

Clerking in the new era:  
implications for college governance  
Full report



# Contributions

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## Assistance with pilot and survey distribution

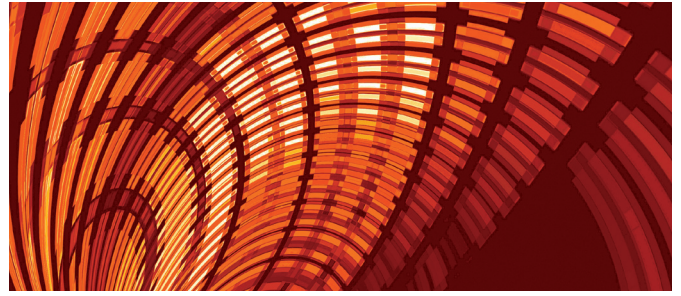
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## Participants in the study

A special thank you to all clerks who responded to the online survey, took part in focus groups and confidential interviews. Without your full participation, and willingness to contribute, this project would not have been possible. Particular thanks to those experienced clerks for their advice and support throughout, and for providing an unfailing example to me.

Catherine Brumwell, independent researcher and author of report

All sections of the report including the annexes can be downloaded from [www.lsis.org.uk](http://www.lsis.org.uk) or [www.fegovernance.org](http://www.fegovernance.org)



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# 1. Foreword

The organisational concept of a ‘clerk’ has a long and distinguished history in Britain, implying a role of seniority, standing and influence. Although the word has lost much of its currency in everyday parlance – with the term ‘clerical’ mainly now used to denote incidental supporting work that makes only limited intellectual demands – the role of clerk in further education colleges is still deservedly respected in the sector as requiring sound professional knowledge, insight and experience, together with the more subjective and sensitive skills required to understand how the people within an organisation work together and relate to each other. Those competencies are more than ever required now in this new era of greater college freedoms, demands and challenges.

Accordingly I welcome this report, which has been funded by BIS and commissioned by LSIS in response to the rapidly changing further education (FE) college environment introduced by the ‘New Challenges, New Chances’ report and the Education Act 2011. This is – surprisingly, perhaps – the first national survey of clerks for ten years; it will I hope act as a baseline for further benchmarking to explore how the clerk’s role is changing in response to national policy and the implementation of the new college freedoms and flexibilities. The survey provides a previously unavailable depth of information about the clerks’ backgrounds and roles. This has highlighted the qualifications and background of almost all clerks surveyed; 93% have been educated to degree level, with 40% having higher degrees, and with many coming into clerking from local government, civil service or higher education backgrounds.

FE college clerks have an essential role in the effective operation of college governance and in guarding its integrity – it is more important than ever, under the close scrutiny of today’s social and other media, that boards uphold the seven Nolan principles of public life. It has been long acknowledged that the advisory role of a clerk both enables and encourages chairs of governing bodies and principals to operate effectively; this report demonstrates that where clerking works well this is indeed the case. A strong working relationship between the triumvirate of chair, principal and clerk is essential to good college governance and effective strategic leadership. If boards of governors are to be able to use the new freedoms and flexibilities effectively and appropriately, they need to take advantage of the advisory role that an experienced clerk can provide. This makes the training and support of clerks now even more important. Currently some 40% have a clerking qualification, but the survey has underlined the need not just for qualifications but also both for continuing professional development and for the availability of legal advice to ensure that boards act in the best overall interests of their college. Professor John Stewart’s phrase about the equivalent person in local government being the “geographer of policy space” is equally applicable here!

This survey has been compiled from responses from 184 clerks in 220 colleges. It provides our sector with a detailed analysis of reliable evidence about clerking that will support chairs, boards and principals alike in effective governance. As colleges respond both to rapid changes and to new opportunities, the report shows the worth as well as the potential of the clerking profession; the priorities and recommendations that it makes will support the recruitment and development of clerks who recognise and aspire to good governance – in short, who are not only up to the job, but up for it as well.

**Roger Morris**

Chair, Governors’ Council, Association of Colleges

13 May 2013

## 2. Background

The clerk's role has never been more critical, following on from the commitment by the Coalition Government to free the sector so that it can respond directly to learner and employer need and be directly accountable for its delivery. These new freedoms were set out in the government's reform plan 'New Challenges, New Chances' (NCNC). Clerking is at a 'tipping point' in terms of the expectations of the role, and yet, paradoxically, there is evidence of pressures working against the clerk in some colleges. The necessity for boards to receive sound governance advice from their clerk is vital to board effectiveness, confidence in assessing and scrutinising risk, and the ability to make informed decisions.

The changed policy landscape provides a complex environment for college boards. The responsibilities of the clerk in colleges, including general further education colleges (GFE), sixth form colleges, land based and specialist colleges are significantly increasing in response to changes from the Department for Business, Innovation & Skills (BIS), the Department for Education (DfE), the Skills Funding Agency, the Education Funding Agency (EFA) and Ofsted. The research shows that the clerk's role is expanding. Boards increasingly require the clerk to have the skills and knowledge to ensure governors are well informed, well trained and that the board is working within its legal powers. With the new freedoms came increased responsibility on boards. The role of the clerk is ever more important in this new framework of devolved responsibility. Boards require more guidance, direction and sound judgement from the clerk. This sound governance advice, including the legal implications of embracing freedoms whilst remaining publicly accountable, ensures the board is supported in scrutinising and assessing risk.

Challenges to effective clerking in FE governance have emerged from the research evidence, as have priorities. The research has revealed emerging conditions necessary for the clerk to be able to clerk effectively, including sufficient training, support and continuing professional development (CPD). This need coincides with the cessation of LSIS in July 2013 and the setting up of the FE Guild in August 2013. The AoC Governors Council is currently reviewing the support and training needs of governors and clerks going forward and will want to take account of the findings of this research. In addition, at the request of the Minister, BIS, with support from the Governors Council, is also looking at how to incentivise and support excellence in governance and the findings of this research will feed into that work.

The conditions necessary for effective clerking centre around six themes surrounded by a changing and complex policy landscape as shown in Figure 1 and described in Chapter 5. The six themes for effective clerking are:

- the 'triumvirate' working relationship between the chair, clerk and principal;
- the ability to maintain high standards of public life and to assess and scrutinise risk to the college;
- sufficient skills and salary to reflect the demands and senior role of clerking;
- a recognition of the status and value of the clerk in colleges and FE sector;
- the clerk's capacity to fulfil their governance advisory role, including legal advice; and
- sufficient training, support and continuing professional development (CPD), including continuing professionalisation of the clerk through qualifications.

Under the new freedoms given to colleges, there is a necessary and welcome increased responsibility on the board, and increased demands on the role of clerk. This changed landscape requires more than ever that the clerk is sufficiently skilled, qualified, receives appropriate training and support to clerk effectively, and is valued and recognised as the source of crucial governance advice to FE college chairs and boards.

Figure 1. Clerking and the changed policy landscape



### 3. Introduction

The aim of the 'Clerking in the New Era' research was to investigate the varied role of clerks and their requirements for training and development in the light of the new freedoms, set out in the government's reform plan 'New Challenges, New Chances' (NCNC); reinforced in Rigour and Responsiveness and implemented through the Education Act of 2011. The sample for this survey includes sixth form college clerks as these are often members of Association of Colleges (AoC) and National Clerks' Network (NCN). Although NCNC only applies to general further education (GFE) and landbased colleges, the freedoms granted by the Education Act of 2011 do apply to GFE, land based and sixth form colleges. Many of the issues identified in the research around the general role of the clerk apply to all colleges. The term FE college used throughout the report and annexes includes all colleges whether general FE, land based, specialist or sixth form colleges.

The origins of the research date back to the Schofield Report 'A review of governance and strategic leadership in English further education'<sup>1</sup>, and more recently 'Challenges for FE college governance and priorities for development: An LSIS perspective'<sup>2</sup>. The Learning and Skills Improvement Service (LSIS) was awarded Department for Business, Innovation and Skills (BIS) funding for the project and has worked in close partnership with the National Clerks' Network (NCN), Association of Colleges (AoC) and BIS; all acknowledge the importance of the role of the clerk under the new freedoms.

### Research methodology

The research consisted of three strands including an online survey, telephone and face-to-face interviews, and focus groups, underpinned by a comprehensive literature review of the policy framework affecting FE governance, including NCNC.

The anonymous online survey was designed so that clerks' individual details could not be traced or divulged. The results of the clerks' survey are aggregated in this report such that details of individual clerks or colleges cannot be revealed.

To prepare for the roll out, a pilot survey was carried out in early February. The survey was released in late February and attracted an immediate and excellent response from clerks both in terms of quantity and quality of responses. The survey ran very smoothly with no 'glitches' or problems. After a final reminder, the survey closed in mid-March 2013.

In all, 184 clerks responded to the online survey; this was a statistically sound figure for analysis and a high response rate. Responses included clerks who clerk more than one college; consequently the responses represent approximately 220 colleges. This produces an approximate response rate of 65% of all colleges. This is based on the AoC official figure of 341 colleges in England January 2013.

