charity Commission to clarify what expenses college governors are entitled to and the circumstances in which governors may be remunerated (see Annex B).
64. We should not rule out changing the Charity Commission rules, but clearer guidance on existing rules is an important first step.

Recommendations

Recommendation	Responsible
<p>1. BIS to work with the Charity Commission to produce a document, clarifying principles and processes for expenses, gifts and remuneration for governors, either as payment for the role or to compensate loss of earnings. The Charity Commission agreed to co-author this. The guidance is at Annex B.</p>	<p>BIS and Charity Commission</p>
<p>2. Governing bodies to review the remuneration guidance in Annex B and consider how it might support their Board</p> <p>The guidance is intended to ensure governing bodies understand their rights and responsibilities regarding remuneration. It is for individual governing bodies to decide what arrangements should apply for their institution, including whether permission for remuneration should be sought.</p>	<p>Colleges</p>
<p>3. Payment of expenses to governors to be adopted as best practice by all colleges.</p>	<p>Colleges</p>
<p>4. BIS to circulate the remuneration guidance to all colleges as part of this report. AoC to include the guidance on the Governance Library.</p>	<p>BIS and AoC</p>

Annex A: The Further Education College Governor Role

The Further Education College Governor Role

1. In the further education college sector in England there are some 8,000 individuals who are governors of further education and sixth form colleges; volunteers committed to the success of their college. But voluntary does not mean amateur. The governing body, together with the Principal, constitute the highest level of decision-making in the college, having overall responsibility for the strategic direction and financial health of the institution.
2. Governors are at the heart of how a college operates. They are responsible for determining what education and training the college will provide and the strategy for delivering it. They also lead the drive for improved standards in teaching and learning by ensuring good control systems and challenging areas for improvement.
3. The governing bodies of colleges require a range of skills. Board meetings can cover a wide variety of topics ranging from the college's business strategy; quality of learning and teaching; buildings and financial investment; business model and delivery, including partnership working. Boards will also discuss recruitment and succession planning, including of the board itself and its performance. Governors will consider performance indicators and financial information on all aspects of the college's activities and will need to be able to interpret and use this information to collectively develop a clear and comprehensive strategic plan to enable the college to achieve its aims.

Authority and Accountability of the Governing Body

4. The governing body has overall responsibility for the conduct of the college, with responsibility for the day-to-day running and management of the college resting with the Principal and senior management team, who report and account to the governing body.
5. The governing body is responsible for the appointment and remuneration of senior staff, including the Principal.
6. A governing body is entrusted with a significant level of public funds and oversight of important local assets. Governors therefore have a particular duty to fulfil the highest standards of corporate governance at all times. They are accountable for ensuring effective and efficient use of resources, and safeguarding the college assets, property and estate.
7. The governing body's ultimate accountability is to the students and the wider community the college serves. To achieve this, the governing body must work in partnership with and support the Principal, but they must also be prepared to challenge the Principal and senior team, asking searching questions when necessary

to maintain a rigorous focus on improving the standards and quality of delivery. They also need to work in partnership with the colleges' many key stakeholders and partners, including employers, local authorities and Local Enterprise Partnerships.

8. In performing these duties governors are expected to follow a Code of Conduct²³ which has regard to the accepted standards of behaviour in public life including; leadership, selflessness, objectivity, openness, integrity, honesty and accountability. *The English Colleges' Foundation Code of Governance* also establishes a common set of recommended standards of good governance practice for college governing bodies.

Impact of the Governing Body

9. A consistent characteristic of any successful college is strong leadership and management. The importance of the governing body in achieving this cannot be overstated. This point was reinforced by the Chief Inspector of Ofsted, Sir Michael Wilshaw, who notes that strong governance has never been more important and has said that *"wherever [Ofsted] find success, good leadership is behind it"*²⁴.
10. Governors are not there to rubber stamp decisions but are directly responsible for how the college is performing. Their importance was recently acknowledged by Vince Cable who talked of governors *"vital role in driving the strategic direction of colleges, helping to build and grow local economies, tackling the issues of skills gaps and unemployment, and supporting communities to flourish"*²⁵.
11. Quite simply, good governance is the cornerstone upon which excellent colleges are built.

The Rewards

12. The role of a college governor is exciting and extremely worthwhile. It provides enormous insights into the social and economic challenges facing local communities and offers opportunities for direct contact with senior people in local firms and community bodies.
13. Becoming a governor enables individuals to make a significant and very real contribution to the success of the college, helping the students to develop and achieve their full potential. It allows those who want to be engaged with a college to make good use of their existing skills and provide them with the training and support to develop new ones. These can include making staff appointments, financial management, chairing meetings and team and project working.
14. The role of a governor isn't easy and requires dedication and real commitment. A governing body typically meets 5-6 times a year and in addition a governor is likely to participate on sub-committees, undertake background reading and attend various events over the course of the year. Governors are rarely remunerated for their role, although expenses are available to reimburse out of pocket expenses for attending the various meetings and events.

15. The rewards of the role to the college, community and the individual are clear, and governors are supported every step of the way to ensure both they and the college benefit from their valuable contribution.

Annex B: Payment and Expenses for Governors

Introduction

1. This document has been produced by the Department for Business, Innovation and Skills (BIS) with advice from the Charity Commission to guide further education colleges as to what expenses their governors are eligible for and in what circumstances it might be possible for governors to receive payment.
2. The voluntary principle of governorship has been established in further education institutions since their inception. Every further education institution in England currently has a governing body consisting of a majority of unpaid independent governors. Recent legislative developments including freeing colleges so they have greater control over their own governing body arrangements, increases the importance of high quality and robust governance. The recent review into governance undertaken by BIS has also prompted the need to improve the diversity of governing bodies and to consider how to incentivise improved governance.
3. Governors are entitled to reclaim any reasonable out of pocket expenses they incur in carrying out their duties. Expenses are not a financial benefit, so no permission is needed. It is good practice to encourage governors to reclaim expenses as it can enable a wider range of people to serve as governors.
4. Colleges who wish to pay governors will need to apply to the Charity Commission for express permission.
5. This guide provides further information on the necessary processes that apply to different types of payment such as payment for non-governor services, compensation payments for loss of earnings or payment for serving as a governor. We recommend you visit the [Charity Commission website](#) the trustee [expenses and payments \(CC11\) webpage](#) in particular offers a comprehensive breakdown of the topic.

The Charitable Status of Further Education Institutions

6. Section 22A of the *Further and Higher Education Act 1992* bestows charitable status on Further Education Corporations and Section 33M bestows charitable status on Sixth Form College Corporations. Further Education Corporations and Sixth Form College Corporations are "exempt charities", meaning they are exempt from registration with, and oversight by, the Charity Commission. For exempt charities a "Principal Regulator" is appointed to promote compliance with the relevant charity law. When applying for permissions under charity law such as permission to pay their governors, colleges are still required to apply to the Charity Commission.
7. Other not-for-profit further education institutions (certain Specialist Designated Institutions) are also charities (because the advancement of education for the public

benefit is a charitable purpose) but they are not exempt, meaning they must register with the Charity Commission.

