

Clerking in the new era: implications for college governance

Annex D

New freedoms and flexibilities



Contributions

Grateful thanks to Roger Morris, Chair of the AoC's Governors Council, the Steering Group and LSIS staff for their unfailing support, guidance and professionalism throughout this project:

Steering group

Peter Munday, Head of Governance and Strategic Development, LSIS

Selina Stewart, Programme Development Manager, Leadership Skills for Governance, LSIS

David Jackson, Chair, National Clerks' Network (NCN)

Gerry Swift, Standards and Qualifications, Department for Business, Innovation and Skills (BIS)

Kevin McGladdery, Governance Manager, Association of Colleges (AoC)

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LSIS Staff

Peter Munday, Head of Governance and Strategic Development

Selina Stewart, Programme Development Manager, Leadership Skills for Governance

Nathan Hawkins, Programme Support Officer, Leadership Skills for Governance

Elaine McNamee, Senior Programme Support Officer, Leadership Skills for Governance

Assistance with pilot and survey distribution

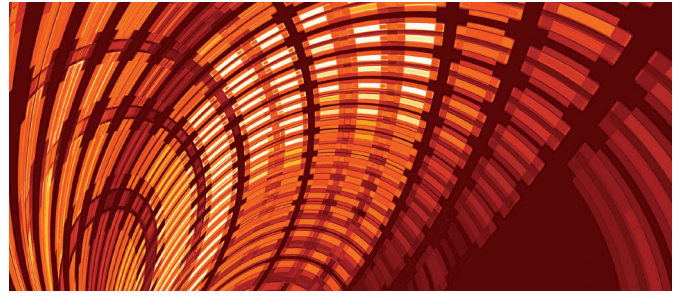
NCN Members; Joanne Dean, Assistant Governance Manager and Helpline Adviser AoC; Landex; SFCA; Linda Barrett FE Clerks Mailbase; and six pilot clerks.

Participants in the study

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Catherine Brumwell, independent researcher and author of report

All sections of the report including the annexes can be downloaded from www.lsis.org.uk or www.fegovernance.org



Contents

1. Introduction and legislative context	04
2. Impact of new freedoms and flexibilities on clerks' role	06
3. Expected impact of new freedoms on clerks' role	10
4. Accountability, high standards of public life and assessing risk	14
5. Additional training and support as a result of the new freedoms	17
6. Board size and changes to the structure resulting from the new freedoms	20
7. Academy sponsorship and clerking	23
8. Appendix 1. The seven principles of public life	26
9. List of acronyms	27
10. References	28

1. Introduction and legislative context

This annex is one of a series of reports as part of the research into the role of the clerk. The annex focuses on the freedoms and flexibilities offered to FE colleges under ‘New Challenges, New Chances’.

The survey asked clerks a range of questions about the new freedoms and the impact, or likely impact, on their role as clerk, including training requirements. Clerks were also asked whether their college had experienced, or was likely to experience, changes to their board size or structure due to the new freedoms. The research also surveyed the impact of academies and other educational institutions on the role of the clerk.

The full report includes a chapter on the research methodology upon which the findings are based. The research included an anonymous online survey, telephone and face-to-face interviews, and focus groups. The charts and tables are based on the online survey responses from 184 clerks. As some clerks clerk more than one college, this represents approximately 220 colleges, approximately 65 per cent of all colleges. These 184 clerks form the ‘base’ of the survey. Where the base is different, for instance with a filtered question, or if the base is a subgroup of a variable, this is shown in the footnotes. Percentages are rounded to the nearest percentage point.

Comments and opinions have been gathered either through the survey, interviews or focus groups. The confidentiality of clerks has been respected throughout this ethical piece of research. The report is written so that individual clerks or colleges cannot be identified.

Challenges and priorities for effective clerking in FE colleges arising from the survey are included in the Summary Report.