There is no definitive national database of clerks to gauge the sample against the whole 'population' of clerks. However, as outlined in Annex B, responses include a broad cross section of clerks reflecting AoC regions, college type and Ofsted grading.

The survey was designed with 'open' questions to give clerks the opportunity to provide comments. This has provided an additional depth to the 'quantitative' data and responses. The responses to open questions provided significant detail of the role of clerks across the sector.

## Interviews and focus groups

In addition to the online survey, clerks were asked to volunteer for interview; in addition some clerks were recommended by NCN. The original brief anticipated up to 20 interviews. However, the uptake for interview was high. In all, 31 clerks were interviewed which provided a very clear picture of clerking across the FE sector. For this reason, and time constraints, the majority of interviews were by telephone.

A structured interview pro forma was used; however, clerks were given the opportunity to discuss a wider range of topics. The profile of interviews was reviewed to ensure a cross section of AoC regions, college type, gender, role, number of colleges clerked, length of service as a clerk and Ofsted grades. The cross section reflected the responses to the survey very closely.

The interviews were an important part of the research to gain a depth of understanding of range of roles, status of the clerk, successes and challenges, qualifications and training requirements. This also provided information about exposure to the new freedoms and examples of effective clerking. All interviews were completely confidential between the clerk and the researcher and the report does not identify individual clerks or colleges. The general themes emerging from the interviews were written and presented in such a way as to ensure comments could not be attributed or traced to individual clerks or colleges. The interviews were also important to help to identify some of the five case studies of models of effective clerking which will be the focus of a follow up LSIS report.

The third strand of the research included focus groups. Three focus groups took place at the LSIS Annual Governance Conference (AGC) 2013, and a fourth at a regional clerks' network meeting. The focus groups provided additional evidence to support the online survey and interviews.

One additional focus group took place with chairs and governors at the LSIS AGC. However, this is too small a sample to use for this research. This research is 'one dimensional' in that the focus was purely clerks. In this way the remit of the research could be fully met, ie the varied role of the clerk and the requirements for training and development as a result of NCNC. There is merit in considering the role and value of clerking 'three-dimensionally' from the perspective of the 'triumvirate' – the chair, principal and clerk. Phase two of this research will include five case studies of effective clerking and will include this three-dimensional perspective.

## Research report and annexes

This full report is part of three levels of reporting, each with different levels of detail and serving different audiences and needs. This full report outlines the changing policy landscape, the challenges and priorities for effective clerking, and evidence from the survey of effective clerking. The annexes provide the detailed survey results. The summary report highlights the challenges, priorities and recommendations arising out of the research.



## 4. Context

### Role of the clerk

The role of the clerk is fundamental to the effectiveness of governance in FE colleges, and yet it is sometimes misunderstood both outside the sector and within the sector itself. This study was commissioned as there was no research into the varied role of clerks and the changes to their role as a result of the new freedoms given to colleges. Informal evidence suggested that the roles of clerks varied across the FE sector, and were changing rapidly in some colleges as a result of ‘New Challenges, New Chances’. This comprehensive survey provides sound evidence of the role of the clerk in FE colleges for the first time in ten years.

It is useful at the outset to establish the statutory requirement for the clerk. The Further and Higher Education Act (FHEA) 1992 Instruments and Articles of Government (I&As) outlined numerous statutory responsibilities of the clerk with regard to the role, but attention is drawn to the following:

“The Clerk shall be responsible for the following functions: –

- (a) advising the Corporation with regard to the operation of its powers;
- (b) advising the Corporation with regard to procedural matters;
- (c) advising the Corporation with regard to the conduct of its business; and
- (d) advising the Corporation with regard to matters of governance practice.”<sup>3</sup>

The original I&As were subsequently replaced in 2008 and modified in March 2012, with the Education Act 2011<sup>4</sup> amendments to the I&As retaining the following statutory duty on corporations to have:

“an instrument must make provision for there to be a chief executive of the institution and clerk to the body”

and

“must make provision about the respective responsibilities of the body, the chief executive and the clerk”.<sup>4</sup>

The changes to governance of colleges resulting from the Education Act 2011<sup>4</sup> are well rehearsed elsewhere (*SGH Martineau 2012<sup>5</sup> & Eversheds 2012<sup>6,7</sup>*). The changes allow greater freedoms for corporations. This includes the power, without the need to seek consent from the relevant funding body or consult the Secretary of State, to dissolve the corporation and transfer its assets and liabilities to another body, having first been expected to have undertaken a Structure and Prospects Appraisal in line with the guidance in ‘New Challenges, New Chances’.

Corporations are also given the power, without the need to seek consent, to amend their own I&As. However, they must comply with Schedule 4 of the Education Act 2011 amendments to the FHEA Act. Whilst the amendments are less prescriptive, they actually place more emphasis on the role of the clerk both in terms of drafting the amended I&As and subsequently interpreting and advising the board. The clerk will no longer be working to a prescribed set of rules. This becomes even more complex if the corporation decides to make changes to their legal status under the new freedoms. This advisory role of the clerk, therefore, is crucial to the good governance and effectiveness of the board, particularly in the light of the new freedoms.

## Research context

The recent LSIS publication ‘Challenges for FE college governance’<sup>2</sup> outlines a series of challenges for governance based on LSIS experience of working with colleges. The role of the clerk features among the challenges and areas for improvement:

**“Clerks as undervalued change agents** – LSIS has encountered many examples where clerks, with support of the chair and principal, have been a powerful force in stimulating and facilitating good governance. Clerks, especially when networked to regional and local peers, are a powerful resource available to boards. In many colleges, however, they are still underpowered, underused or lack the skills and knowledge to help lead change in governance. This may reflect the view of some colleges that the clerk is not ‘part of the college’ and therefore they do not see the case for investing in developing the clerk.”

The LSIS Challenges document also highlights priorities for improving governor effectiveness so they can ‘grasp the new freedoms, flexibilities and accountabilities’. The clerk features among these priorities for development:

**“The professionalism and impact of clerks** – the clerk is usually the most readily available instrument for leveraging improvement within the governance team. Continuing support is needed to build up their professionalism and the ability of clerks’ networks to share good practice. Clerks should be seen locally and nationally as a key part of each college, worthy of investment, but also in need of clear performance management and appraisal. It is important to consider the time allocated to the role, as this is likely to be an indicator of how seriously the college and the board perceive the role, and even how seriously the college values the input of governors.”

The importance of the role of the clerk, and the need to commission a study of this nature, was recommended in the Schofield<sup>1</sup> report ‘A review of governance and strategic leadership in English further education’ as far back as 2009:

“That a study be commissioned on how the role of the clerk to corporations in colleges is undertaken and how this relates to the performance of corporations, and that this should involve the Clerks’ Network.”

Schofield also recommended consistency across the sector for the role of the clerk:

“That a role description for the clerk to the corporation be agreed, after wide discussion by clerks and other interested parties, and then be adopted by colleges on a voluntary basis.”

This study, and its origins, is set against a backdrop of a rapidly changing political landscape, with ever increasing challenges to governance and the role of clerking.

## 5. Changed policy landscape

This chapter outlines the changed policy landscape, as shown in Figure 1, which surrounds clerking at the present time.

### The English Colleges' Foundation Code of Governance

The Schofield report<sup>1</sup> recommended:

“That a code of governance for FE colleges be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector.”

The resulting English Colleges' Foundation Code of Governance<sup>8</sup> 'establishes a common set of recommended threshold standards of good governance'. There is evidence in the survey that clerks are bringing papers to the board in relation to the Foundation Code of Governance. It highlights the 'triumvirate', ie the crucial relationship between the chair, principal and clerk:

“(The Code)...should promote the development of effective governance where leadership of the governing body is given by the Chair, supported by the Principal, and by the Clerk. All governors should engage in rigorous discussion and constructive challenge on a consistent basis, and adopt an open and frank approach to all aspects of the governing body's business.”

This core relationship is examined in more detail in Annex B. The effective working of this triumvirate relationship is a necessary condition for effective clerking, and is one of the six themes for effective clerking.

### New Challenges, New Chances

The Code has been developed alongside a backdrop of the changed government policy since the Coalition Government came in and the reforms introduced through the Education Act 2011 and the reform plan 'New Challenges, New Chances'<sup>9</sup>. As discussed in Annex D, 'New Challenges, New Chances' confirms that:

“This changed landscape means a new role for college governors, who need to be ready to use the new freedoms to lead their colleges strategically... College governors will have collective responsibility for developing a diverse FE sector, working with schools, academies, independent training providers, universities, local government and the voluntary sector. Colleges have a key role to play in responding to the changing needs of a dynamic economy and society, contributing to the work of Local Enterprise Partnerships in driving local economic growth and working with local community leaders and the business sector through initiatives such as the City Deals agenda.”

