

NEWHAM COLLEGE OF FURTHER EDUCATION

CODE OF CONDUCT FOR CORPORATION MEMBERS

(As reviewed and agreed by the Corporation on 19th September 2006)

1 INTRODUCTION

- 1.1 This code is intended as a guide for Corporation Members, to indicate the standards of conduct, which are expected of them, to enable them to understand their legal duties and to assist them both in carrying out their duties and in their relationship with the Corporation and the Principal. This Code is therefore aimed at promoting effective and well-informed college governance, and is not intended to be a definitive or authoritative statement of the law.
- 1.2 In addition to this Code, Corporation Members are required to familiarise themselves with the following, which will be supplied to them on appointment:-
- (a) The College's Instrument of Government;
 - (b) The College's Articles of Government;
 - (c) The College's Three Year Development Plan; and
 - (d) The Financial Memorandum entered into by the College with the Learning and Skills Council (LSC).

The following Appendices are attached for ease of reference:

Appendix 1 Summary of Responsibilities of Corporation Members

Appendix 2 Summary of main provisions of the Financial Memorandum of the LSC

Appendix 3 Summary of the Powers of the Corporation

They should not be read as an exhaustive statement of duties, powers or provisions, and Members should refer to the source documents listed above. If a Member is in doubt on the provisions of any of these documents, the Clerk should be consulted and, if necessary, legal advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Member of a corporate body and for any act or omission in that capacity rests with the individual Member.

1.3 This Code applies to every committee, working party or other subsidiary body of the Corporation to which Members may be appointed.

1.4 Acceptance of appointment as a Member of the Corporation will be construed as acceptance to this Code.

2 **INTERPRETATION**

In this Code “College” means Newham College of Further Education, “Member”, “Chair”, “Principal” and “Clerk” mean respectively the Member, Chair, Principal and Clerk/Secretary for the time being of the Corporation. All other definitions have the same meanings as given in the College’s Instrument and Articles of Government, and words importing one gender will import all genders.

3 **DUTIES**

3.1 Members owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its interests. Each Member should act honestly, diligently and, subject to the provisions appearing in paragraph 7 of this Code relating to collective and individual responsibility.

3.2 Whatever decisions Members take at meetings of the Corporation and its committees they must reflect the College Mission and be for the benefit of the College as a whole and not for any improper purpose, or for personal motive. The “benefit of the College” can be taken to mean, first and foremost, the interests of its students and other users of the College’s services, and the safeguarding of public funds. Members should have regard to those interests, and must not allow any sectional interest to take precedence. In particular, Members are not appointed as ‘representatives’ or ‘delegates’ of any outside body, and may not lawfully be bound by mandates given by others.

3.3 Members must observe the provisions of the College’s Instrument and Articles of Government and in particular the responsibilities given to the Corporation by Article 3(1) of the College’s Articles of Government. Those responsibilities that are so important that they must not be delegated, are set out in Appendix 1.

3.4 Members should also have regard to the different, but complementary, responsibilities given to the Principal as the College’s Chief Executive. Whereas it is the Corporation’s function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior post holders, it is the Principal’s role to implement the Corporation’s decisions, and to manage the College’s affairs within the budgets and framework fixed by the Corporation. Members should work together so that the Corporation and the Principal perform their respective roles effectively.

3.5 Members are collectively responsible for observing the duties set out in the Financial Memorandum that the College has entered into with the LSC as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum is set out in Appendix 2.

- 3.6 Although the LSC is the main provider of funds to the College, Members should note that they are also responsible for the proper use of income derived from other sources, such as the Higher Education Funding Council for England (HEFCE), and the European Union (EU).

4 **SKILL, CARE AND DILIGENCE**

Members should in all their work for the College exercise such skill as they possess and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Members act as agents of the College, for example, when functions are delegated to a committee of the Corporation, the Chair, or they are appointed by the Corporation as representatives on external bodies. Members should be careful to act within the terms of reference of any committees on which they serve.