8. Like the further education sector, the charity sector has a long history of voluntary governorship (board members in charities are usually referred to as trustees). Except where payments are permitted by the law or their governing document, charities wishing to pay their trustees must apply to the Charity Commission for permission, explaining why payment is in the charity's best interests, how it will help the charity to fulfil its objectives more effectively and how the conflict of interest will be managed. The vast majority of charities in the UK don't pay their trustees for the role although few charities have quite the scale of delivery and financial responsibility of colleges.
9. The Secretary of State for Business, Innovation and Skills will shortly be appointed as Principal Regulator for all Further Education Corporations. In practice this will not change the application process with regard to the payment of governors. The change in regulator status will require the Charity Commission to consult with the Secretary of State regarding requests for permission for institutions to make payment to governors or for permission to compensate governors for loss of earnings. As before, all applications will need to demonstrate that there is a clear or significant advantage to be gained from payment that will outweigh any disadvantages.

Duties of the Governing Body

10. Every governing body is constituted by an instrument and articles of government. Recent changes made by the *Education Act 2011* have given institutions greater freedom and flexibility to change their instrument and articles of government, and consequently the form and make-up of their governing body.
11. Subsequently, governing bodies are demonstrating greater variety in size, structure and operating models. Some features remain consistent across the sector: the majority of governing body members remain non-executive including the Chair of Governors; students and staff must be represented on the governing body; the executive Principal/CEO of each institution sits on the governing body; and a Clerk is employed to support the governing body and advise on constitutional and procedural matters, duties and powers.
12. The governing body is not only responsible for the strategic direction of the institution, they hold the Principal and executive leadership to account for their performance. In addition they are expected to have a role in the local community, representing the institution and helping to build connections with local stakeholders while ensuring that the community's voice is heard and influences the strategic direction of the institution.
13. As charity trustees, governors also have duties under charity law. In summary, these are:
 - Making sure the charity complies with the law and its governing document;

- Always seeking to further the charity's objects for the public benefit;
- Always doing what they believe to be in the charity's best interests (i.e. in the interests of most effectively carrying out its objects now and in the future);
- Acting responsibly;
- Exercising reasonable care and skill;
- Managing any conflicts of interest; and
- Making decisions collectively (i.e. as a group), except where decision making has been properly delegated to an individual or sub-committee.

14. These duties mirror governors' duties under education law, and are explained in more detail in [The Essential Trustee \(CC3\)](#).

Conflicts of Interest

15. A conflict of interest is any situation in which a governor's personal interests or loyalties could influence or affect their decision making.

16. There are particular conflict of interest issues around payments to trustees. Under charity law, trustees:

- Must not put themselves in a position where their personal interests conflict, or appear to conflict, with the interests of the charity;
- Cannot authorise benefits to themselves;
- Cannot simply resign as a trustee in order to receive a benefit.

17. When considering making payment to governors all governing bodies should be aware that paying a governor creates a conflict of interest which must be managed by:

- Ensuring that they are able to identify situations in which conflicts of interest occur;
- Ensuring that any element of trustee benefit arising from a trustee decision is properly authorised;
- Following any specific requirements in the institution's governing document that deals with conflicts of interest and how they should be managed;
- Where there are no specific governing document requirements, following a management process for conflicts of interest which requires conflicted trustees to:

- declare their interest at an early stage
 - withdraw from the quorum, discussion and voting on any matter in which they have a conflict;
 - Formally recording any conflicts of interest and how they were handled; and
 - Disclosing all expenses and payments to governors in the institution's Annual Report, and in cases when governors have been remunerated to serve as a governor justifying the reason why this is the case.
18. For more information on what conflicts of interest are and how best to manage them visit the Charity Commission website's [conflicts of interest page](#).

Payment and Expenses for Governors: Existing Permissions

19. The following sections set out the current processes and the selected instances in which institutions can pay expenses, present a gift or make payments to governors. Firstly we cover the situations where Charity Commission permission is not required, if colleges adhere to the established rules.

Expenses (*Charity Commission permission not required*)

20. All governors are allowed to receive expenses for costs incurred when fulfilling their role. Expenses are for out-of-pocket payments governors have to make in order to carry out their duties, for example:
- Travel to and from governing body meetings or events;
 - Overnight accommodation;
 - Telephone calls and broadband time for college work; and
 - Childcare or care of other dependents incurred while attending meetings.
21. The Charity Commission recommends that all institutions have a written policy setting out what is classed as an expense and a process to claim and approve expenses. The institution's Annual Report should set out the total amount reimbursed in each Financial Year.
22. It is good practice to encourage trustees to claim expenses as this can support governor diversity. Charity Commission permission is not required to pay expenses because expenses are not a benefit.

Small Gifts and Honorariums (*Charity Commission permission not enforced*)

23. Institutions may award gifts or small financial sums to governors in exceptional circumstances, for example, as a retirement present. The Charity Commission does not insist on small gifts being authorised provided that:

- The value of the gift is minimal (total payments to all governors in any financial year must be less than £1,000 – this excludes expenses and other approved payments);
- Conflicts of interest are managed; and
- Non-conflicted governors are satisfied, and can show, that the payment is in the best interests of the charity.

Paying Governors to provide other services to the Institution (*Charity Commission permission usually not required*)

24. The *Charities Act 2011* allows governors to be paid for providing services to their charity (without permission from the Charity Commission) subject to certain conditions. The kind of services covered could include:

- Provide specialist services, such as estate agency, IT consultancy;
- Delivery of a lecture or a piece of research work; and
- Occasional use of a governors' premises or facilities.

25. Before paying a governor, the governors must:

- Manage the conflict of interest by making sure that the affected governor takes no part in any meeting or discussion affecting their own payment or potential payment;
- Decide they are satisfied that paying that governor for those services would be in the interests of the charity, and the level of payment is reasonable;
- Produce a written agreement, including specifying the exact (or maximum) amount to be paid;
- Make sure that less than half of the governing body are (or are connected with people) receiving payments or benefits of any kind from the charity; and
- Make sure the college's governing document (instrument of government/constitution/articles) does not expressly forbid the payment.

26. If the governors cannot fulfil these conditions, but they think the payment is in the charity's interests, they will need to contact the Charity Commission. For more guidance visit the Charity Commission website's [conflicts of interest page](#).

Going Further and Paying Governors to serve as Governors – The Debate

27. There is an ongoing debate over whether governors should be remunerated, as is the case with non-executive directors of companies in the private sector and some parts of the public sector e.g. NHS Foundation Trusts (although these roles are different to that of a college governor in some respects). The view of BIS is that this decision is very much for individual colleges to consider.
28. The Charity Commission considers requests for permission to make payment on a case-by-case basis, based on the specific evidence presented. Relevant circumstances might include where an institution is experiencing particular recruitment challenges or where a particular role (such as the Chair of a large institution), demands a very significant time commitment. The case studies section (page 30) provides further detail.