Legislative context

The changes to governance of colleges resulting from the Education Act 2011¹ are well rehearsed elsewhere (SGH Martineau 2012² & Eversheds 2012^{3,4}). The changes allow greater freedoms for college corporations. This includes the power, without the need to seek consent from the relevant funding body or to consult the Secretary of State, to dissolve the corporation and transfer its assets and liabilities to another body. The corporation, after undertaking a strategic appraisal, now has the power to change their legal structure significantly. New models may include, for instance, merging with another educational institution, becoming part of a federation, group or joint venture company, and/or sponsorship of, for example, an academy, studio school or University Technical College (UTC).

In addition, corporations have been given greater freedom to amend their Instruments and Articles of Government (I&As). The I&As were originally defined when further education corporations were formed under the Further and Higher Education Act (FEHA) 1992, subsequently replaced in 2008⁵ and modified in March 2012. Corporations have also been given the power, without the need to seek consent from the relevant funding body or the Secretary of State, to amend their I&As. However, they must comply with an amended Schedule 4 of the Education Act 2011 amendments to the FEHA Act. Whilst the amendments are less prescriptive, Schedule 4 still includes statutory requirements including:

- number, eligibility and appointment of members;
- procedures for dissolution;
- provision for a chief executive of the institution and a clerk to the body;

- responsibilities of the corporation, chief executive and clerk;
- arrangements for seeking views of staff and students;
- change of name procedures;
- that changes to the I&As do not result in the college ceasing to be a charity; and
- application of the college seal.

It is noticeable that whilst the amendments are much less prescriptive than the original 1992 Act, corporations must still make provision for a clerk and their responsibilities. Furthermore, the very fact that the amendments are less prescriptive places more responsibility on the clerk in terms of drafting the revised I&As and interpreting this bespoke set of I&As. 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 as described by clerks in the survey:

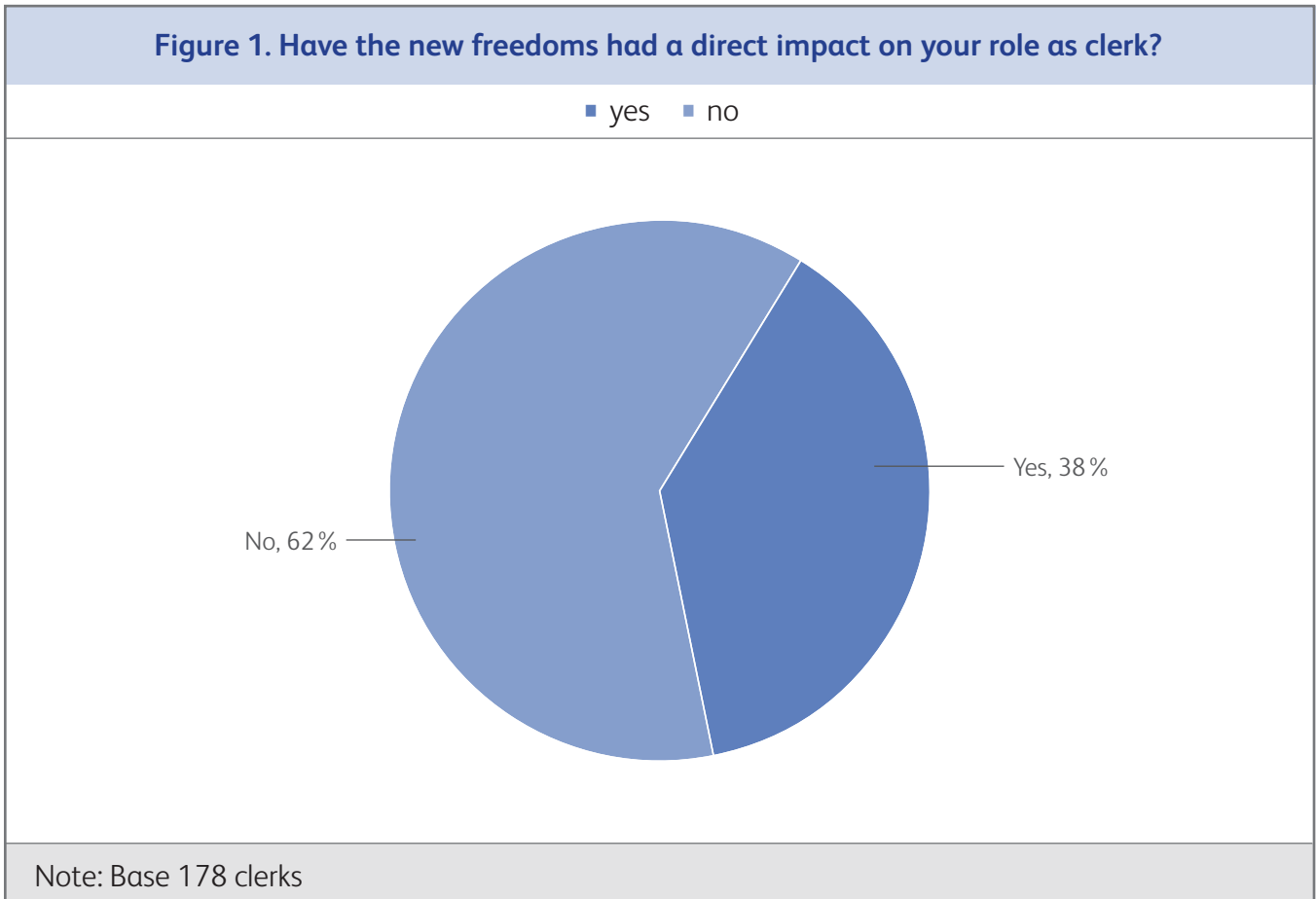
“The emphasis currently on ensuring governors understand the new world is important but without the professionalisation of the role of clerk, governing bodies will struggle to make the step change needed. Due to the relaxation of the I&A and the new freedoms we have received, whichever organisation takes the development of colleges forward needs to consider how they support an increasingly diverse sector effectively. Our advice as clerks is no longer subject to a narrow governance document with activities constrained to education in the classroom. Clerks need to be supported to enable their advice to governors to be much more than compliance – where will that come from?”