5 **POWERS**

Members are responsible for taking decisions, which are within the powers given to the Corporation by Section 18 and 19 of the Further and Higher Education Act 1992. A summary of those powers is set out in Appendix 3. If a member thinks that the Corporation is likely to exceed its powers by taking a particular decision, he should immediately refer the matter to the Clerk for advice.

6 **CONFLICTS OF INTEREST**

- 6.1 Like other persons who owe a fiduciary duty, Members should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their work and personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise, which might therefore interfere with the exercise of their independent judgement.
- 6.2 Members are reminded that under clause 11(1) of the College's Instrument of Government they must not take or hold any interest in any property held or used of the purpose of the institution.
- 6.3 Members are also reminded that under clause 11(2) of the College's Instrument of Government they must disclose to the Corporation any financial interest which they have, or may have, in: -
- (a) The supply of work or goods to or for the purposes of the College;
 - (b) Any contract or proposed contract concerning the College; or
 - (c) Any other matter relating to the College.
- 6.4 However, an interest does not have to be financial for the purposes of disclosure. If it is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Member's independent judgement, then the interest, financial or otherwise, should:-

- (a) Be reported to the Clerk; and
- (b) Be fully disclosed to the Corporation before the matter giving rise to the interest is considered.

Where a Member makes a disclosure the Chair will rule whether the Member should withdraw from that part of the meeting at which the matter is considered, or to be allowed to remain within the meeting. The Member will take no part in the discussion arising, and on no account may vote in relation to the matter.

- 6.5 Members must not receive gifts, hospitality or benefits of any kind from a third party that might be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.
- 6.6 The Clerk will maintain a Register of Members' Interests, which will be open for public inspection. Members are invited to disclose routinely to the Corporation all business interests, financial or otherwise, which they may have and to use their best endeavours to ensure that they declare an interest where a spouse/partner is involved in an activity or contract which comes into conflict with their role as a Governor. The Clerk will enter such interests on the Register. Members should inform the Clerk whenever, their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Members should have regard to the meaning given to "interest" in paragraph 6.4 of this Code.

7 **COLLECTIVE RESPONSIBILITY**

- 7.1 The Corporation operates by Members taking majority decisions at quorate meetings. Therefore a decision of the Corporation, even when it is not unanimous, is a decision taken by the Members collectively and each individual Member has a duty to stand by it, whether or not he was present at the meeting of the Corporation when the decision was taken.

- 7.2 If a Member disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Member strongly disagrees, he/she should consult the Chair and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Member should refer to clause 12(4) of the College's Instrument of Government as to the powers to call a special meeting and, if appropriate, exercise them, requesting the Clerk to circulate the Members' views in advance to the other Members. Alternatively, the Member may decide to offer his/her resignation from office, after consulting the Chair.

8 **CONFIDENTIALITY**

- 8.1 Because of the Corporation's public accountability, Members should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when the Chair has approved them for publication.
- 8.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items, will be kept in a confidential folder by the Clerk, and will be circulated in confidence to Members. However, Staff and Student Members may not have access to minutes dealing with matters in respect of which they are required to withdraw from meetings under clauses 14(4), (7) or (8) of the College's Instrument of Government.
- 8.3 It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Members with a shared corporate responsibility for decisions. Members should keep confidential any matter which, by reason of its nature, the Chair or the Members or the Chair or members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.
- 8.4 Members should not make statements to the press or media or at any public meeting relating to the proceedings of the Corporation or its committees without first having obtained the approval of the Chair or, in his absence, a Vice Chair. It is unethical for Members publicly to criticise, canvass or reveal the views of other Members that have been expressed at meetings of the Corporation or its committees.

9 **ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Corporation is expected so that Members can perform their functions properly.

10 **GOVERNANCE DEVELOPMENT**

- 10.1 Members are encouraged to obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes.
- 10.2 Members of the Corporation will take or seek opportunities to enhance their effectiveness as a member through participation in training and development programmes and by increasing their knowledge of the College, as may be appropriate.
- 10.3 In order to promote more effective governance, Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing process of self-evaluation.