Paying a Governor to be a Governor (*Charity Commission permission required*)

29. As discussed previously, further education governors typically volunteer their services and receive no payment for their work. There are certain exceptions where permission may be granted by the Charity Commission to make a payment. When applying for permission an institution should be able to demonstrate that there is a clear and significant advantage to be gained that will outweigh any disadvantages. Factors to consider include:
- What additional skills or diversity of membership will be attracted to the governing body through payment?
 - What steps have been taken to recruit governors with the required skills or diversity without offering payment?
 - Are the functions to be carried out genuinely those of a governor, as distinct from an employee or a consultant?
 - Is there a clear advantage to paying a trustee as opposed to spreading duties among trustees or increasing the number of unpaid trustees?
 - What amount of payment is being considered? Is this amount reasonable and affordable?
 - What risks have been identified and how will the institution manage them?

- How will the conflict of interest be managed?
- How will performance be managed, and if necessary, payment be brought to an end?

Payment for Loss of Earnings (*Charity Commission permission required*)

30. When considering diversity or skills shortages at governing body level or when dealing with a situation requiring an extraordinary time commitment institutions can apply for permission to make payment to a governor to replace loss of earnings. This is a similar process to payment to a governor (covered above). The bullet points in the governor payment section still need to be considered, but in addition institutions should also ask themselves:
- Can available applicants not afford to serve as a trustee because their employer does not pay for time spent on charity work during working hours?
 - Or in the case of self-employed candidates would they lose out financially by carrying out governor duties during normal business hours?
31. The amount paid as reimbursement for loss of earnings must be no more than either what is considered a reasonable payment for work undertaken, or, the amount lost in earnings by the governor, whichever is the lowest amount. In practice, therefore, it may be easier to justify compensation for loss of earnings than payment for serving as a trustee, as being in the interests of the charity.
32. Payment can either be made directly to the governor or to the employer directly to compensate for loss of earnings. In practice, whether the payment is made to the employer or directly to the governor is a matter for the governing body to decide and does not affect the issues that the Charity Commission will need to consider.

Diversity of Governing Bodies

33. Recent studies undertaken by the Women's Leadership Network and the Association of Colleges in the Eastern Region (see analysis in Annex C) suggest that women, ethnic minorities and people with disabilities are under-represented on governing bodies when viewed in relation to the communities they serve. A lack of particular skills (e.g. finance) and a relatively small proportion of younger executive / middle-management professionals have also been identified as an issue. It is recommended that governing bodies regularly carry out a skills audit (see example [Trustee Works checklist](#)) to identify any additional skills or experience they require.
34. In certain cases, for example where potential financial hardship has been shown to be a factor (see case study 3, page 30) the Charity Commission has authorised payment to improve the diversity of a board but there are other approaches to improving diversity that governing bodies should consider first:

- Actively recruiting outside their circle of acquaintances (e.g. advertising, using recruitment agencies, approaching other organisations). See the [Trustees Week blog](#) for ideas on what to do and who to ask;
- Practical considerations like:
 - Accessibility of meetings (timing, location, transport);
 - Whether trustees are encouraged to reclaim expenses (see above);
 - How new governors are inducted and supported;
 - The culture of the governing body (how things are always done).
- Highlighting the potential benefits of serving as a governor in terms of skills development and experience.

How to Apply to Pay Governors

35. Before proceeding, please ensure that you have considered the Commission's guidance on [trustee expenses and payments \(CC11\)](#).
36. Once you have decided that you would like to apply to pay a governor you will need to complete [the relevant form on the Charity Commission website](#).
37. Depending on the kind of payment you are applying for, the questions you will have to answer on the form may be slightly different. The indicative questions when applying to pay governors section (page 33) contains a sample list of questions.
38. In order to make an application the institution will need to include:
 - Their latest set of accounts (usually published within the Annual Report);
 - Their instrument and articles of government; and
 - Information on the current composition of their governing body (this may already be specified in the Annual Report).
39. If for any reason you are unable to make your application using the online form, you will need to [contact the Commission online](#), explaining the circumstances.

Next Steps

40. The Charity Commission aims to reply to correspondence within 15 working days. The Commission recognise that permission may need to be given urgently and, subject to all relevant information being provided, Commission staff will aim to ensure they respond within this deadline.

41. Applications will need to address the various questions and issues highlighted in this guidance, and demonstrate with evidence that the proposed payment is in the best interests of the charity in the circumstances. If insufficient information is presented the Commission may request clarification or additional information in order to guide their decision.
42. The Commission will correspond directly with charities –charities do not have to communicate via a solicitor or other professional advisor.

Permission to Pay a Governor

43. If the Charity Commission agrees to authorise payment, they will issue authority in the most appropriate form in the circumstances. For a Further Education Corporation, this is likely to be an order that will sit alongside the instrument of government. For a college set up as a company, this is likely to be authority to insert appropriate powers into the articles of association.

Case Studies of the Remuneration Process

44. To give a better sense of how the process works below are five case studies taken from the Charity Commission guidance:

Subject	Case Study
<p>1. Payment of Chair</p>	<p>A large educational trust running a group of schools had expanded considerably, and was looking to extend its operations still further into Academy schools. The trust was attempting to recruit a new Chair with a commitment of around 60 days per year; it sought authority for reasonable payment in recognition of the increased time commitment and complexity the role of Chair now demanded.</p> <p>We were satisfied the trust had conducted an extensive advertising campaign, including use of a leading recruitment agency. The results showed considerable reluctance to undertake the commitment required on an unpaid basis. We agreed the proposed remuneration of the Chair, subject to our further approval to any subsequent increases in the agreed rate of payment.</p>
<p>2. Payment of Chair and Trustees</p>	<p>A large grant-making charity applied for remuneration for future Chairs and certain trustee posts on the basis of the high level of time and commitment involved. The charity felt that, without offering payment for the time commitment and for the responsibilities that come with oversight of a multi-million pound organisation, it could not attract the right calibre of candidate, and would be likely to attract only those who were retired or 'well-off'. It provided evidence that, even with a well targeted recruitment campaign, it was struggling to attract the right calibre of candidate.</p> <p>We approved payment for Chairs, but rejected an application for payment of five other trustee posts, for which the charity wished to attract experts in its field. There was little similarity in time commitment compared with the Chair, and no evidence that these posts were difficult to recruit for; indeed, previous recruiting campaigns suggested the opposite was the case, as a number of well-qualified candidates had come forward.</p>
<p>3. Increasing Diversity of Trustees</p>	<p>A leading disability charity wanted to ensure blind and visually impaired people are always able to have a voice on its trustee board. In this case, the charity wished to</p>