Further, 'New Challenges, New Chances' highlights the freedoms under the Education Act, including colleges changing their structures and Instruments and Articles of Government:

“To create this new environment, through the Education Act 2011 we have removed a wide range of restrictions and controls on college corporations, putting colleges on a similar footing

to charities operating within the independent/private sector. Corporations no longer need to seek permission to change their Instrument and Articles and the legislative requirements for these are now reduced to a minimum core of essential elements.”

The recent BIS / DfE publication ‘Rigour and Responsiveness in Skills’<sup>10</sup> sets out how some of these reforms will be accelerated. This includes targeted capital investment for 47 selected colleges and a new FE Commissioner to lead and co-ordinate intervention where FE colleges are failing. The EFA will undertake the intervention role with sixth form colleges if needed. The publication highlights:

“For individual colleges the ultimate responsibility for raising standards and challenging poor performance rests with the governors. Governors are accountable for the quality of what is delivered. Effective governance and leadership are essential ingredients of a strong institution, and weak governance and leadership is almost always at the root of poor performance.”

## Accountability

There is a clear recognition of the crucial role of governors, and added pressure to be accountable to the local community, as outlined in Baroness Sharp’s report ‘A Dynamic Nucleus’<sup>11</sup>.

“The shift in public policy from centrally planned systems towards greater local discretion and responsibility means greater autonomy for colleges, and a continuing streamlining of top-down regulation and direction, particularly for those colleges demonstrating good results and sound finances. It also means placing a greater emphasis on accountability to the people colleges serve, rather than to government or its agencies. Developing the community agenda for colleges requires new thinking about governance and accountability.”

The AoC publication ‘Thinking Outside the College’<sup>12</sup> translates policy into action for colleges, and demonstrates the important role not only of governors and principals but of clerks:

“The importance of clerks in supporting processes that embrace responsiveness to communities as part of a planning and evaluation strategy in Colleges should be fully appreciated by governors and senior staff.”

The Heseltine Report ‘No Stone Unturned’<sup>13</sup> placed emphasis on FE colleges to engage with their Local Enterprise Partnerships (LEPs) and the Government’s response published in March said:

“To ensure that local businesses can shape the pipeline of talent emerging from local further education (FE) institutions, at Autumn Statement 2012, the Government agreed that LEPs would have a new strategic influence over skills policy in accordance with Lord Heseltine’s analysis.

LEPs will be responsible for setting local skills strategies and chartered status for FE colleges is now dependent upon having taken into account the skills priorities of local LEPs. The Government is reforming the delivery landscape so that employers have direct influence over qualifications and learning programmes and by ensuring that LEPs are represented strongly on college governing bodies. The Government will also encourage LEPs to have a seat on FE colleges’ governing bodies, with colleges also represented on LEP boards.”

Ofsted’s recent report ‘Local accountability and autonomy in colleges’<sup>14</sup> demonstrates the clerk’s role in ensuring boards are well informed, and refers to the skills base of the board, engagement with LEPS, and the clerk’s role in governor recruitment and training:

“Clerks to governing bodies and senior managers tended to focus well on ensuring that governors were well informed about the relevant legislation and government policy. However, most of the governors interviewed acknowledged that corporations needed to review their skills base and working practices carefully in order to build capacity for the significant challenges that the changes presented.”

However, accountability stretches beyond the local community. The requirement for colleges and providers to be financially accountable is fundamental, and places possible additional requirements on corporations and the clerk in the scrutiny of governance arrangements, as demonstrated with the recently released Skills Funding Agency publication ‘Accountability Reviews’<sup>15</sup>:

“As part of the Skills Funding Agency (the Agency)’s continued work on simplification, Providers were notified in September 2012 that they were no longer required to complete and submit an annual Financial Management and Control Evaluation Return to the Agency. However, the Agency did make it clear that it was still the intention to undertake some reviews of Provider’s ‘financial management and control arrangements’ to gain assurance that providers have effective systems in place to manage and monitor the funds given to them. These reviews are to be termed ‘Accountability Reviews’ in order to emphasise that they will cover governance arrangements and strategic oversight arrangements as well as financial management and internal control arrangements and will be carried out by staff in the Agency’s Provider Finance Team.”

## High standards of public life and assessing and scrutinising risk

A further crucial aspect of public accountability, often overlooked with the myriad of ever changing external policy changes, and yet fundamental to good governance, is adherence to the high standards of public life. These centre around the Nolan Principles as outlined in the latest Committee on Standard in Public Life (January 2013)<sup>16</sup>.

“Standards of behaviour matter. They are particularly important where public money is being spent on public services or public functions. Citizens have a right to expect that holders of public office who take decisions which affect their lives should do so with impartiality, should be truthful about what they are doing and should use public money wisely. Society can expect better outcomes when decisions are made fairly and on merit and not influenced by personal or private interests. Organisations in every sector benefit from greater legitimacy when the public has confidence in their integrity.”

Nolan’s seven principles of public life, outlined in Appendix 1, of **selflessness, integrity, objectivity, accountability, openness, honesty and leadership** are as relevant today as they were in 1994 when first devised with the establishment of the Nolan Committee. Annex D highlights the necessity to adhere to these seven principles within the context of the new freedoms offered under ‘New Challenges, New Chances’.

These principles of public life lie at the heart of good governance and should be central to the ethos of college boards in whatever form or structure boards choose to adopt. These principles may get lost among the multitude of choices open to college boards. The role of the clerk is paramount in reminding, and ensuring, boards and the executive team to continue to embrace these fundamental principles. Clerks have traditionally described their collective role as ‘a conscience of clerks’ and this crucial role remains critical, particularly in the context of the new freedoms and the devolved responsibilities placed on corporations.



The importance of high standards of public life, and the clerks' collective role as a 'conscience of clerks', becomes even more critical under 'New Challenges, New Chances' as new opportunities may involve new risks, as identified in Challenge 8 of the LSIS paper 'Challenges for FE college governance'<sup>2</sup>:

"For example, raising loans without requiring external approval, creating new bodies and adopting new models raise new risks for governors to weigh. High-performing colleges sponsoring academies in poor-performing schools, for example, risk their own reputation if things go wrong. This may challenge the risk management procedures of governing bodies. There is also a danger in a deregulated environment, as arose in the last period of college deregulation in the 1990s and the financial sector more recently, of what Professor David Collinson, formerly the director of LSIS's practitioner research programme, has called 'Prozac leadership'. This he describes as 'the tendency for leader positivity to become excessive [so that] ... leaders believe their own narratives that everything is going well and discourages followers from raising problems or admitting mistakes'. Principals, chairs and governing bodies are already starting to do new things and take greater risks. Governors need to adjust their risk management to encourage innovation and tolerate risks, but at the same time ensure the long term values, assets and reputation of their colleges."

The clerk has a critical role to play in advising the board of the need to assess any potential risks in embracing the new freedoms. The clerk acts as a guardian, protecting the best interests of the chair, board and college. This should not stifle or hold back progress or enthusiasm, but provide a considered, and where necessary, cautious approach, particularly to any new venture that may have the potential to damage the long term values, assets or reputation of the college.

The dynamics of the triumvirate – chair, clerk and principal – are crucial to this, a true partnership approach drawing on the skills and expertise of each of the three. The vision of the principal and strategic oversight of the chair should be complemented by the measured deliberations of the clerk. This should lead to confidence that the college is in safe hands, particularly when undertaking ambitious plans under the new freedoms. On occasions a new venture may not be the right path for the college; listening to the clerk's advice is important, even if it is not necessarily always welcome. A wise board will seek the wisdom of the clerk.

The clerk is not an obstacle to progress, quite the reverse. The clerk is a necessary custodian, keeping a watchful eye on visions and plans. A key role is to ensure that plans are appropriately considered. This includes the board assessing whether they are in the best interests of the college and assessing the risks involved. In this way, the board is able to feel confident that any new ventures they embark upon have been given due care and consideration by the clerk, particularly legal consideration. This in turn provides the board with confidence that they are working towards the best interests of the college and the students that they serve.

## Ofsted

Ofsted's 'Handbook for the inspection of further education and skills introduced in September 2012'<sup>17</sup> places a greater emphasis on teaching, learning and assessment:

"The main focus in judging the effectiveness of leadership and management is how successfully it has an impact on improving outcomes and teaching, learning and assessment for all learners."

The effective college board will reflect this and include a range of measures, including self-assessment, strategic direction, challenge and a focus on improving teaching, learning and assessment<sup>17</sup>:

“Where there is a governing or supervisory body, inspectors will consider their effectiveness, including how well they:

- know the provider and understand its strengths and weaknesses through appropriate involvement in self-assessment
- support and strengthen the provider’s leadership and contribute to shaping its strategic direction
- provide challenge and hold the senior leader and other senior managers to account for improving the quality of learning and the effectiveness of performance management systems
- work efficiently, including through having a systematic approach to meeting statutory duties and approving and monitoring priorities that are focused on improving teaching, learning and assessment.”

