

MOULTON COLLEGE

**CODE OF CONDUCT FOR
CORPORATION MEMBERS**

INDEX

Paragraph No.		Page No.
1.	Introduction	1
2.	Definitions	2
3.	Duties	2
4.	Skill, Care and Diligence	3
5.	Powers	3
6.	Conflicts of Interest	3
7.	Collective Responsibility	4
8.	Confidentiality	4
9.	Attendance at Meetings	5
10.	Governance Development	5
Appendix No.		
1.	Summary of Responsibilities of Corporation Members	6
	Article 3(1) of the Articles of Government	
2.	Summary of the main provisions of the Financial Memorandum of the Education and Skills Funding Agency	8
3.	Summary of the Powers of the Corporation Sections 18 and 19 of the Further and Higher Education Act 1992	12

CODE OF CONDUCT FOR CORPORATION MEMBERS

(Made by the Corporation on 23/3/95, reviewed and amended on 25/11/98, 31/3/02, 26/7/06, 30/7/08, 27/7/11, 24/7/12, 20/6/13, 28/7/16, 13/7/17, 12/7/18, 4/7/19 and 9/7/20)

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.

As members of a Corporation within the public sector, Governors accept that they will operate within the principles laid down by the Nolan Committee for those holding public office, namely:-

Selflessness
Integrity
Objectivity
Accountability
Openness
Honesty
Leadership

- 1.2 In addition to this Code, Members are recommended 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 Strategic Plan
- d) the Financial Memorandum entered into by the College with the Education and Skills Funding Agency (ESFA)
- e) The Corporation's Standing Orders
- f) Information on the availability of internet based training materials.

Appendices 1, 2 and 3 are attached to this Code for easy reference. 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 about 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 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 of this Code.

2. DEFINITIONS

In this Code “College” means Moulton College, “Member”, “Chair”, “Principal” and “Clerk” mean respectively the Member, Chair, Principal and Clerk 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 responsibility, independently.
- 3.2 Whatever decisions Members take at meetings of the Corporation and its committees must 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 of the College’s Articles of Government. Those responsibilities, including a list of “reserved” responsibilities which are so important that they must not be delegated, are set out in Appendix 1.
- 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 which the College has entered into with the Education and Skills Funding Agency (ESFA) 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 In addition to the funds provided by the ESFA to the College, Members should note that they are also responsible for the proper use of income derived from other funding bodies, such as the Education Funding Agency (EFA), Office for Students, Student Loan Company, Local Authorities (for High Needs Students) and the European Union (EU).

4. SKILL, CARE AND DILIGENCE

A Member should in all his or her work for the College exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Members act as agents of the College for example, when functions are delegated to a committee of the Corporation or the Chair.

5. POWERS

Members are responsible for taking decisions which are within the powers given to the Corporation by Sections 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 or she 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 personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

6.2 Members are reminded that under Clause 12 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; or
- d) any other interest of a type specified by the Corporation in any matter relating to the institution.

6.3 However, an interest does not have to be financial for the purposes of disclosure. If it is likely or, if publicly known, 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.

Members should refrain from the discussion and any voting which may take place on the matter giving rise to the interest and should withdraw from the meeting for the duration of the agenda item if required to do so by a majority of the Members present.

6.4 Members must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity. Any offer or receipt of gifts, hospitality or benefits should immediately be reported to the Clerk.

6.5 The Clerk will maintain a Register of Members' Interests which will be open for public inspection. Members should routinely disclose to the Corporation all business interests, financial or otherwise, which they or their spouses, children or other close relatives may have, and the Clerk will enter such interests on the Register. Members must inform the Clerk whenever their circumstances change and interests are acquired or lost.

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.
- 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 still strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter again with the Corporation when it next meets. If no meeting is scheduled, the Member should refer to Clause 13(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 Member's view in advance to the other Members. Alternatively, the Member may decide to offer his or 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 and the general public 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 from the Clerk after they have been approved by the Chair. Minutes of Corporation and Committee meetings are also made available on the College website once they have been approved and signed at the next meeting.
- 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 the other good reasons. Such extended 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 Part 2 Agenda Items or other matters in respect of which they are required to withdraw from meetings under Clauses 15 (5), (8) or (9) of the College's Instrument of Government. Minutes of part 2 meetings shall be reviewed after 2 years under the guidelines for determining confidentiality. A copy of parts of the minutes no longer considered confidential shall be made public.
- 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 or her absence, the Vice Chair. It is unethical for Members publicly to criticise, canvass or reveal the views of other Members which have been expressed at meetings of the Corporation or its committees.

9.0 ATTENDANCE AT MEETINGS

A high level of attendance at meetings of the Corporation is required so that Members can perform their functions properly. A Member who is unable to attend Corporation Meetings on a regular basis should offer his or her resignation from office. In accordance with the Instrument of Government any member who has been absent from meetings of the Corporation for a period longer than 6 consecutive months without the permission of the Corporation or is unable or unfit to discharge the functions of a member shall be removed from office.

10. GOVERNANCE DEVELOPMENT

10.1 Members are encouraged to obtain a thorough grounding in their duties and responsibilities by participating in the College's induction and training programmes, including regular refresher workshops.