Subject	Case Study
	<p>enable three trustees (including the chair) with valuable specialist skills to contribute regularly to the board, without any financial hardship to themselves as a result. One was self-employed, the other two had to forego fees from other work on a number of occasions when attending trustee meetings and acting on charity business.</p> <p>We recognised the contribution made by these trustees, whose expertise ranged from IT support, disability employment services, Access to Work issues, and the needs of visually impaired people. We authorised payment by the charity to reflect their duties on the occasions when they would otherwise lose out. This was based on the charity's assessment of rates comparable to the chair and non-executive directors of NHS Trusts. As a result, the charity was able to retain the expertise of these three trustees, and further empower its users on the trustee board. The charity makes the point that it does not wish only to appoint trustees who can afford to be trustees.</p>
<p>4. Payment of Loss of Earnings</p>	<p>A charity providing social care and support across a wide spectrum of social need, including disability, wished to appoint a disabled person who was in employment as a consultant to serve as a trustee. The board felt it important to secure the appointment of the person concerned in order to give a wider perspective on its work. To avoid financial hardship as a result, the Charity Commission authorised reasonable payment to the new trustee as a direct replacement of loss of earnings while active on trustee business. In this case the payment was below what was considered a reasonable rate for work undertaken, which helped to justify it as being in the interests of the charity.</p> <p>In cases of payment for loss of earnings payment can also be made directly to an employer (see paragraph 32).</p>
<p>5. Conflicts of Interest</p>	<p>The case of one charity highlighted potential difficulty with managing conflicts of interest. We refused a power of remuneration that would have allowed the Chief Executive Officer to continue as a trustee. The person concerned was also the founder of the charity, and our main concern was that the trustee board was not taking adequate steps to strengthen its governance, so it could take decisions in the interests of the charity independently of the CEO, and also review his performance.</p>

Subject	Case Study
	<p>Where a charity's governance arrangements are strong – for example, they include clear procedures for managing conflicts of interest in an open and transparent manner – the impact of conflict of interests and undue influence on trustee decision making is greatly reduced.</p>

Indicative Questions when applying to Pay Governors

45. Indicative questions for institutions are:

- Amount of payment (per hour/month or year if appropriate). In the case of payments over a fixed term state the total amount to be paid;
- State when the arrangement will start and (if appropriate) finish;
- Describe how the payment is affordable, and will not affect the charity's ability to carry out its objects;
- What steps have been taken to recruit unpaid trustees with the necessary skills and life experience? (If no steps have been taken please explain why);
- Explain how the functions to be carried out are genuinely those of a trustee;
- Why do you consider there are clear and significant advantages to the charity in paying a trustee rather than spreading duties among other trustees?
- What 'benchmarking' have you conducted (testing what is the 'going rate' for a similar job in a broadly similar organisation)? If you have not conducted any please explain why;
- Explain fully the duties for which the payment is made;
- What risks associated with the proposed payments have been identified and how will these be managed;
- Explain how the unpaid trustees will be able to review performance, judge value for money and if necessary, bring the payments to an end;
- How will conflicts of interest be managed, so that the conflicted trustee can still be effective in the governance of the charity?
- How has the charity consulted with those who have a significant stake in its affairs and what were the results of this consultation?

46. You will also need to sign a declaration stating that the trustees are satisfied that:

- The proposed payment is in the interests of the charity and will provide a clear and significant advantage to the charity over all other reasonable options;
- It is in the interests of the charity to pay a named trustee rather than recruit or retain unpaid trustees;
- The person named has played no part in the proposal or decision to pay them, except to provide information if requested;

- The potential conflict of interest will be managed and the person named will not be privy to any discussion or meeting at which their remuneration is discussed;
- The decision to make the payments was taken at a properly convened quorate meeting, excluding any trustees who may have a conflict of interest;
- The trustees, excluding any conflicted trustees, will be able to form a quorum to deal with performance reviews, etc; and
- The proposed appointment taken together with other payments already being made to trustees will not result in half or more than half of the trustees receiving benefits of any kind from the charity.

Any Questions?

47. Please [email the Charity Commission](#) if you have any questions about any of the topics covered in this guidance.

Annex C: Supporting Evidence

Recruitment and Succession Planning

1. The two most recent surveys on the composition of FE governors were conducted by the Association of Colleges in the Eastern Region (ACER) and the Women's Leadership Network (WLN). One of the recommendations of this report is to establish a governor database to record and monitor trends in the composition of governing bodies.
2. The ACER survey was undertaken as a response to the Schofield Report that commented on the lack of data on the make-up and practices of colleges. The first ACER survey was undertaken in 2010 and the figures quoted below are from the second survey, compiled in December 2012. 34 colleges participated in the survey, representing 92% of the ACER region and 10% of England as a whole. Consequently, the survey provides an accurate picture of the region but caution must be exercised when applying the findings to England as a whole.
3. The WLN survey was conducted in May-June 2012 and consisted of two separate questionnaires. The first, completed by governors, received 120 responses from governors based in 50 colleges in England. The second, completed by clerks on behalf of their respective governing bodies, received responses from 81 colleges, representing 24% of all colleges in England.

Proportion of Female Governors

Figure 1: ACER Survey, Breakdown of Governors by Gender

Type of Governor	Female	Male	Total
Chair	8 (23.5%)	26 (76.5%)	34
Independent*	116 (29.6%)	276 (70.4%)	392
Staff	37 (54.4%)	31 (45.6%)	68
Parent	5 (50.0%)	5 (50.0%)	10
Student	22 (35.5%)	40 (64.5%)	62
Total	188 (33.2%)	378 (66.8%)	566

* Independent Governor = A non-executive governor, i.e. not a member of staff at the institution or in a representative position such as staff, student or parent governors. For this table this category excludes chairs, in all tables independent governor includes co-opted governors.

Figure 2: WLN Clerks Survey, Breakdown of Governors by Gender

	Female	Male	Total
Governors* per Governing Body	6.3	10.6	16.9⁺
Total (%)	37.5%	62.5%	100%

* Governor includes executive and non-executive governors in this table.

⁺ The average governing body in the survey comprised of 16.9 people. In addition there were on average 0.9 vacant posts per governing body.

Figure 3: WLN Clerks Survey, Breakdown of Chairs and Chief Executives by Gender

Type of Governor	Female	Male	Total
Chair	16 (20.3%)	63 (79.7%)	79
Chief Executive	34 (43.6%)	44 (56.4%)	78

Ethnicity of Governors

Figure 4: ACER Survey, Breakdown of Governors by Ethnicity

Type of Governor	Asian/ Mixed Asian	Black/ Mixed Black	White	Other/ Not Known	Total
Chair	0	0	34	0	34
Independent	22	7	353	10	392
Staff	4	1	58	4	67
Parent	0	3	7	0	10
Student	6	11	44	1	62
Total	32 (5.7%)	22 (3.9%)	496 (87.8%)	15 (2.7%)	565

Age of Governors

Figure 5: ACER Survey, Breakdown of Governors by Age

Type of Governor	16-35	36-45	46-60	60+	Total
Chair	0	2	13	18	33
Independent	19	67	157	133	376
Staff	9	22	31	2	64
Parent	0	3	7	0	10
Student	62	0	0	0	62
Total	90 (16.5%)	94 (17.2%)	208 (38.2%)	153 (28.1%)	545