The skills of governors and their ability to challenge are essential to good governance. Ofsted’s ‘Handbook for the inspection of further education and skills’<sup>17</sup>, highlights:

“the extent to which governors and/or supervisory bodies have the skills and experience to fulfil their duties and to ask challenging questions to raise or maintain high standards and secure positive outcomes for learners.”

This vital role of governors, and their ability to challenge, is also recognised by Ofsted in ‘How colleges improve’<sup>18</sup>:

“The governors of good and outstanding colleges were well-informed, received the right information and could challenge managers vigorously on the college’s performance. Problems occurred when governors did not know what questions to ask or when relationships with senior leaders were too close.”

Ofsted’s ‘How colleges improve’<sup>18</sup> also recognises the importance of governors being well-informed and well-trained and recommends:

“Governors have a key role in establishing accountability mechanisms, including sound risk assessment and clear early warning indicators. But this requires that they are well-trained and well-informed, able to ask the right questions, and have access to performance data and other information about the college’s work.”

The clerk has a key role to play in ensuring governors are well trained and receive appropriate information, as recommended by Ofsted<sup>18</sup>:

“...train governors in governance so that they are informed about and competent in their role in shaping their college’s mission and can offer challenge as well as support... involve governors more systematically in monitoring performance, agreeing clear indicators to measure success and ensuring that they are informed of the actions taken to raise standards.”

Ofsted’s ‘How colleges improve’<sup>18</sup> highlights the importance of the clerk in one outstanding college:

“The governors had a well-informed clerk who worked closely with the ‘search committee’ to ensure the right balance and mix of skills among governors. The search committee was very active, maintaining a waiting list of potential governors to ensure the full complement. An annual programme of governor training activities used internal and external expertise in addition to

the regular short training slot before each governors' meeting. Additionally, governors attended staff meetings as observers, as well as staff training sessions and updates (including on human resources and finance).

Each curriculum area had a link governor who was informed about the targets and progress against quality assurance plans. The governing body monitored and tracked performance regularly against targets. This was done through clear reports that included teaching and learning. The governors also validated the college's self-assessment report. This included their own self-assessment where governors reported on the targets for their own performance that they had set and monitored. In this way, they had a thorough knowledge of the college. By asking the right questions and having the right information, they were able to challenge both financial and academic performance rigorously."

It is too simplistic to attempt to make broad-brush correlations between Ofsted grades and the role of clerk as there are so many factors involved in college performance and Ofsted grading. The research has revealed numerous examples of effective clerking which demonstrate the direct impact clerks are making to college governance, which in turn enables governors to be effective and make informed decisions.

## The role of the clerk... so what?

So what are the implications of this changed policy framework on the role of the clerk in FE governance? And how does this research contribute to our understanding of the role?

The changed policy framework and landscape has enormous implications and involves increased expectations for the role of the clerk as governance advisor to the board.

This new policy landscape provides a new environment for college boards, with new responsibilities for the clerk. The clerk's role is expanding. Evidence from the research demonstrates that boards increasingly require the clerk to have the skills and knowledge to ensure governors are well informed, well trained and that the board is working within its legal powers.

With new freedoms come increased responsibilities for the board. The role of the clerk is ever more important in this new framework of devolved responsibility. Boards require more guidance, direction and sound judgement from the clerk. Without this sound governance advice, including knowledge of the legal implications of embracing freedoms, boards are in danger of making themselves and their colleges vulnerable.

Challenges and priorities for effective clerking in FE governance have emerged from the research evidence. The research has revealed emerging conditions necessary for the clerk to be able to clerk effectively, including sufficient training, support and CPD. The conditions necessary for effective clerking centre around six themes emerging from a complex policy landscape.

As a result of the new freedoms given to colleges, including college-specific Instruments and Articles of Government and new models of governance and structure, there are increased responsibilities on the board, and increased demands on the role of clerk. This changed landscape requires more than ever that the clerk is sufficiently skilled, qualified, receives appropriate training and support to clerk effectively, and is valued and recognised as the source of important governance advice to FE college chairs and boards.

## 6. Summary of findings and emerging challenges

Challenges and priorities to effective clerking in FE governance have emerged from the research evidence. The research has revealed emerging conditions necessary for the clerk to be able to clerk effectively. Where these conditions exist, there is widespread evidence of effective clerking, as demonstrated in the full report. The emerging conditions necessary for effective clerking centre around six themes, as shown in Figure 1, surrounded by a rapidly changing and complex policy landscape:

- the ‘triumvirate’ working relationship between the chair, clerk and principal;
- the ability to maintain high standards of public life and assess and scrutinise risk to the college;
- sufficient skills and salary to reflect the demands and senior role of clerking;
- a recognition of the status and value of the clerk in colleges and FE sector;
- the clerk’s capacity to fulfil their governance advisory role, including legal advice;
- sufficient training, support and continuing professional development (CPD), including continuing professionalisation of the clerk through qualifications.

In the spirit of the LSIS perspective ‘Challenges for FE college governance and priorities for development’, this summary paper mirrors the same format. This ensures consistency for college boards to be able to use this document to assess their own effectiveness, this time in relation to the role of the clerk. Each challenge is considered in Figure 2, with priorities for development of effective clerking. Figure 2 also lists partner organisations under actions, and points to evidence of each priority in the annexes.

### **Challenge 1: The ‘triumvirate’ – chair, clerk and principal**

The ‘triumvirate’ relationship between the chair, and clerk the principal is essential for effective governance. This survey provides evidence that good working relationships are fundamental to the clerk’s ability to clerk effectively, and in turn support effective governance. The survey has revealed numerous examples of the triumvirate working well, as revealed in the full report. This relies on good communication and mutual respect for each other’s role within the triumvirate, as evidenced in the survey, and should include regular annual appraisal of the clerk by the chair; this occurred in the majority of cases.

#### **The challenge**

The experience of some clerks, either currently or in previous colleges, is not conducive to effective clerking largely due to difficulties in this triumvirate relationship. This experience is not only the preserve of new clerks into the FE sector. Clerks with many years of experience described circumstances that rendered them almost powerless if the equilibrium of this triadic relationship is damaged. In terms of communication, perhaps surprisingly, a minority of clerks never meet the chair or the principal outside of board meetings, are only formally appraised biennially, are never formally appraised, or are appraised by the principal alone.

As outlined in Figure 2, priorities include raising awareness of the importance of an effective triumvirate relationship with college boards and encouraging an effective self-assessment of the triumvirate relationship. For those colleges where there is a lack of communication and appraisals, training for the triumvirate members is recommended.

### **Challenge 2: Nolan Principles, high standards of public life and assessing and scrutinising risk**

Nolan’s seven principles of public life, of **selflessness, integrity, objectivity, accountability, openness, honesty and leadership** are as relevant today as they were in 1994 when first devised with the

establishment of the Nolan Committee. Annex D highlights the necessity to adhere to these seven principles within the context of the new freedoms offered under ‘New Challenges, New Chances’. These principles of public life lie at the heart of good governance and should be central to the ethos of college boards in whatever form or structure boards choose to adopt. The principles can get lost among the multitude of choices open to college boards. The role of the clerk is to remind and ensure that boards and the executive team continue to embrace these fundamental principles. Clerks have traditionally described their collective role as ‘a conscience of clerks’ and this crucial role remains critical, particularly in the context of the new freedoms and devolved responsibilities placed on corporations.

### The challenge

To ensure that the clerk is sufficiently skilled to be able to support the board in assessing and scrutinising risk. This includes ensuring clerks have ready access to legal advice and are adequately trained in the legal aspects of the new freedoms, including charity law and company law, particularly if the college embraces a new model or new structures. This may also include identifying and managing possible conflicts of interest, for instance if the college sponsors an academy or other educational institution. Ready access to legal advice is essential and consequently colleges should ensure the clerk has ready and funded access to legal advice and services. The ability of the clerk to remain independent and offer impartial advice is vital. There is the potential for this independence to be hampered if the clerk is line managed by the principal or executive team.

### Challenge 3: skills and salary

The survey has revealed a very highly qualified workforce. A very high proportion (93%) of all clerks are degree level educated or higher. Further, 40% hold a higher degree level qualification. Many degree or higher degree qualifications held by clerks are directly useful and relevant to the clerking role. Relevant degree or higher level qualifications include law degrees. Many are qualified solicitors, or chartered secretaries and administrators who are fully ICSA qualified. Equally, backgrounds in accountancy, finance, business management, human resources management and corporate governance are common. Many clerks previously held senior management positions in local government, civil service, higher education, further education, human resources and finance. There is also evidence from the survey of men entering the clerking profession as part-time employees in their 50s and 60s with extensive previous experience often at a senior level.