“The sector has been and continues to be subject to almost constant change. Whilst in part this is to be expected, and change can help breathe new life and thinking into ‘governance’, I think the importance of continuity and embedding gets forgotten. I also believe that there is a rhetoric gap between the expectations of those making demands, who almost seem to want change for change’s sake, and those volunteering to serve their local communities to the point that you sometimes wonder who would wish to be a governor.”

2. Impact of new freedoms and flexibilities on clerks' role

Clerks were asked if the freedoms and flexibilities introduced in relation to college governance had a direct impact on their role and responsibilities as a clerk.

Nearly four in ten (38 per cent) of clerks surveyed indicated that the freedoms have had a direct impact, whilst over six in ten (62 per cent) indicated no impact to date.



It is helpful to look back to a study undertaken during March 2012 (Hill R et al ⁶), shortly before the new freedoms came into force, where Clerks were asked to state whether they would expect to take advantage of the new freedoms by changing their Instruments and Articles of Government. In Hill's study, of the 119 clerk responses 44 intended to 'significantly vary the Articles and Instruments of Government for their corporation in the next 12 months' – around 39 per cent of clerks. This suggests, nearly 12 months on from Hill's study, that the expected impact has been realised.

Clerks were asked in this research to indicate the impact that the new freedoms had already had on their role as clerk. The responses from this cohort of 38 per cent of all clerks surveyed show a wide variety of impact to date. A large proportion of clerks indicated that they had made alterations to their Instruments and Articles of Government (I&A) including:

“Review of structure of governance, Instrument & Articles and possible future business models.”

“Leading project to review instrument, articles and standing orders to streamline procedures.”

“A total review of our instrument and articles of government, together with the board’s bye-laws, which is currently ongoing.”

“Considerably more work in terms of review of strategy, review of I&As and debate about increased liability and responsibility.”

“Setting up and running a corporate governance working group to advise the board on what changes should be made and then undertaking the detailed revision of the I&As and Standing Orders (SOs).”

“Change made to I&AG – as yet minor but may be more in future. Looking at collaborative working models.”

“Currently looking at modifying the Articles and Instrument and introducing more rigorous self-assessment processes. The board are looking for guidance from the clerk about their future strategy.”

“Revision of IAG agreed. Also to rework our cycle of business to allow more time in corporation for strategic focus and discussion.”