Figure 6: WLN Governor Survey, Breakdown of Governors by Age

	18-39	40-49	50-59	60+	Total
Total	15 (12.5%)	16 (13.3%)	40 (33.3%)	49 (40.8%)	120

Period of Office for Governors

Figure 7: ACER Survey, Breakdown of Governors by Period of Office

Type of Governor	Less than 1 year	1-4 years	5-8 years	9-12 years	13+ years	Total
Chair	0	5	12	12	5	34
Independent	73	156	82	45	36	392
Staff	11	42	13	2	0	68
Parent	4	6	0	0	0	10
Student	52	10	0	0	0	62
Total	140 (24.7%)	219 (38.7%)	107 (18.9%)	59 (10.4%)	41 (7.2%)	566

Figure 8: WLN Governor Survey, Breakdown of Governors by Period of Office

Type of Governor	Less than 1 year	1-3 years	3-10 years	10+ years	Total
Chair	7 (28%)	5 (20%)	9 (36%)	4 (16%)	25
Governor*	16 (20%)	22 (27.5%)	30 (37.5%)	12 (15%)	80

* Governor includes executive and non-executive governors in this table

Figure 9: ACER Survey – Q: Does your college have a maximum number of years (or terms) that a governor may hold office?

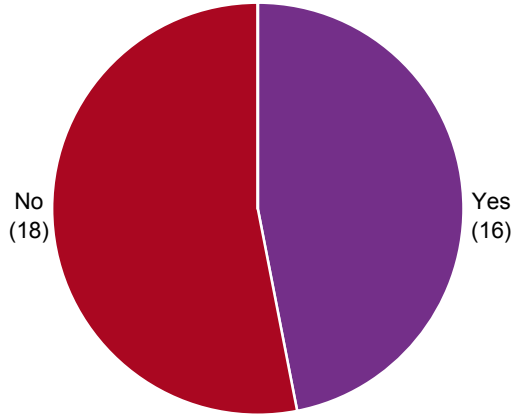


Figure 10: ACER Survey – Q: If yes (to question above), what is the maximum number of years that a governor can hold office?

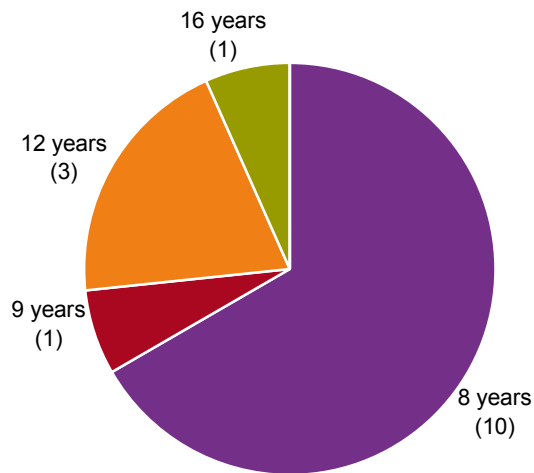


Figure 11: ACER Survey – Q: How often is the chair's position elected?

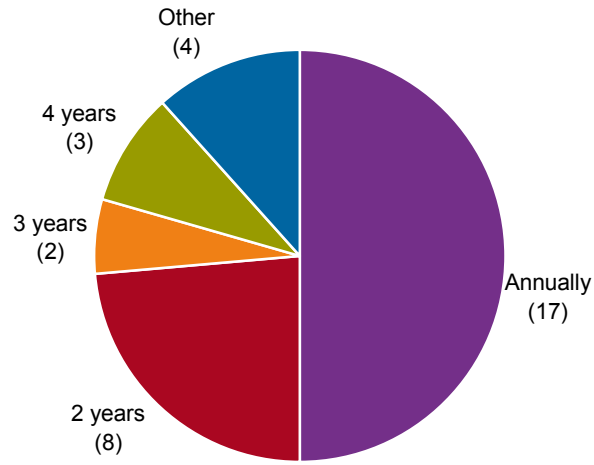


Figure 12: ACER Survey – Q: Does your college have a maximum number of years (or terms) that the Chair may hold office?

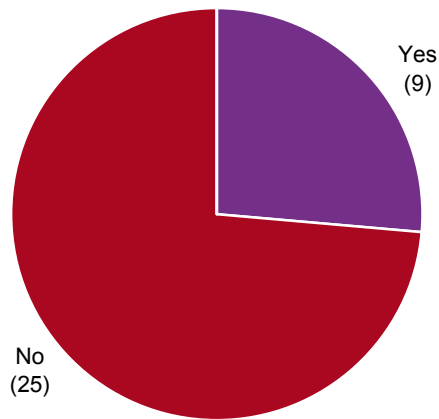
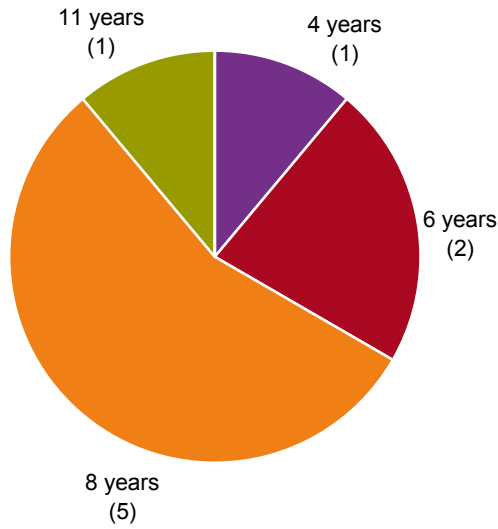


Figure 13: ACER Survey – Q: If yes (to question above), what is the maximum period of office set for the chair?



The Recruitment Process

Figure 14: WLN Governor Survey, how were you recruited to join the governing body?

Method of recruitment	Total
Approached by the college's Corporation Search Committee	33 (38.8%)
Encouraged to apply by an existing governing body member	17 (20.0%)
In response to public advertisement	13 (15.3%)
Selection by competitive interview	2 (2.4%)
Other	20 (23.5%)
Total	85

Recognising the Status and Importance of Governors

4. There are two sets of Honours awarded each year, the New Year Honours and Queen's Birthday Honours. From 2010 onwards 121 Honours have been awarded for services to FE in England. Of these 26 have been awarded to governors, 22 of the Honours awarded were MBEs and 4 were OBEs.

Figure 15: Honours awarded since 2010 in further education (England only*)

Honours Cycle	Total FE Honours	Governors Honoured [†]	Total % awarded to governors
Queen's Birthday 2013	18	4	22%
New Year 2013	17	1	6%
Queen's Birthday 2012	16	2	13%
New Year 2012	15	4	27%
Queen's Birthday 2011	15	6	40%
New Year 2011	12	1	8%
Queen's Birthday 2010	16	4	25%
New Year 2010	12	4	31%
Total	103	22	21%

* For the purposes of this table Honours awarded to UK wide bodies, e.g. to the UK Mathematics Trust or the Network for Black Professionals are included within England.

[†] Governor includes non-executive members, the chair and the clerk but excludes executive governors (e.g. the Principal) and staff, student or parent representatives in this table.