This extremely highly skilled and experienced workforce, suggests clerks are very well equipped to carry out their clerking role, and perhaps confirms the assumption made in the recent LSIS publication ‘Challenges for FE governance’ :

“Clerks as undervalued change agents – LSIS has encountered many examples where clerks, with support of the chair and principal, have been a powerful force in stimulating and facilitating good governance. Clerks, especially when networked to regional and local peers, are a powerful resource available to boards.”

### The challenge

The survey reveals evidence of lower salaries in some parts of the sector, use of part-time contracts, including term-time only contracts, and lower skills requirements when colleges are recruiting for new clerks. There is evidence of new clerks feeling overwhelmed in their new role, feeling isolated, and not as yet skilled or equipped to meet the challenges of ‘New Challenges, New Chances’. Priorities for the future include ensuring the existing highly qualified workforce is retained and replenished by highly qualified entrants, particularly given the challenges of NCNC. For new clerks, ‘meet and greet’ by a Regional Clerk Network link member could be introduced, and even formal mentoring schemes. Colleges should carefully consider succession planning if experienced clerks are due to retire or leave.



#### **Challenge 4: value and status**

There is evidence in the survey of clerks who feel extremely valued by their chair, board members, principal, executive team / SMT and colleagues. Equally, there is wide evidence of clerks viewing their status as senior members of staff and, perhaps more importantly, being viewed as senior members of staff by the chair, principal and colleagues. The evidence of effective clerking in the full report demonstrates the added value the clerk gives to governance when this occurs, particularly where the triumvirate relationship is working well.

##### **The challenge**

In some colleges there is a lack of recognition of the importance and seniority of the role, particularly by senior managers. Less experienced clerks are also more likely to view their role as middle management, and to feel less valued. The seniority and value placed on the clerk may reflect the value placed by the college on governance itself.

There is also a misconception of the role of the clerk outside the FE sector, but also inside, where it is viewed as administrative rather than governance advisory. This misconception, many clerks feel, is not helped by the title 'clerk'.

The priorities for the future include raising awareness of the importance and seniority of the clerk role, particularly with college senior management, but also college HR departments involved with recruitment. The summary document is recommended for distribution to colleges. The importance of the governance advisory role should also be promoted to alleviate the misconception that the role is purely administrative. The time may be right to consider a review of the title 'clerk' and the consideration of alternatives including; 'governance advisor' or 'director of governance'.

#### **Challenge 5: Capacity to fulfil advisory role, including legal advice**

There is evidence in the survey of clerks adding real value to their college governance, often stimulating the discussion and use of freedoms, as seen in the examples of effective clerking. There is also evidence of clerks being recognised for their added value; in some cases increased hours and salary are suggested by the chair and supported by the principal. Increased hours have allowed clerks to concentrate on governance advice and management. An increased workload was in some cases a direct consequence of NCNC, particularly the impact of college sponsorship of academies or other educational institutions, and has occasionally led to the appointment of deputy clerks to alleviate the time pressures.

##### **The challenge**

As the survey revealed, there is evidence of clerks in some colleges being employed for insufficient hours due to part-time contracts, and some term-time only contracts. Some clerks were unable to focus on governance advice due to the volume of administrative responsibilities. Nearly a third of all clerks do not have administrative support. There is evidence of additional roles in college which are sometimes too close to operational duties. The demands of NCNC are placing increased pressure on clerks, particularly those where colleges have sponsored academies or other educational institutions, or have adopted new models or structures as a result of the new freedoms.

The increased demands on clerks due to the new freedoms should be kept under review.

#### **Challenge 6: Training, CPD and clerk qualification**

The research has revealed widespread evidence of highly trained and extremely effective clerks. Around four in ten clerks hold, or are working towards, clerks' qualifications. Governance training for many clerks and their governors is valued and where budgets are allocated to clerk and governor training they bring significant additional value to the college. Clerks value LSIS highly, including the governance training programmes, online governor training materials, courses and conferences. Clerks also value the National

Clerks' Network and Regional Clerks' Networks, as well as other training and support services as outlined in the report.

### The challenge

There is widespread concern amongst clerks at the cessation of LSIS, and the continuity of the clerks' qualification programme, governor training materials, annual conference and governance support. The immediate challenge to the sector is to work with the FE Guild to ensure continuity where there is clear evidence of demand.

A further challenge, as evidenced in the survey, is the clerk's ability to access training and support. Barriers some clerks face include difficulties accessing college budgets, and limited budgets for training, not just for themselves but for their board members. For almost a fifth of clerks the training budget for their own training and board members was under £1,000 per annum. Geographical barriers also exist in the form of added time and cost, for clerks in more remote AoC regions which prevent them from travelling to national training events. As a consequence, some regions organise their own locally accessible training events, which are much appreciated by clerks.

There was widespread evidence of additional training and CPD requirements for clerks as a result of the new freedoms. These included legal updates and training on company law, charity law, and revisions and advising on college-specific Instruments and Articles of Government. New clerks in particular were overwhelmed by the policy changes, and were not always sure where to seek advice. Many clerks would welcome the streamlining of policy updates and information.

Priorities for the future include the continued professionalisation of the clerk's role through the clerks' qualification programme, soon to be the remit of the FE Guild. As well as the clerks' qualification, updates or 'top-ups' for clerks' own CPD is a priority, particularly in relation to the new freedoms. Support and training for new clerks is a priority, including clerk induction programmes and induction pack, and possibly introducing a formal mentoring scheme for clerks in their first year of clerking. The delivery of training and support may need to reflect local demands more fully, perhaps using the Regional Clerks' Networks as a catalyst for events and training, and introducing more online resources.

The increased demands on the clerk, as a direct result of the new freedoms under 'New Challenges, New Chances', highlights the importance of investing and maintaining a highly skilled, highly qualified workforce of clerks. Continued investment in the training of clerks should enable colleges to embrace the challenges under NCNC, enable clerks to continue to add value to their boards and to aim to deliver excellence in governance standards in through effective clerking.

Figure 2. Challenges and priorities for effective clerking in FE colleges

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<b>Challenge 1: Triumvirate relationship between chair, principal and clerk</b>			
The evidence of difficulties with the 'triumvirate' relationship preventing effective clerking; the clerk must be able to remain independent.	To raise awareness of the crucial 'triumvirate' relationship with college boards; encouraging effective self-assessment.	FE Guild AoC Governors Council Chair Board Members Triumvirate	Annex B Chapter 6
Some evidence of a lack of communication in triumvirate between clerk, chair and/or principal.	To increase training and awareness of the need for a triumvirate relationship in which there is effective communication.	FE Guild AoC Governors Council Chair Board Members Triumvirate	Annex B Chapter 6
A small proportion of clerks are not appraised at all by chair; some are appraised biennially; a small minority appraised by principal alone.	To ensure the chair is adequately briefed and trained to carry out annual appraisal of the clerk.	FE Guild AoC Governors council Chair Board Members Triumvirate	Annex B Chapter 6

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<b>Challenge 2: Nolan Principles, High Standards of Public Life and assessing and scrutinising risk</b>			
<p>Clerk's continued role in ensuring boards and executive team are publicly accountable under the Nolan Principles and that they adhere to high standards of public life, whilst embracing new freedoms.</p>	<p>To raise awareness with the board and executive team of the Nolan Principles and clerk's role in ensuring these are adhered to, particularly as a result of NCNC.</p> <p>To ensure the clerk receives adequate training to understand the assessment and scrutiny of risk to the board and college under NCNC.</p>	<p>Chair Board Members Triumvirate Executive Team / SMT</p> <p>FE Guild</p>	<p>Annex D Chapter 4</p>
<p>Almost a quarter of clerks' colleges sponsor academies or educational institutions; there is some concern of possible conflict of interest.</p>	<p>To ensure clerks, boards and the executive receive adequate training, and accessible legal advice; to ensure they are aware of any possible conflict of interest with sponsored academies or educational institutions.</p>	<p>Chair Board Members Triumvirate Executive Team / SMT FE Guild</p>	<p>Annex D Chapter 7</p>
<p>An increased need to access legal services and legal training, particularly as a result of NCNC, eg Charity Law, Company Law, legal aspects of groups / federations / mergers.</p>	<p>To ensure clerks receive appropriate specific CPD / training for legal advice.</p> <p>To ensure college funding is available to access legal services.</p>	<p>FE Guild Chair Board Members Triumvirate</p>	<p>Annex D Chapter 5</p>
<p>Dual roles for clerks in colleges may blur the lines between clerking and operational potentially resulting in a conflict of interest.</p>	<p>An effective appraisal of suitability of other functions of the clerk, mindful of possible conflict of interest.</p>	<p>Chair Board Members Triumvirate College HR</p>	<p>Annex B Chapter 4</p>