Changes under the new freedoms that extend beyond the revision of Instruments and Articles of Government include:

“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.”

“Currently in the process of looking at the best model to have in place to cover the range of activities being pursued – Free School, major regeneration project, possible acquisition of a college.”

“Company secretary for new company and if the bid is approved I will be the governance advisor to the clerk to the governing body for the Studio School; greater awareness and reporting about the external environment and strategic direction debate.”

“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.”

“New freedoms and flexibilities prompted governor task and finish groups reviewing both legal models and governance structures. I am now project managing the transition to a new governance structure.”

As a result of the new freedoms, many clerks have found that their role is widening and the board is looking to them for guidance and governance advice, that their work load is increasing, and in some cases the board has increased their hours or agreed the appointment of a deputy clerk to assist:

“Yes absolutely – it has and will continue to broaden the role of clerk considerably! I now have to

have an understanding of charity and commercial law, to research, understand and potentially advise on different governance models (beyond the more traditional ones) etc.”

“I am aware that governors are looking for a very strong steer from the clerk in this area and it is part of my responsibilities to maintain up-to-date knowledge and be aware of beneficial changes for the college.”

“Increased reliance on the clerk for advice on governance issues and opportunities”

“A great deal more work and the need to ensure that my knowledge is up to date, this has required a great deal of research.”

“Increased work load, need for a much wider, more specialist knowledge.”

“New requirements under Foundation Code and new options under I&A have increased advisory role and catalyst for change.”

“Much more involved in strategic matters. Has impacted hugely on workload and knowledge required – all positive!”

“More to do in terms of interpretation and analysis of current practices, research into possibilities and risks, an increase in advice given about governance.”

“Much more work re local consultative boards helped by appointment of deputy clerk.”

“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.”

“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.”

Clerks pointed out the increased role in terms of a need for legislative awareness:

The responsibility for changes to the Instruments and Articles and the subsequent requirement to be aware of the wider responsibilities included in such legislation as the Charities Act.”

“If the IAG are changed substantially at any time the requirements of Charity Law will need to be known. Needed to make all amendments to IAG – meaning those which are relevant to all sixth form colleges. Keeping up with the fast pace of change.”

Some clerks had experienced insignificant impact so far, but anticipated impact in the future, whilst, for instance, specialist college clerks indicated the changes did not apply to them. There was also a level of cynicism as to how new the freedoms are, or how beneficial to good governance:

“Not really. Only in that I have had to write papers explaining them to governors. We have not embarked on changing I&A as yet. I already had knowledge of Charity Law and most business structural changes do not seem appropriate for this college at the moment. The main change has been a new Principal and different ways of working.”

“Not applicable as we are a specialist college and already have our own Articles. However we review the effect of any new papers and benchmark other colleges to ascertain if any improvements could be made to our own governance.”