(i) AS A GOVERNOR I AGREE TO ABIDE BY THIS CODE OF CONDUCT

NAME:

SIGNED

DATED:

APPENDIX 1

SUMMARY OF RESPONSIBILITIES OF CORPORATION MEMBERS

Responsibilities

Under Article 3(1) of the College's Articles of Government the Corporation shall be responsible:

- (a) the determination of the educational character and mission of the institution and the oversight of its activities;
- (b) the effective and efficient use of resources, the solvency of the institution and the Corporation and safeguarding their assets;
- (c) approving annual estimates of income and expenditure;
- (d) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk, including, where the Clerk is, or is to be appointed as, a member of staff, the Clerk's appointment, grading, suspension, dismissal and determination of pay in the capacity of a member of staff; and
- (e) setting a framework for the pay and conditions of service of all other staff

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

Responsibilities which must not be delegated

Article 9 of the Articles of Government prohibits the Corporation from delegating the following:

- (a) the determination of the educational character and mission of the institution;
- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets;
- (d) the appointment or (subject to article 17) the dismissal of the Principal or holder of a senior post;
- (e) the appointment or dismissal of the Clerk, (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment or, subject to article 17, dismissal in the capacity of a member of staff); and
- (f) the modification or revocation of these Articles.

Article 5(8) of the Articles of Government prohibits the Corporation from delegating to the Principal the power to determine an appeal in connection with the dismissal of a member of staff under article 18(6) unless the Principal has previously delegated his power under article 18(1) to dismiss a member of staff to a holder of a senior post.

The Corporation may, from time to time, resolve to add other matters that must not be delegated to this list of "reserved" responsibilities.

APPENDIX 2

SUMMARY OF MAIN PROVISIONS OF THE FINANCIAL MEMORANDUM OF THE FURTHER EDUCATION FUNDING COUNCIL (as per new financial memorandum effective from August 1999 (FEFC Circular 99/48 refers))

The Department for Education and Skills (DfES) requires the Learning Skills Council (LSC) to enter into an agreement set out in a financial memorandum with the College for the purpose of regulating its relationship in financial and related matters and setting out the terms and conditions on which public funds will be paid by LSC to the College.

The Memorandum is divided into two parts. Part 1 contains general terms and conditions under which the LSC provides funds to the Corporation. A summary of the main provisions of Part 1 appears below. Part 2 is issued annually and consists of the annual funding allocation and any specific conditions that might apply to the funding of the College.

The main points to note in relation to Part 1 are as follows:

(a) *Duties and Responsibilities*

The Corporation is responsible for:

- ensuring that funds from the LSC are used only in support of activities permitted by the Further and Higher Education Act 1992, the financial memorandum and any other conditions which the LSC may from time to time prescribe;
- Determining the educational character and mission of the College and for oversight of its activities;
- Ensuring the solvency of the College and safeguarding of the College's assets;
- Appointment, grading, suspension, dismissal and determining the pay and conditions of service of the Principal and other senior post holders;
- Setting the framework for pay and conditions of all other staff;
- Ensuring that the financial, planning and other management controls, including controls against fraud and theft, applied by the College are appropriate and sufficient to safeguard public funds;
- Approving the appointment of external auditors and an internal audit service;
- Securing the efficient, economical and effective management of all of the College's resources and expenditure, capital assets and equipment, and staff so that the investment of public funds in the College is not put at risk; and

- Ensuring that financial considerations are taken into account at all stages in reaching decisions and in their execution.
- Planning and conducting its financial and academic affairs so that its total income is not less than sufficient, taking one year with another, to meet its total expenditure;
- Making appropriate arrangements to appoint a Clerk with the necessary expertise to fulfil the duties of the post;
- Approving an annual budget before the start of each financial year;
- Determining tuition fees;
- Approving rules and procedures relating to staff grievances, conduct, suspension, dismissal and appeals;
- Approving the students’ union constitution and rules relating to the conduct of students;

(b) *Recurrent and Capital Funding*

Recurrent funds are intended to meet the recurrent costs of the College, which include the routine maintenance of buildings and other assets. The College may transfer recurrent funds to capital funds but not vice versa.