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<b>Challenge 3: skills and salary</b>			
<p>There is evidence of an extremely highly qualified workforce of clerks, 93% degree educated and 40% with a higher degree, but there is also evidence of recent recruitment trends undermining the skills requirement and salary of the role; there is a danger of a less qualified workforce in the future.</p>	<p>To ensure the existing highly qualified workforce is retained in the sector; to ensure new recruits are highly qualified, particularly with challenges of NCNC.</p>	<p>AoC FE Guild Board Members Triumvirate College HR NCN</p>	<p>Annex A Chapter 3</p>
<p>There is evidence of new clerks feeling overwhelmed in their new role, lacking skills if new to clerking, particularly with challenges of NCNC, and feeling isolated.</p>	<p>To introduce a formal mentoring scheme for new clerks to assist in first year of clerking; assess practicality of a payment or allowance.</p> <p>To introduce a 'Meet and greet' scheme through a 'Link Member' of Regional Clerks' Network and signposting to relevant agencies, eg AoC, Regional Networks, Governance helpline, JISC Mailbase, SFCA, Landex.</p>	<p>FE Guild NCN / Regional Clerks' Network</p> <p>NCN / Regional Clerks' Network</p>	<p>Annex A Chapter 2</p>
<p>There is evidence of the loss of long experienced clerks to sector.</p>	<p>To ensure succession planning and handover within colleges well in advance of retirement.</p> <p>As above, to introduce a formal mentoring scheme for new clerks to assist in first year of clerking. To assess the practicality of a payment / allowance.</p>	<p>Chair Board Members Triumvirate College HR / FE Guild NCN / Regional Clerks' Network</p>	<p>Annex A Chapter 2</p>



Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<p>There is evidence of a disparity in clerks' salary scales, some evidence of low salaries, and inconsistency across the sector.</p> <p>There is evidence of a possible trend towards lower clerks' salary, more part-time, some term-time only, and a lower level of required qualifications, with potential resultant deskilling of clerk role.</p>	<p>To raise awareness with partners, board, executive and colleges' HR of the highly skilled role of clerk, and the required salary level.</p> <p>Measure future trends in salary and recruitment by monitoring clerk advertisements.</p>	<p>AoC Governors' Council NCN FE Guild</p> <p>AoC NCN Board Members Governors' Council Triumvirate College HR</p>	<p>Annex A Chapter 6</p>
<p><b>Challenge 4: status, value and title</b></p>			
<p>There is evidence of a lack of recognition of the importance, seniority and value of the clerk's role, particularly by senior management in the college, and occasionally governors.</p>	<p>To circulate the executive summary of this report to all chairs, principals, senior management and college HR.</p> <p>To raise awareness of the importance and seniority of the clerk's role, particularly with college senior management, but also chairs and governors.</p>	<p>AoC NCN Governors' Council Chair Board members Triumvirate College HR</p>	<p>Annex B Chapter 5</p>
<p>There is evidence of less experienced clerks viewing their role as middle management and feeling less valued compared to more experienced clerks.</p>	<p>To ensure clerks with less experience receive adequate training to equip them for senior role in college.</p> <p>To raise awareness in colleges where clerk is relatively new or inexperienced.</p>	<p>FE Guild Triumvirate</p> <p>Executive / SMT College HR</p>	<p>Annex A Chapter 4</p>

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<p>The misconception of the role of clerk outside of FE sector, and to some extent inside FE, particularly including SMT, but occasionally governors and stakeholders.</p>	<p>To ensure clerk recruitment promotes the skills and requirements of the role, and title ‘clerk’ in advertisements is qualified / explained; a degree level of education is desirable unless an applicant has relevant prior employment.</p>	<p>AoC NCN Triumvirate College HR</p>	<p>Annex B Chapter 5</p>
<p>The role viewed as administrative, not as governance advisory.</p>	<p>To improve understanding of the clerk’s role within the FE sector, particularly with SMT, but also governors and stakeholders.</p>	<p>AoC / NCN Governors’ Council Triumvirate Executive / SMT College HR</p>	<p>Annex B Chapter 5</p>
<p>The title ‘clerk’, is confused with school governor clerk, or administrative role, and minute taking only. There was a strong feeling that the job title ‘clerk’ may need reviewing to better reflect governance advisory role and seniority.</p>	<p>To review the title ‘clerk’; and alternatives including ‘Clerk to the Corporation and Governance Advisor’, ‘Director of Governance’, ‘Company Secretary’, ‘Corporate Governance Advisor’.</p>	<p>AoC NCN Governors’ Council Regional Clerks’ Network</p>	<p>Annex B Chapter 5</p>

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<b>Challenge 5: Capacity to fulfil advisory role, including legal advice</b>			
There is evidence in some colleges of insufficient hours of employment due to part-time or term-time contracts	To review the employment contract in some colleges to ensure that there are sufficient hours to carry out the clerking role	AoC NCN Governors' Council	Annex A Chapter 5
There is evidence of insufficient administrative support to detriment of governance advisory role.	To ensure there is sufficient administrative support to enable clerks to carry out the governance advisory role.	Triumvirate College HR	Annex A Chapter 7
There is evidence of additional responsibilities in college beyond the remit of the clerk, sometimes very close to operational duties.	To assess additional responsibilities in college beyond the remit of the clerk.	Triumvirate College HR	Annex B Chapter 4
There is evidence of increased time and workload demands due to NCNC, an ever changing political agenda and resulting impact on the role of the clerk, eg revision and advisory role on college specific Instruments & Articles; governance advice and / or clerking academies or other educational institutions; company secretary role for new models / structures.	To assess and keep under review the demands on clerk due to new freedoms, eg revision and advisory role for bespoke college I&As; clerking and / or governance advice due to sponsorship of academies or other educational institutions; company secretary role under new models / structures.	AoC NCN Triumvirate College HR	Annex D Chapters 2,3,5 & 7

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<b>Challenge 6: training, CPD and clerk qualification</b>			
There is evidence of new clerks lacking experience or confidence, particularly with challenges of NCNC.	<p>To ensure the continuation of the Clerk Induction Course for new clerks.</p> <p>To update the Clerk Induction Pack for new clerks.</p> <p>To introduce a formal mentoring scheme for new clerks (as above).</p> <p>To introduce a 'Meet and greet' scheme by a 'Link Member' of Regional Clerks' Network.</p>	<p>FE Guild (advised by NCN)</p> <p>NCN / Regional Clerks' Network</p>	Annex A Chapter 2
There is widespread evidence of concern over the continuity of clerk and governance training.	To maintain dialogue with BIS and FE Guild to ensure clerk and governance training continues.	NCN FE Guild	Annex C Chapter 8
There is widespread evidence of use and value of LSIS Governance Training Materials, and concern that they should be available and updated.	To maintain dialogue with BIS and FE Guild to ensure LSIS Governance Training Materials continue to be available online and are regularly updated.	NCN FE Guild BIS	Annex C Chapter 6
There is evidence of concern by the existing cohort and future participants with regard to the clerk qualification.	To maintain dialogue with BIS and FE Guild to ensure continuity of Level 4 and Level 5 clerk courses.	NCN FE Guild BIS	Annex C Chapter 8
There is evidence of a desire, by experienced clerks who already hold the ICSA Certificate in FE, to participate in Level 7 clerk qualification.	To maintain dialogue with BIS and FE Guild to assess feasibility of Level 7 clerk qualification.	NCN FE Guild BIS	Annex C Chapter 8

Challenge to effective clerking	Priority for effective clerking	Action / Partners	Annex reference
<p>There is widespread evidence of a need by clerks, including experienced clerks, for ‘top-up’ continuing professional development (CPD) for all clerks in specific topic areas, eg legal implications of NCNC, company law, charity law.</p>	<p>To maintain dialogue with BIS and FE Guild to consider introducing a national strategy for continuing professional development (CPD) for all clerks, particularly in response to NCNC.</p>	<p>FE Guild (advised by NCN) BIS</p>	<p>Annex C Chapter 8 &amp; Annex D Chapter 5</p>
<p>There is evidence of a need for an increased legal understanding required to revise and subsequently advise upon bespoke college Instruments &amp; Articles of Government.</p>	<p>To provide / signpost legal training and support for clerks to be able to revise and subsequently advise upon bespoke college Instruments &amp; Articles of Government.</p>	<p>FE Guild (advised by NCN)</p>	<p>Annex D Chapter 5</p>
<p>There is evidence of clerks’ need for wider knowledge and the ability to interpret the law or of a need to access expert advice. This is the result of the new freedoms, eg charity law and company law. Clerks also sought streamlining of changing policy updates.</p>	<p>To maintain dialogue with BIS and FE Guild to provide legal training to increase knowledge and interpretation of the law resulting from new freedoms, eg charity law and company law. To review streamlining of sources of policy updates. The need for clerks to have access to professional legal advice when needed.</p>	<p>FE Guild (advised by NCN) AoC</p>	<p>Annex D Chapter 5</p>
<p>There is some evidence of a move towards a ‘company secretary’ role for those colleges that have fully embraced the new freedoms.</p>	<p>To assess the suitability and funding of full ICOSA Company Secretarial qualification for clerks in colleges which have fully embraced the new freedoms.</p>	<p>FE Guild (advised by NCN)</p>	<p>Annex C Chapter 8</p>