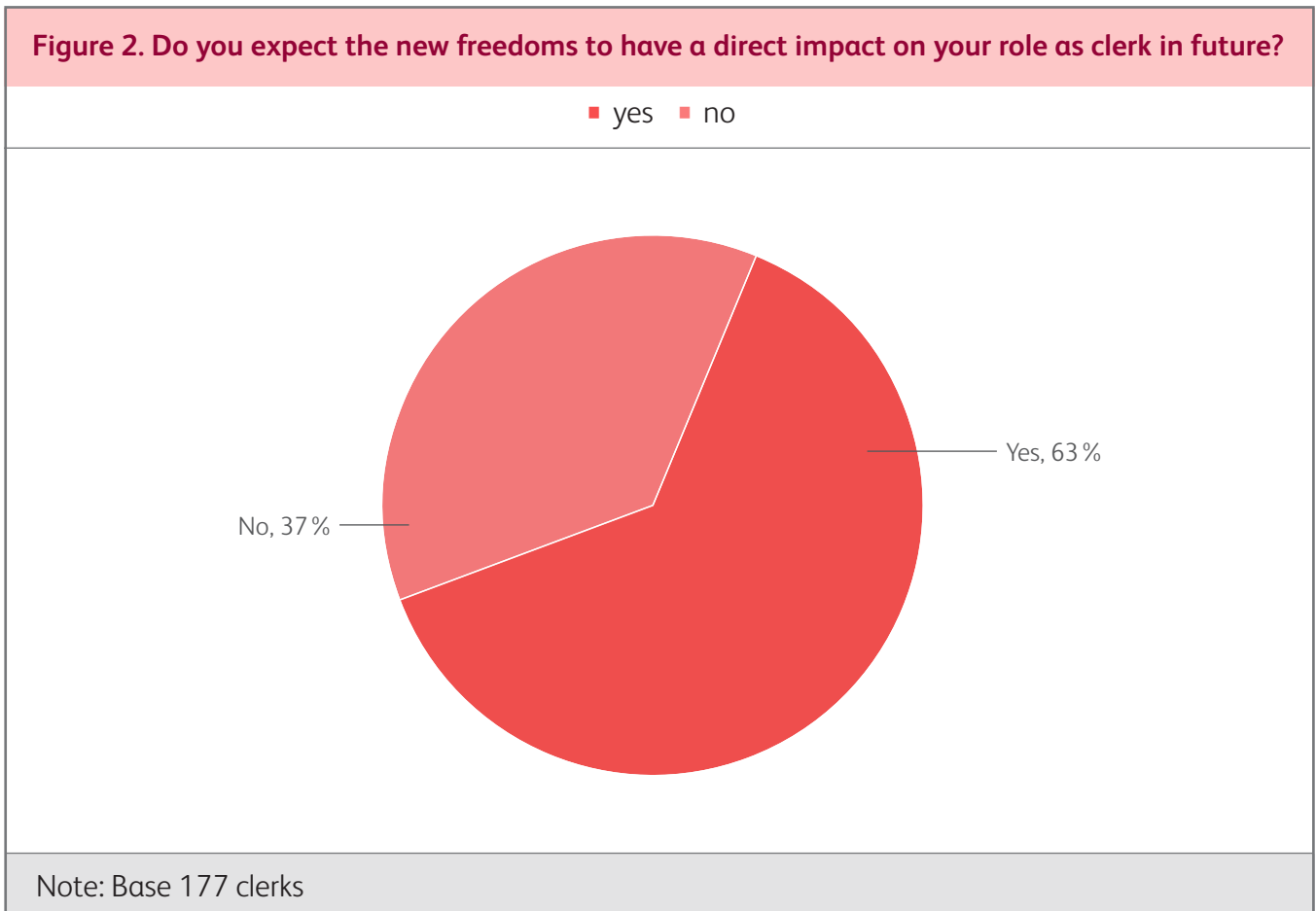
“Yes, to a limited extent at this stage although I anticipate the impact may increase.”

“I am unsure what the freedoms that you mention are. Deregulation has been a switch from one source of regulation, eg Education Act, to another, eg Charity Law. Flexibility might mean the option of sending out resolutions for approval by post. But is that good governance?”

3. Expected impact of new freedoms on clerks' role

Clerks were asked if they expect the freedoms and flexibilities introduced in relation to college governance to have a direct impact on their role and responsibilities in the future.

Significantly, far more clerks expected an impact in the future than had indicated an impact to date. This time nearly two thirds (63 per cent) of all clerks expected the new freedoms to have a direct impact, whilst over a third (37 per cent) indicated they would not expect the freedoms to have an impact.



The impact of the new freedoms is almost like a tidal wave in that it flips from 38 per cent who have experienced an impact so far to 63 per cent still expecting an impact in the future. This suggests the impact of the new freedoms have yet to reach their full potential.

Whilst this may be frustrating to those who would prefer to see a faster impact, the findings suggest a great deal of activity around the new freedoms. As revealed in Annex C, a high proportion of clerks are bringing papers to the board for consideration on all aspects of the new freedoms. However, there is a degree of caution by boards in undertaking the full extent of the new freedoms, particularly changes to structures, and justifiably so given the complexities involved.