Figure 16: Honours awarded to governors since 2010 in further education, breakdown by role

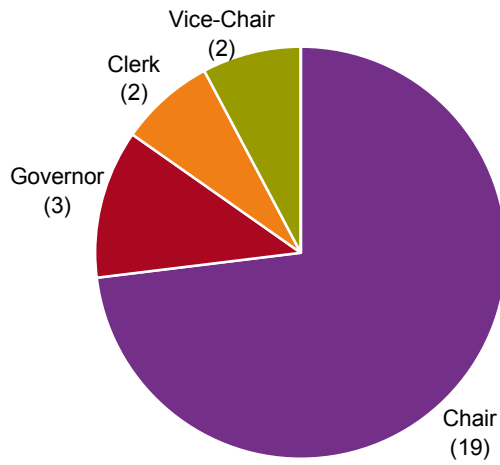
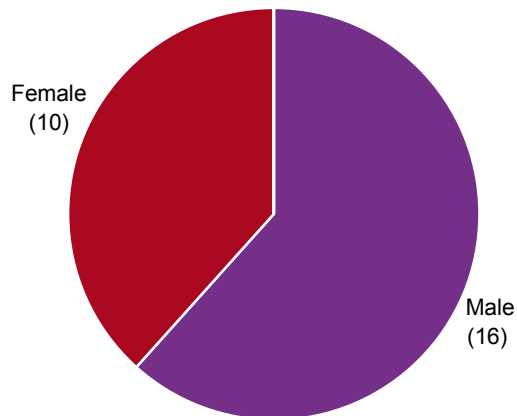


Figure 17: Honours awarded to governors since 2010 in further education, breakdown by gender



Remuneration for Governors

5. Grant Thornton's 2013 report *The Science of Good Governance* stated that 14 of the top 100 UK charities (by income) remunerate trustees for their time and 80 pay expenses to trustees. The study of US charities by Francie Ostrower found that 2% of public US charities remunerate trustees for their time, rising to 10% amongst public charities with a turnover of over \$40m.
6. Ostrower's study drew conclusions on the effectiveness of remuneration based on the self-assessment of responses submitted by US public charities.

We generally found no indication that compensating trustees promotes higher levels of board engagement. Boards that compensate were not more or less likely to be actively engaged in financial oversight, setting policy, planning, monitoring programs, or evaluating the CEO/executive director. They were no more or less likely to evaluate whether the organization is achieving its goals at least every two years. Compensation was negatively associated with levels of board activity in fundraising, community relations, and educating the public about the organization and its mission. Boards that compensate were more likely to be active to try and influence public policy, but this relationship disappears with controls for other variables. However, compensation was positively associated with attendance at board meetings, and this relationship held even after controls for other variables.

We did not find evidence that compensating trustees help nonprofits attract board members with particular expertise. Boards that compensate were actually less likely to have members with professional backgrounds or expertise in management, law, or accounting, and no more or less likely to have members with expertise in the organization's field of activity. Furthermore, compensation was not associated with achieving greater racial or ethnic diversity.

7. Lord Hodgson's review of the *Charities Act 2006* also considered the issue of remuneration for charities:

Interestingly, very few organisations mentioned the inability to pay trustees as a barrier to recruitment. Where it was reported, the issue was more the uninitiated expecting payment and being discouraged when this was not forthcoming rather than otherwise strong candidates being unable to take roles due to lack of payment.

Payment of trustees nonetheless remains a hugely divisive issue in the charity sector. Those who are in favour of a general power to pay cite the need to reach those who are unable to take the role unpaid (those who need to work full time, say), to improve board diversity, and those with high levels of professional skill. They point to the illogicality of a policy which permits a charity to recompense a trustee for a specific professional service (e.g. chartered surveyor) but not for the no-less-important skills of general commercial management. Those against argue that payment fundamentally undermines the voluntary principle and, while it may motivate more people to become trustees, this may not be for the right reasons nor bring in the people with the characteristics and skills charities need. There are also risks of creating an unlevel playing-field between organisations that can and cannot

afford to pay trustees; creating a 'market rate' for the role could lead to an expectation of payment where none existed before.

The public perceptions research found that, while awareness of whether trustees are paid is low (an even split between those who thought they were, those who thought they were not, and those who did not know), once the role of trustees was explained, 61% thought they should not be paid. However, there was considerable variation within that result, with 47% of younger people agreeing that trustees should be paid, compared to 22% of over 65s. Views from the sector were relatively balanced but leaned marginally towards not permitting payment.

Considering the limited concrete evidence on this issue, there is no real indication from sectors that do have the general power to pay trustees that they have found this helpful in recruiting and retaining quality trustees. Universities submitting evidence to the Review could see no clear benefit, and many have actively decided not to use the power they have, with one citing a wider survey they had conducted among universities that supported this conclusion. Similarly, evidence from housing associations is that paid boards cannot be shown to have delivered an increase in quality (though arguably in quantity) of applicants.

There is also the danger of abuse of any freedom to pay trustees. This is likely to be particularly pertinent in smaller charities which are largely below the regulatory and public 'radar'. Against this, one has to realise that the larger charities are truly huge organisations handling substantial amounts of public and private money.

On balance, therefore, taking into account the importance of the voluntary principle as a fundamental tenet of this review, I believe that, in respect of what will become 'small' and 'intermediate' charities (see Chapter 6), the best solution may be to maintain the status quo (the ability to pay trustees with the permission of the Charity Commission), but that charities in the 'large' category should be permitted to pay their trustees. This recommendation depends on there being clear disclosure requirements on the quantum and terms of any remuneration in the individual charity's annual return.

But in order to encourage people to come forward to serve as trustees and to encourage the appropriate diversity of age, gender and ethnicity, all charities should remain able to, and be encouraged to, reimburse legitimate expenses. Travel costs are obvious but reimbursing the cost of care might encourage more people looking after young families or elderly relatives to come forward. It will be another area where trustees' judgment will play the key role.

Annex D: Views of the Sector

1. This annex provides a selection of sector views on the issues covered by the review and reflects the range of opinions put forward.