<b>Challenge to effective clerking</b>	<b>Priority for effective clerking</b>	<b>Action / Partners</b>	<b>Annex reference</b>
<p>There is evidence of a need for locally organised training and support. This is due, in part, to geographical access acting as a barrier to nationally organised training, particularly in remote regions, due to time and travel costs.</p>	<p>To maintain dialogue with BIS and FE Guild to consider innovative delivery of regional training, eg locally delivered via AoC Regional Clerks Networks as well as online training.</p>	<p>FE Guild NCN Regional Clerks Networks</p>	<p>Annex C Chapters 6 &amp; 7</p>
<p>There is some evidence of restricted access to training budgets for governance training, particularly if the clerk is not the budget holder.</p>	<p>To review access to training budgets in colleges for governance training.</p>	<p>NCN Triumvirate College HR</p>	<p>Annex C Chapters 7 &amp; 8</p>
<p>There is some evidence of a limited annual value of training budget for governance training.</p>	<p>To review the annual value of training budget for governance training.</p>	<p>AoC, NCN Triumvirate College HR</p>	<p>Annex C Chapter 7</p>
<p>There is some evidence of clerk inactivity, other than administration, with regard to recruitment of governors.</p>	<p>To raise awareness of the proactive role of the clerk in recruitment of governors and provide training materials for good practice and signposting.</p>	<p>FE Guild (advised by NCN)</p>	<p>Annex B Chapter 8</p>



## 7. Research evidence of effective clerking

The research has revealed concrete evidence of effective clerking. The survey, focus groups, and particularly the in-depth interviews with clerks, revealed substantial evidence of clerking working at its best. At interview, clerks were asked if they could give examples of what they thought was 'effective clerking', particularly if they could demonstrate a direct impact on improved governance or raising standards. Clerks were able to cite evidence of their direct impact on college governance.

This chapter provides a picture of effective clerking from clerks' own experiences. These examples highlight the importance of the role of the clerk to the efficient running and management of governance in FE colleges.

The examples cited arguably contain many of the positive factors from the six themes necessary for effective clerking. However, the survey also revealed the challenges many clerks face which work against them being able to clerk efficiently. Whilst not necessarily universal, they are widespread enough to have an impact on the effectiveness of clerking. These challenges are outlined in the six themes in the previous chapter. Without the sector addressing these issues, some clerks will continue to struggle to make a direct impact on the governance in their college.

There is a simple assumption made by some that there is a direct correlation between the effectiveness of the clerk and the Ofsted grading of the college. This is not necessarily the case as grades are influenced by many factors, particularly with the greater emphasis on teaching, learning and assessment. Clerks can, however, ensure their governors are well prepared and informed prior to inspection, and that governance is well conducted. The 'triumvirate' relationship has a crucial part to play in this regard and needs to be working well to achieve this.

With the right conditions as set out in the six themes, the clerk can ensure governors receive appropriate information on the performance of the college, that the board has appropriate membership and skills, and are increasingly involved in the life of the college to better assess teaching and learning themselves. The clerk can offer sound, independent advice to the board on governance matters, with professionalism and integrity, and support the board to achieve the highest standards of governance.

The examples provided can be sourced as exemplars for clerking in the sector. They can also be used by clerks as examples of effective clerking. They should also be shared with chairs, board members, principals and senior management within FE colleges to raise awareness of the vital role of the clerk. As one clerk accurately described:

“To be an effective clerk, you need to be a strong person, able to challenge and be well organised. Governance should be strategic and not operational, using the appropriate skills and competencies. The stronger the board the stronger the challenge, and the role of the clerk is to push that along as a driver. This is where clerks add value. The clerk can act as a driver to keep the board strategic.”

The following evidence from the research demonstrates effective clerking, supporting boards to achieve the highest standards of excellent governance practice in FE colleges.

## Preparation for Ofsted

“I have worked as a clerk for two colleges. Whilst the business of the two colleges was very different, governance was remarkably similar at both colleges. I experienced two Ofsted inspections in one term, the results of which were very positive for both colleges (the questions asked by inspectors were more or less the same for both sets of governors). I think these results were achieved because governors at both colleges are very dedicated and genuine individuals with a real commitment to improving the outcomes for young people. I was able to provide evidence that both boards were kept well informed of college activities, were involved in formulating the strategic direction, monitoring the college’s ethos, were good attenders, possessed the correct skills (a variety of different backgrounds and experience), and that the minutes accurately reflected discussion and actions and provided evidence that governors worked hard and appropriately challenged management. Behind the governance arrangements for both colleges is an annual cycle of business (working document) formulated by the clerk (with input from the principal and SMT) which is adhered to and very regularly monitored and reviewed.”

“I assisted governors to gain a full understanding of their governor role. Now all governors have full understanding, and are involved in teaching and learning. The college was graded ‘Good’ in Ofsted.”

“I keep governors informed of what’s happening – eg good reports, encourage visits, if not observations then tours and link governor visits to understand teaching and learning. I try to ensure the focus is on quality in meetings.”

“I am preparing governors for Ofsted at both colleges. I have a section in Curriculum & Quality for teaching and learning. I have implemented self-assessment, and one-to-ones with governors. I have improved governor briefings and we are moving to paperless / e-governance, and which also costs fewer resources. I carried out a review / self-assessment against Terms of Reference, and the board is tending to move away from compliance and becoming more strategic rather than operational. The Eversheds subscription helps in being effective.”

“Our college has recently been exposed to an Ofsted inspection. The nominee was the deputy principal. The focus was on T&L – impact rather than process. I have a background in governance and auditing. I received lots of support from the deputy principal and between us we were very focused. The college gained Grade 1 Outstanding.”

“The college had Ofsted 2010 – Grade 2 Good with Outstanding Features – but I want to move governance to Outstanding! I ensure we embrace the Nolan principles of public life – I wouldn’t want the college to go in to covert mode.”

## Triumvirate and effective governance

“I believe that the level of awareness and support and professional respect of the principal and the chair are fundamental to ensuring that I am an effective clerk. Without their commitment to ensuring that I hold an equivalent senior manager position in terms of pay and level of respect I would be significantly less effective in my role.”

“Any clerk, in order to be effective, must be seen as being the manager of the business of governance in the college and must be the person to whom all governors and managers turn

with regard to any governance issue. The consequent relationship – chair/principal/clerk – will then be crucial in the continuing advancement of governance and the college.”

“I see it as an essential element of the role to establish and maintain effective and open communications with the chair, the principal and other governors. The clerk can also play a pivotal role in engendering a good working relationship between the chair and the principal. The clerk should seek to be aware of developments in FE governance and alert both the chair and the principal to these and their implications for the college.”

“The clerk can be a superb resource in supporting governance in a college and can contribute to improving governance effectiveness and performance. This can only be achieved however if the role of the clerk is valued, if they have adequate time to do the job and adequate access to CPD opportunities.”

## Board evaluation

“I think that the good clerks quietly get on with it and can be undervalued. I am quietly developing a board evaluation model which takes into account the overall performance of the college. We have always self-evaluated. However, the Code of Foundation Governance stipulates that it is not just about board meetings, training, induction, etc, but the board’s effectiveness overall. I’d be surprised if board evaluation models thus far have taken account of this.”

## Governor and staff awareness

“In order to raise staff (including senior managers’) awareness of the role of governance and the clerk in particular I am delivering ‘What is Governance?’ training sessions which the board would like to be incorporated as part of all-staff induction and have recently led a presentation at our strategic planning conference on ‘Governance in a Changing Environment’. The board is very keen to promote the importance of the role of the clerk in the organisation and, whilst I have no other role in the college, I am given the same status as members of the Executive Management Team.”

## Effective clerking and review of governance structure

“I have introduced KPIs – a one-page KPI with score card. I write minutes to show evidence of challenge. I cross-reference evidence to link with the Common Inspection Framework. On Ofsted’s focus on teaching and learning, I have organised learner walks and governors hear 10 minutes of what the faculty or department does. I have organised a board self-assessment and action plan. My appraisal is carried out by the chair.”

“We have gone from traditional structure towards Carver, and governors more aware of strengths and weaknesses. All SMT produce standard cover sheet with risk analysis, (equality) impact and recommendations. This has raised governor challenge. I’ve changed the cycle of business. I have improved Induction. I ensure student governors are involved. I used LSIS research modules and LSIS Level 5 and other clerks/colleagues to improve effectiveness of board. I am using Level 5 Module – developing strategic direction of the college – practically in college.”

“I undertook a review of the governance structure. We looked at what is governor role? We update the Strategy & Mission and undertook a self-assessment process. I carried out a mapping

exercise which was checked by auditors. I was central to review. I arranged that 50 % of the review process was workshops – rather than dry meetings. Now 50 % to 75 % of agenda is strategy and 25 % risk, so meetings are much more focused on strategic. We now have ‘Strategy Committee’ where chairs of each committee meet every two months. SMT have KPIs and are monitored.”