10.2 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.

**AS A MEMBER OF THE CORPORATION I AGREE TO OBSERVE THIS CODE OF CONDUCT
TO THE BEST OF MY ABILITIES.**

Signed: _____

Dated: _____

Name of Member _____

APPENDIX 1

SUMMARY OF RESPONSIBILITIES OF CORPORATION MEMBERS

Responsibilities:

Under Article 3 of the College's Articles of Government the Corporation shall be responsible for:-

- (a) the determination and periodic review of the educational character and mission of the institution and for oversight of its activities;
- (b) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
- (c) approving the quality strategy of the institution;
- (d) the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
- (e) approving annual estimates of income and expenditure;
- (f) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk (including, where the Clerk is, or is to be appointed as a member of staff, his appointment, grading, suspension, dismissal and determination of pay in his capacity as a member of staff); and
- (g) 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 of the Principal or holder of a senior post;
- (e) the appointment of the Clerk, (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity of a member of staff); and
- (f) the modification or revocation of these Articles.

Article 10 of the Articles of Government states that the Corporation may not delegate -

- (a) the consideration of the case for dismissal, and
- (b) the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation.

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

APPENDIX 2

SUMMARY OF MAIN PROVISIONS OF THE FINANCIAL MEMORANDUM OF THE EDUCATION AND SKILLS FUNDING AGENCY (the full Financial Memorandum can be found in section D2 of the Governor Handbook)

The main points to note are as follows:-

(a) Responsibilities of the Governing Body

The Governing Body of the College has responsibilities for ensuring that the College's funds are used only in accordance with the College's powers as set out in the Further and Higher Education Act 1992 and the College's own statutory duties and other obligations.

The Governing Body is responsible for ensuring the solvency of the College and shall inform the Chief Executive of any transactions that could jeopardise financial viability. The Governing Body is responsible for achieving value for money in all transactions involving Public Funds.

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The Governing Body shall appoint an accounting officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the accounting officer will be the Principal of the College. The Governing Body shall inform the Chief Executive in writing of the name and position of the accounting officer and if the accounting officer is absent from the College for an extended period as determined by the College, the name of the person who will discharge the accounting officer's responsibilities during the absence.

The College shall inform the Chief Executive in writing of the vacating or filling of the positions of chair of the Governing Body and Principal and the clerk.

(b) Responsibilities of the Accounting Officer

The Governing Body shall require the accounting officer to take personal responsibility, which shall not be delegated, to assure them that there is compliance with the Financial Memorandum and all other terms and conditions of funding. The accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College's use of Public Funds.

The accounting officer shall be responsible for advising the Governing Body in writing if at any time, in his or her opinion, any action or policy under consideration by the Governing Body is incompatible with the Financial Memorandum. If the accounting officer has evidence that the Governing Body is acting in breach of the Financial Memorandum or any other terms and conditions of funding the accounting officer shall inform the Chief Executive in writing.

(c) Provision of Information

In addition to the other requirements to provide information set out in this Financial Memorandum the Chief Executive reserves the right to request information from the College in order to exercise her responsibilities and to meet European funding requirements. On occasion, the Chief Executive will require urgent information from the College, usually as a result of requests to the Chief Executive to fulfil her duty to provide information to the Secretary of State and account to Parliament.

The College shall provide the Chief Executive or agents acting on her behalf with the information she requires at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.

(d) Funding and Payment

The breakdown of funds which the Chief Executive agrees to pay to the College is set out in Appendix 1 of this Financial Memorandum.

The College is free to spend its funding as it sees fit, providing it fulfils the conditions of funding imposed by the Chief Executive. The College shall ensure that public funds are not used for the purpose of delivering learning provision in respect of which the College has already received other funding, public or otherwise, unless the Chief Executive so specifies. In the event that the Chief Executive identifies that the College has used public funds in a way not specified by her she may deduct the value of such funding from the funds she pays to the College or require it to be repaid.

(e) Conditions of Funding

The detailed requirements in respect of each Learning Programme are set out in the Funding Rules 2013/14 as amended and updated from time to time and which form part of the terms and conditions of this Financial Memorandum.

The Provision is to be delivered in accordance with any specific requirements of the Chief Executive and delivery profiles and any tender document submitted by the College which all form part of the conditions of funding, this will include Appendix 1, Appendix 2 and any Funding Appendices of this Financial Memorandum.

(f) Access and Monitoring

The College must notify the Chief Executive immediately in writing if at any time there is a risk to its solvency and viability. In order to continue to receive funding the Chief Executive may require the College to provide information to demonstrate to her satisfaction the College's ability to continue to meet the needs of Learners and discharge its responsibilities in relation to its solvency and safeguarding of assets and provide evidence of financial resources sufficient to enable it to continue to deliver the Provision.

(g) Sub-contracted Provision

The College must comply with the requirements on sub-contracting delivery of the Provision set out in the Funding Rules as amended and updated. Sub-contracting any part of the delivery of the Provision shall not relieve the College of any obligation or duty attributable to it under this Financial Memorandum.