Recruitment and Succession Planning

2. The role of an FE governor needs to be more widely publicised both nationally and by colleges themselves to ensure that there is a wider audience of potential governors to fill spaces and to ensure that there is a diverse and representative mix of skills, experience and backgrounds on every board.
3. One potential idea to encourage new members would be if there was a way to link the skills that are needed and developed as a board member to some form of a leadership development programme for up-and-coming or aspiring leaders in the private sector, as not only would our sector benefit, but our future leaders would be actively developing a sense of social responsibility. This may also help increase diversity within boards by opening it out to a wider range of people. Aspiring leaders may initially join in a co-opted capacity which would also help succession planning within boards.
4. Recruitments should follow the Nolan procedures with all vacancies being advertised and a full interview process being carried out.
5. We are over-inclined to accept the difficulties of recruitment unquestioningly. It's likely that, in many cases, struggling to recruit is a consequence of poor practice – lack of imagination, rigour, failure to reach the potential talent pool because of self-limiting practice; it shouldn't be assumed that it is because of a lack of available talent. Few boards take specific action to grow governors or create a pipeline for succession, or move out of the usual 'professional' contexts of existing governors to find new members. Developing capacity and capability in existing governors to fulfil the role well is critical, and so is the capacity and capability to recruit new governors effectively.
6. There is not enough systematic data available on governance, the roles and responsibilities of board members, board composition and next to nothing is known about recruitment practices. This data needs to be collected for the last three years to be meaningful.
7. On recruitment and profile, rather than merely outlining the basic responsibilities of the governor role, perhaps there could be a focus on what an individual can achieve as a governor? Of course individuals need to be aware of what they are signing up for but I think any work that can be done around promoting potential outcomes, supporting the vision and delivery of the aims as a result of working on the board might catch the eye of more 'outcome' or 'impact' focused individuals.

Recognising and Rewarding Governors

8. I personally found the invitation to the ministerial event held by the Minister for Skills at Lancaster House, both flattering and inspiring. It was incredibly useful to have the opportunity to speak with the Minister and other Chairs of colleges and as a result I have stayed in touch with some to explore good practices in governance in the sector. Recognition and status is a powerful motivator. Events that bring governors together allow us to explore initiatives and build stronger links within the sector. So I do support the incentives listed i.e. Honours, receptions / garden parties etc It may also be helpful to explore specific events for the development of governors and sector announcements.
9. The recognition event in January was an excellent start and brought a number of Chairs together. For me personally, I have made a number of contacts through that event and am looking at how we can share knowledge and good practice. More of these events and ways to share governance practice (both what has worked well and what hasn't) would be welcome.
10. Any successful organisation will have a wide range of ways of celebrating and encouraging excellence. The key is not to have one-off events but to build them into the fabric of the organisation and assimilate them into the culture. When I first became an FE governor someone described FE to me as the Cinderella of the education system. Under-funded, under-valued and under-recognised. I took this as a challenge because I believed (and still do) in the key role FE has in our society. Sector and government bodies have a fundamental role in changing the perceptions about FE which have doubtless developed over many years. It will be a long and perhaps difficult task – but it will be worth it.
11. You could take the example used in sport – the “PFA Players Award” for example and encourage nominations from any member/s of governing bodies which could be submitted to an independent panel formed from the Education and Training Foundation (judged against a published set of criteria). Submissions which needed to be endorsed by the relevant Chair or Principal might not encourage a large response (in my opinion) but it might be worth exploring this a little further. You could link contributions made by governors to the local stakeholders. This means empowering local Chamber of Commerce and/or schools’ forums to nominate. This might recognise the local contributions being made by some governors?? Again this could be funnelled through the Education and Training Foundation.
12. I do not believe that the Honours system or garden parties should be promoted as a way in which governance could be incentivised. I think this clearly not what the Honours system is designed for and would lead to an abuse of the system. The same applies to garden parties – we will not attract the talent and skills required to support the strategic leadership of colleges if individuals are attracted to the position so that they can attend a Royal Garden Party or be awarded an OBE!
13. Minister Hancock’s suggestion that the Education and Training Foundation should work on creating a single place for collating all the advice and guidance available to governing bodies is supported. However, it is important that this is resourced on an ongoing basis to ensure ongoing sustainability.

14. Agree that there should be an easily accessible mechanism for finding guidelines and information of relevance to governing bodies. It seems quite complicated at present. If ownership of information belongs to several different organisations then one option may be for all of those organisations to publish documents to one online location / document repository. It would be helpful to have a form of notification when any of those documents change or new information becomes available. Ideally by email or through semi-regular events for governors. It would also help if there was an annual summary of updates to the guidance, so it could be incorporated into the governance cycle of reviewing compliance. It would act as a positive prompt for reviewing governance responsibilities
15. It is fundamental that clear, concise and reliable guidance on governance issues is available from a single, well-established and respected, source. This information must be easily accessible and kept up-to-date. Whoever has the responsibility there is a long way to go to capture and present the FE governance requirements in a way that governors would find helpful. A simple list of the various documents that need to be consulted might be necessary but is hardly sufficient to support hard-pressed, busy governors who have many other claims on their time. I would also hope that the following could be provided:
 - A short paper (say 2 sides of A4) which summarises the key points and intended to be included in all FE governors' induction packs;
 - A comprehensive paper detailing the FE governance requirements intended for the Principal, Chairman and Chairs of key committees;
 - A detailed paper laying out the responsibilities and accountabilities of individual governors in ensuring appropriate governance policies and practices;
 - Concise briefing papers on governance implications of all major FE changes and initiatives as they occur;
 - Regular seminars specifically addressing the governance responsibilities of individual governors allowing adequate time for Q&A and sharing of best practice;
 - An Ofsted briefing note indicating the governance topics to be explored during a college inspection with both the senior management team and individual governors.
16. Governors need to feel they are doing a worthwhile job which is recognised and respected by their community and government. Recent pronouncements by Ministers have greatly helped in this respect and hopefully Ofsted will be conscious of the wider impact of some of their comments. Overall I do not think it an exaggeration to say that FE will play a key role in the regeneration of the UK economy. This message and the value that FE governors play should be given positive publicity at every opportunity.
17. Specifically on the point of profile and attractiveness of being an FE governor learning and development might play a part in attracting different individuals. Perhaps there

are some specifics that could be explored within this that are not so much about how to do the role, but why an individual should do the role – this might be more inspiring / appealing to potential governors and attract (or develop) those with the right attitudes/behaviours as well as appropriate skill sets. Also in relation to training I think governors need to be empowered and have a clear understanding of the difference between their role and that of a senior leader in the college.

How to Evidence Strong Governance

18. Local participation, influence and demonstrable championing of the college to stakeholders (evidenced by external testimony for example); leadership qualities evidenced by actual issues/projects; achievement of corporate objectives evidenced by key performance indicators and minutes.
19. Excellent governance is difficult to define and even more difficult to measure, it is important not just to reward 'time serving'. Excellence should be celebrated through the active involvement and participation of learners, who are the primary beneficiaries. Participatory approaches involving other community stakeholders should also be sought, and views collected on a regular basis.
20. The criteria of excellent governance and leadership should reflect all key stakeholders' views and feedback, and go beyond the Ofsted Inspection Framework. Views could be collected through questionnaires and interviews. The Ofsted Inspection Framework is necessary, but not sufficient, as the college's provision falls beyond Ofsted's remit. More emphasis should be put on qualitative measures of success and achievement (to enhance and complement quantitative measures). Focus should be on the added value provided by colleges, level of progression of learners, and overall social impact.
21. Evidence of excellent governance and leadership should focus on results achieved by the college as measured in the Ofsted inspections. It would be unfortunate and confusing if there were two sets of standards to work to.