“The board needs good quality information and good reports. It needs to be managed by the clerk and reports succinct enough, eg KPIs, format, and remembering governors are part-time. I ensure governors are involved in strategy. I ensure governor skills are best for the board, leading Search Committee. Advertising, eg working with Network of Black Professionals, Equality for All, LinkedIn, local magazines, etc. I have updated the governor section of the website. I ensure governors look at policies and streamlining, eg produce front cover sheet. We are considering delegation of authority to remove duplication. On new legislation I point governors to web links. A board review and appraisal will be carried out for first time March 2013. I organise link governors / link areas where each governor is allocated an area within college and reports back. It improves their understanding of T&L.”

“I have changed how information is presented to governors. Now they always receive a set of statistics, eg staffing statistics and gender balance – getting governors to question / challenge more. Constantly trying to improve using self-evaluation. I pushed as clerk to get governors more involved – moved away from curriculum links to ‘governor engagement’ – so not just talking to heads of department. I produce report, eg football club, FE Guild, training, Young Enterprise, learner voice, etc. I am trying to get governors to events and eg tour of site to help make decisions more meaningful.”

“I changed Search Committee to ‘Search and Governance Committee’ – it now reviews board membership. Our self-assessment is linked in with new Ofsted framework. I am looking at recruiting new board members considering equality and diversity, eg ethnicity, gender. We’re looking at succession planning, policies, introducing vice chairs of committees, more structured and organised – more professional – all coming through the board. The challenge can be the fact that governors are volunteers. Ofsted is a good proxy for aiming to ‘getting to be excellent’.

## Efficient running of the board

“I have worked hard to streamline the clerking role and have made it more efficient – coming from a private background where time is money. Administration can be an end in itself. It was a battle at first to reduce, eg volume of paper – and people’s reliance on previous clerk in carrying out administrative tasks. I am not prepared to do it and I gained more respect. I worked with SMT to streamline papers. I cross reference agenda to terms of reference of committees and ask why is this report at board? I looked at the role of the clerk, SMT and board. I carried on further and developed executive summaries, so duplication and volume of papers has reduced.”

“The college got Ofsted Grade 3 in 2010 (target 58 %, got 56 %). So we improved Quality & Standards Committee. Governors now scrutinise trends, benchmarking, quartiles. The SAR used to be 400 pages, now just 21 pages. We’re striving for Outstanding. But Ofsted measures 40 % of what we’re producing, who looks at the other 60 %? There can also be too much focus on T&L. I use the European Foundation of Quality Managers (EFQM) tool to measure and benchmark.”

“I see the clerk’s role in facilitating the whole relationship between chair/governors, principal/ executive team. The clerk’s role as ‘smoothing, negotiating and facilitating’.

## Learner success versus new freedoms

“The board of the corporation, as is the executive, is entirely focused on learner success and raising standards of teaching and learning. It is the perception of governors that those corporations and executives that spend time on mergers, federations, etc take their eye off the quality of teaching and learning leaving their students to fail. This has happened at a number of colleges who have crashed spectacularly.”

## Active recruitment of governors

“Sending out adverts and marketing packs to different individuals or companies identified whose skills would be valuable to the college; constant recruitment of co-opted advisers to act as succession planning for governors. Putting together impartial skills assessment of current governors and a gap analysis to inform the search process.”

“I ensure that this is a live issue through the Search and Governance Committee and reflect the requirements of the board relative to any vacancies and / or skills and experience needs. I have responsibility for ensuring initial introduction of prospective members to the college and for post-appointment induction.”

“Identification of companies / organisations to be targeted for prospective governors. contacting individuals by letter and / or telephone for initial discussion. Meet with prospective governors together with the chair of Search Committee and principal at initial ‘interview’ stage. Devised promotional leaflet to attract interested parties.”

“I take the lead in the search for new governors, using mailshot letters to targeted groups, the use of the one stop shop for governors, and taking advantage of all networking opportunities.”

“Duties include: writing all reports for the Search and Governance Committee, highlighting skills gaps and impending ends to terms of appointment, succession issues, overseeing succession plans, reviewing the skills audit and recruitment materials regularly, devising and carrying out recruitment strategies including use of the college website, a DVD, a leaflet, contact with external organisations including SGOSS and volunteer centres, targeting specific sector organisations, holding the initial meeting with applicants and making recommendations for interview. I also work with college staff on the recruitment of student governors including promotion of the role. I offer support to the student and staff governors throughout the year including support meetings before each board meetings to help them access and understand papers to enable their contribution at meetings. I also conduct induction for all new governors.”

“The clerk must adopt a flexible approach to get an appropriate and satisfying response from members. There is a wide range of areas of activity that must be covered hence the range of skills/experience required across the corporation and essential; surveys, eg a skills audit are crucial in developing a board that can cover the varied activities.”

“Contacting local community organisations, etc. Addressing equality and diversity of board via researching new ways of advertising vacancies. Clerk joins chair and principal for any preliminary discussions with interested parties.”

“The importance of selection / recruitment of governors is a good example of effective clerking. A good clerk will have an integral role – good recruitment and selection. Some boards have the

same governors for 20 years, all white middle class. With Ofsted I am preparing and getting governors on board – to understand teaching and learning, observations etc. I play a key role in getting governor training.”

## New Challenges, New Chances

“Undertaken a review of college governance – kept a traditional committee model, but determined new committees that better serve the strategic role of governors and keep well away from operational issues, including some elements of long-term planning and aspiration, such as an Innovation Committee. Undertaken review of skills needed in the corporation to meet new expectations from ‘New Challenges, New Chances’ and the new Common Inspection Framework. Changed the Instrument and Articles of Government in some areas to make them less bureaucratic for the college and open up governors’ freedom to act.”

“As clerk, I undertook relevant research and attended seminars, conferences, etc in order to design and lead a workshop with the corporation on the new freedoms and flexibilities and work through which, if any, the corporation wished to adopt. This also provided a general briefing as to the new freedoms for future consideration, such as the ability to merge or dissolve the corporation after due consultation.”

“When appointed in Sep 2010 it was on a contract for 16 hours per week, term-time only. The board believed at that time this was sufficient for the role, this having been the case for many years. This moved to 20, then 25 hours per week as it became clear that if governance was to be adequate under NCNC, more time had to be allocated coupled with significant commitment to training for the clerk.”

“Greater awareness will be needed regarding charitable status and the link with FE colleges. There will be a constant need to keep the I&As under review to ensure they satisfy and support the aims of the College going forward with new initiatives.”

“Introduced Policy Governance over the last year and reduced the board from 18 to 15 members.”

“I feel the role of clerk is much more visible under NCNC – this is both a cultural shift in my college and in a wider, more sector and national context.”

“Greater reliance on the independence of the clerk position.”

“Expansion of knowledge into wider corporate governance, expansion of role from clerk to company secretary moving more into an “officer” of the college advising executive colleagues on new work streams and the governance implications rather than just an advisor to the board. Involvement in setting up subsidiaries, academy trusts, charities.”

“Changes have resulted in revised remit for clerk and bringing post in-house instead of buying in service from an external provider.”

“Greater role in consideration of changes to governance model and how a revised framework is addressed. This includes greater responsibility for the Instrument and Articles of Government and under a changing compliance framework.”



## 8. Appendix 1. The seven principles of public life

<p><b>Preamble</b></p>	<p>The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.</p>
<p><b>Selflessness</b></p>	<p>Holders of public office should act solely in terms of the public interest.</p>
<p><b>Integrity</b></p>	<p>Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.</p>
<p><b>Objectivity</b></p>	<p>Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.</p>
<p><b>Accountability</b></p>	<p>Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.</p>
<p><b>Openness</b></p>	<p>Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.</p>
<p><b>Honesty</b></p>	<p>Holders of public office should be truthful.</p>
<p><b>Leadership</b></p>	<p>Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.</p>
<p>Source : Committee on Standards in Public Life Fourteenth Report of the Committee on Standards in Public Life Standards matter A review of best practice in promoting good behaviour in public life Cm 8519 January 2013</p>	

## 8. List of acronyms

<b>AGC</b>	LSIS Annual Governance Conference
<b>AoC</b>	Association of Colleges
<b>BIS</b>	Department for Business, Innovation & Skills
<b>CPD</b>	Continuing professional development
<b>DfE</b>	Department for Education
<b>EFA</b>	Education Funding Agency
<b>FE</b>	Further Education
<b>FHEA</b>	Further and Higher Education Act 1992
<b>GFE</b>	General Further Education (college)
<b>I&amp;As</b>	Instruments and Articles of Government
<b>LSIS</b>	The Learning and Skills Improvement Service
<b>LEPs</b>	Local Enterprise Partnerships
<b>NCN</b>	National Clerks' Network
<b>NCNC</b>	New Challenges, New Chances
<b>SMT</b>	Senior Management Team
<b>SFC</b>	Sixth Form Colleges
<b>SFCA</b>	Sixth Form College Association

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