(c) *Land and Buildings Transactions*

The Board is charged with ensuring procedures for strategic estate and equipment management, and project appraisal. It should keep its holdings of land and buildings under review and maintain its estate in accordance with its accommodation strategy.

The Board must obtain the consent of LSC for land and buildings (including leasing) transactions where the total costs exceeds £1,000,000 or 5% of its annual revenue, whichever is the lower.

(d) *Borrowing*

General consent is given to colleges to:

- Borrow up to 5% of its annual revenue on an unsecured basis;
- Borrow up to a cumulative maximum of £1,000,000 or 5% of its annual revenue, whichever is the lower, on a secured basis.

(The College has LSC approval to a maximum unsecured overdraft of £1,000,000, and a secured borrowing approval of £1,000,000).

(e) *Accounts and Financial Management*

The College must provide LSC with audited accounts for the financial year within five months of the year end. It must also notify the LSC in writing if at any time there is a significant deterioration in its financial position. Where the LSC conclude that there is a risk to the College’s liquidity, service delivery or asset base it may require the College to put in place a recovery plan or a risk reduction plan.

- (f) *External Institutions*
The College is required to seek an audit certificate from the external auditors of those institutions to which the LSC , through the College, has given financial support.
- (g) *Audit*
The Corporation is responsible for ensuring that the College has a sound system for internal control, has appointed an audit committee and has arranged for the provision of external and internal audit. With effect from 1 August 2000, internal and external audit services must be carried out by separate providers.
- (h) *Information*
The College is required to provide LSC with information concerning its finances, staffing, students and programmes, its accommodation strategy and other information as required by LSC.
- (i) *Requirement to inform LSC*
The College is required to inform LSC in writing, of:
- The intention to make a major change in the nature or location of the College;
 - The vacating and filling of the following positions:
 - The Chair of the Board
 - Principal
 - Clerk
 - The name of the person who will be discharging the Principal's responsibilities during his/her absence for an extended period of time.

(a) SUMMARY OF THE POWERS OF THE CORPORATION

Principal Powers

Under Section 18 of the Further and Higher Education Act 1992 as amended by section 142(1) of the Learning & Skills Act 2000 (LSA) a further education corporation may:

- (a) Provide further and higher education and secondary education and to participate in the provision of secondary education at a school; and
- (b) Supply goods or services in connection with their provision of education. These powers are known as the Corporation's "principal powers".

Supplementary Powers

Under Section 19 of the 1992 Act as amended by Schedule 9 (paragraph 22) of the LSA a further education corporation may do anything, which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers conferred by Section 18 of the Act, including in particular the following:

- (a) The power to acquire and dispose of land and other property;
- (b) The power to enter into contracts, including in particular:
 - (i) Contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers; and
 - (ii) Contracts with respect of carrying on by the Corporation of any such activities;
- (c) The power to borrow such sums as the Corporation think fit for the purposes of carrying on any activities they have power to carry on or to meet any liability transferred to them under Sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage charge or other security in respect of any land or other property of the Corporation. This power may not be exercised without the consent of the Further Education Funding Council (now LSC), which may give its consent for a particular borrowing or for borrowing of a particular class.
- (d) Power to invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on;
- (e) Power to accept gifts of money, land or other property and apply it or hold and administer it on trust for, any of those purposes; and

- (f) Power to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.

The Corporation may also provide facilities of any description (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties), which appear to be necessary or desirable for the purposes of or in connection with the carrying on of the principal powers.

The powers conferred by Section 19 of the Act are known as "supplementary powers".