Remuneration for Governors

22. In changing times where there is competition for skilled governors there will have to be some form of incentivisation with remuneration being the most obvious. This may have to be at the discretion of each college, a cap would be appropriate to prevent abuse.
23. Governance should be remunerated because:
 - Commercial expertise is required;
 - Remuneration imposes a commercial undertaking rather than being a public service;
 - It provides a sanction for poor performance.

24. I do not think paying governors or Chairs is the answer, I think payment then attracts a certain type of non-executive who is looking for a 'job' or to earn money rather than to be a governors for more altruistic or developmental reasons.
25. I am not against payment of governors, particularly the chair of governors, as a matter of principle. Rather, I am against it if it is paid for by the college, as the governor then becomes effectively on the payroll of the college, and the whole relationship changes. It is a question of justice being seen to be done as well as being done. The governor on the payroll is in too 'intimate' a relationship to be a truly effective governor. Standards of governance will not increase. If there was a separate – to the college – financial resource for payment of governors then it might work. However, the degree of payment would have to be carefully controlled, and equal for all colleges – otherwise there would arise a 'bidding war' for good governors, and this would not increase standards.
26. If the NHS remuneration strategy was introduced this could cost a college nearly £200,000 a year (assuming 13-15 business governors). This could place a huge financial burden on many colleges. Many governors choose to undertake the role as they want to give back to their communities and do it as a voluntary activity. But their responsibilities as governors are certainly great so they need to be well prepared and highly professional in these roles. So what does need to be considered is their training and development and the clarity of the roles and responsibilities they have.
27. I am in support of governor remuneration as a means by which to attract senior professionals to the role. However, not a 'one size fits all' issue – colleges need the flexibility to determine the model best suited to their needs. More could be done to utilise the existing remuneration powers currently available to colleges – further guidance would be useful to clarify the options available in this respect. Guidance / advice on how to apply to the Charity Commission for powers to remunerate, for those colleges that consider it necessary and in the best interests of their institution to do so, would be useful. Exploration of incentives to employers to release staff during working hours to carry out governor duties – payment or other forms of incentive. Also a need to promote/raise awareness with employers of the potential benefits to their organisation.
28. How would governors be funded – would funding levels increase? Who would manage performance and would (and with whom) would the powers be to influence their employment terms? We could consider a 'cabinet approach' where a few governors take the brunt of the work and are remunerated while the rest are unpaid.

Annex E: Publications Referenced in the Report

¹ 'FE' and 'college' in this report are taken to mean all English sixth form colleges, further education colleges (including arts and land-based) and specialist designated institutions. For further information on the designation of colleges and colleges based in England see the AoC website: http://www.aoc.co.uk/en/about_colleges/

² The advisory group consisted of representatives from the AoC Governors' Council, the Department for Education, the Institute for Government, the National Clerks Network, the Network for Black Professionals, Ofsted and the Women's Leadership Network. In addition the majority of participants also serve on a governing body (either as chair, vice-chair or governor) of a further education institution (including general further education colleges, a sixth form college, a land-based college and a specialist designated college)

³ The virtual group consisted of representatives from the Sixth Form College Association, the 157 Group, the Education Funding Agency, the National Union of Students, the University and College Union, the Public Chairs Forum, , the Women's Leadership Network and chairs, governors and Principals from various general further education colleges and a sixth form college

⁴ AoC website: http://www.aoc.co.uk/en/college_governors/

⁵ AoC Governance Library: http://www.aoc.co.uk/en/college_governors/governors-resource-library/

⁶ The English Colleges' Foundation Code of Governance, AoC (2012): http://www.aoc.co.uk/en/college_governors/english-college-code-of-governance/

⁷ The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2010/11, Ofsted (2011): <http://www.ofsted.gov.uk/resources/annualreport1011>

⁸ New Challenges, New Chances. Further Education and Skills System Reform Plan: Building a World Class Skills System, BIS (2011): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32313/11-1380-further-education-skills-system-reform-plan.pdf

⁹ A Review of Governance and Strategic Leadership in English Further Education, Allan Schofield (ed), Jo Matthews, Simon Shaw (2009): http://www.aoc.co.uk/en/college_governors/review-of-governance/

¹⁰ Key Challenges for FE college governance and priorities for development: An LSIS perspective, LSIS (2012): <http://www.lsis.org.uk/publication-content/key-challenges-fe-college-governance-and-priorities-development-lsis-perspective>

¹¹ Standards in Public Life, First Report of the Committee on Standards in Public Life, Chairman Lord Nolan (1995): <http://www.archive.official-documents.co.uk/document/cm28/2850/285002.pdf>

¹² The make-up of ACER members' corporations, ACER (2013): <http://www.acer.ac.uk/2013%20corporation%20survey%20report%20%20FINAL.pdf>

- ¹³ Report on surveys of Further Education Governors and Clerks to Governors, The FE Women's Leadership Network (2012):
http://www.wlnfe.org.uk/documents/FINALGovsSurveyReportvFinal2_000.pdf
- ¹⁴ Women on boards, Lord Davies Report published by BIS, the Department for Culture, Media & Sport and Government Equalities Office (2013):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182602/bis-13-p135-women-on-boards-2013.pdf
- ¹⁵ An independent governor in this report is taken to mean a non-executive governor, including co-opted governors. Representative positions such as staff, student or parent governors (parents are governors in the case of sixth form colleges) are not counted as independent governors unless specifically mentioned in the section
- ¹⁶ The Science of Good Governance – Towards Charity Best Practice, Grant Thornton (2013):
http://www.grant-thornton.co.uk/Global/Publication_pdf/Charity-Governance-Review-2013.pdf
- ¹⁷ Clerking in the new era: implications for college governance, LSIS (2013):
<http://www.lsis.org.uk/publication-content/clerking-new-era-implications-college-governance>
- ¹⁸ A dynamic nucleus: Colleges at the heart of local communities, Independent Commission on Colleges in their Communities, Chaired by Baroness Sharp (2011):
http://shop.niace.org.uk/media/catalog/product/d/y/dynamic_nucleus_-_full_-_final.pdf
- ¹⁹ Autumn Statement 2012, HM Treasury (2012): <https://www.gov.uk/government/topical-events/autumn-statement-2012>
- ²⁰ Section 22A of the Further and Higher Education Act 1992 for Further Education Corporations and Section 33M of the Further and Higher Education Act 1992 for Sixth Form College Corporations
- ²¹ Trusted and independent: giving charity back to charities – review of the Charities Act 2006, Cabinet Office, Chaired by Lord Hodgson (2012):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79275/Charities-Act-Review-2006-report-Hodgson.pdf
- ²² Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study, The Urban Institute - Center on Nonprofits and Philanthropy, Francie Ostrower (2007):
http://www.urban.org/UploadedPDF/411479_Nonprofit_Governance.pdf
- ²³ The UK Corporate Governance Code, Financial Reporting Council (September 2012):
<http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx>
- ²⁴ The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2011/12, Ofsted (November 2012): <http://www.ofsted.gov.uk/resources/annualreport1112>
- ²⁵ Vince Cable, Letter to Finance Directors of 100 Group, 21 February 2013

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