Where the College has sub-contracted any duties or obligations arising out of this Financial Memorandum, the College shall ensure that there is in place a legally binding sub-contract and send copies of the subcontract to the Chief Executive if requested in writing to do so. Where the College enters into a sub-contract for the purpose of delivering the Provision, the College shall ensure that the sub-contract includes any terms specified in the Funding Rules.

(h) Raising Standards

When the College receives notification from OFSTED that the Provision is to be inspected, the College shall provide the Chief Executive with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. The College must inform the Chief Executive of the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.

(i) Learner Health, Safety and Welfare

The College shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. The College shall provide information to the Chief Executive, as and when specifically

requested, to give assurance that adequate arrangements exist for learner health, safety and welfare.

Where part of the learning takes place in an environment outside the direct control of the College, the College shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of learners.

The College shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected.

(j) Financial Reporting and Audit

The Chief Executive shall specify her requirements as to the information to be contained in the College's financial statements and how they should be reported in accordance with best practice in the further education sector.

The College shall appoint an audit committee and arrange to provide for internal and financial statements audit, including regularity audit, in accordance with the *Joint Audit Code of Practice* and any other directions drawn up and published by the Chief Executive in consultation with colleges. Any mandatory requirements under the *Joint Audit Code of Practice* shall be a condition of funding under this financial memorandum.

The College shall provide the Chief Executive with copies of its audited financial statements within five months of the College's year-end. As a charity, the College is expected to make its financial statements available to members of the public on request.

The College shall demonstrate that any payments made in respect of the termination of employment are regular secure value for money and have not been made where disciplinary action would have been justified. All such payments shall be brought to the attention of the College's financial statements auditors.

The College must ensure that it has an effective policy of risk management.

The College shall investigate and report to the Chief Executive all significant cases of internal and external fraud or suspected fraud or irregularity (as defined in the *Joint Audit Code of Practice*). The Chief Executive reserves the right to review the College's fraud investigation files.

(k) Capital Transactions

The College shall properly manage and develop its property with regard to good practice guidance in the further education sector and ensure that it maintains premises which are properly equipped in order to deliver the education and training for which it is funded by the Chief Executive.

Where the College proposes to dispose of, lease or rent land and/or buildings which have been acquired, developed and/or refurbished or modernised with the help of capital grants from the Chief Executive and predecessor bodies, the Chief Executive should be notified in writing of such transactions and reserves the right to require repayment of some, or all, of the associated grant.

(l) Additional Conditions of Funding

The Chief Executive reserves the right to impose additional conditions of funding where she considers it is necessary to do so to secure the delivery of education and training of a reasonable quality by the College, or ensure that the resources provided by her are being used effectively and efficiently or to require the College to address concerns about its financial viability.

(m) Repayment of Funds

The Chief Executive reserves the right to require the College to repay all or part of the funds provided by her in the event of a breach of the terms and conditions of funding set out in this Financial Memorandum or any previous Financial Memorandum between the Chief Executive or any predecessor body.

(n) Interpretation

Nothing in this Financial Memorandum shall require the College to act in a manner which would cause it to lose its charitable status.

No failure to exercise or delay in exercising by the Chief Executive any of her rights, powers and remedies shall operate as a waiver of any of them.

APPENDIX 3

SUMMARY OF THE POWERS OF THE CORPORATION

Principal Powers

Under Section 18 of the Further and Higher Education Act 1992 a further education corporation may:-

- (a) provide further and higher education, and
- (b) provide secondary education suitable to the requirements of persons who have attained the age of fourteen years
- (c) provide education which is secondary education by virtue of section 2(2B) of the Education Act 1996 (definition of secondary education)
- (d) participate in the provision of secondary education at a school,
- (e) supply goods or services in connection with their provision of education.

These powers are known as the Corporation's "principal powers".

A further education corporation may not provide education of a kind specified in subsection (b), (c) or (d) above unless they have consulted such local education authorities as they consider appropriate.

For the purposes of subsection (d) above, goods are supplied in connection with the provision of education by a further education corporation if they result from:

- (i) their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education, .
- (ii) the use of their facilities or the expertise of persons employed by them in the fields in which they are so employed, or .
- (iii) ideas of a person employed by them, or of one of their students, arising out of their provision of education.

For the purposes of that subsection, services are supplied in connection with the provision of education by a further education corporation if:

- (i) they result from their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education, .
- (ii) they are provided by making available their facilities or the expertise of persons employed by them in the fields in which they are so employed, or .
- (iii) they result from ideas of a person employed by them, or of one of their students, arising out of their provision of education.

Supplementary Powers

Under Section 19 of the 1992 Act, 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.

A further education corporation may provide facilities of any description appearing to the corporation to be necessary or desirable for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties).

A further education corporation may:

- a) acquire and dispose of land and other property;
- b) 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) subscribe for or otherwise acquire shares in or securities of a company,
- d) 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 (ie when the College achieved its corporate independence on 1 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.
- e) invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on;
- f) accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
- g) 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 powers conferred by Section 19 of the Act are known as "supplementary powers".

Approved Governing Body: July 2019;
Reviewed and amended: July 2020