It is important to remember that the clerk is the conduit of the research into the new freedoms and the provider of governance advice, not the decision maker. The board makes the overall decision. The clerk has a role to play in advising the board of the legal implications of any new undertaking, and this may include a considered and cautious approach which involves assessing risk. Whilst boards are receiving

information and advice on the new freedoms, it is evident many boards are taking an understandably cautious approach, at least for the time being. There was also a certain lack of clarity as yet with supplementary regulation in the form of the Audit Code and Financial Regulations.

Many clerks indicated that their board was aware of the new freedoms and flexibilities but had not yet decided to implement changes:

“When the corporation is clear about where it is going I expect that my role will be impacted on. Governors are aware of the changes that the freedoms and responsibilities agenda has introduced but it is too early to tell how they wish to respond.”

“The governing body is aware of the potential for the college to work in partnership with other organisations (educational and non-educational) which will require the clerk to provide appropriate advice and may result in an increase in responsibilities, ie taking on company secretarial roles depending on the formal structure which is established.”

“Still too early to say what the impact will be, but there is the opportunity for the corporation and college to look at changing the role of the clerk in line with changes to board size and structure, rationalisation of internal audit, possible conversion to academy status (this would definitely have an impact on future role of the clerk) and so on.”

“It will take some time for them to be ‘embedded’ with some significant ‘tweaking’ over the next few years.”

“I am up to speed on the new freedoms, and have advised the board, but at the moment governors have no appetite for change.”

“Colleges are operating in a very changing and challenging environment and are required to respond to a variety of issues, eg funding pressures, increased emphasis on colleges in their communities, partnerships with other educational organisations, eg academies, etc. How a college responds to these agendas will predicate which freedoms and flexibilities it pursues. I would anticipate that this will be continually revisited.”

“When the outcome of other colleges using the freedoms and flexibilities is known. Current view of the board is ‘if it ain’t broke, don’t fix it.’”

“May do, but we are just coming out of recovery so this has not been a priority until now.”

“Will all depend upon the freedoms contained within supplementary regulation, eg long overdue Audit Code and Financial Regulations. Such guidance will curb any perceived new powers.”

“As the college grows, the board may consider a different model and structure of governance that is more appropriate to its needs. I would hope to have a role to play in advising the board on matters of procedure and governance practice as a minimum.”

Examples where the new freedoms were expected to have a direct impact include:

“Changing Board structure is being discussed. Potential new business model in the near future.”

“Especially around local consultation, community input to governance, self-evaluation.”

“Changes to the college’s Instrument & Articles of Government, different models of working to align with the future strategic direction of the college.”

“The future development of the college within its community and with another local college will give the opportunity for new freedoms to be explored to the benefit of general governance.”

“Once they have been thoroughly debated and understood I think the Corporation may, in particular, wish to change to a two-tier model.”

“Potentials for new models, e.g. Studio Schools.”

“Possible merger(s) or more collaborations.”

“Work with the Gazelle Group going forward as a founding college.”

“Likely to federate with others on shared back office services.”

“More involvement with wider ‘federal’ model.”

Clerks anticipate significant changes to their role in future as a result of the new freedoms, including a greater emphasis on their governance advisory role, and even governance leadership, as boards may look to the clerk for sound advice in changing regimes:

“Greater awareness among governors of their responsibility for strategy and external accountability creates more pressure on leadership role of clerk, ensuring that governance is effective.”

“As the legislation becomes increasingly complex and diverse the clerk becomes central in ensuring that all legislation is complied with and that where benefit to the college can be obtained that college documents are modified within the regulatory framework. I came into clerking without a background but was able to pick up quickly the legal requirements but these are becoming increasingly diverse.”

“The college is about to restructure & looks likely to become a group including companies for some activities hence the company secretarial requirements will increase.”

“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.”

“I anticipate that the advisory role to governors will increase.”

“May require more advice with regard to legal matters.”

“Given the potential impact of charity law.”

“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.”

“The clerk will be key in keeping the corporation updated with new practice in the sector that may be relevant for a corporation to also consider, as well as keeping governors apprised of political expectations of what colleges will do with ‘New Challenges, New Chances’ and how ‘hands-off’ the Skills Funding Agency really will be now that the Agency’s powers have changed. The clerk will always have the role to advise whether any proposed changes can be made under the new freedoms and to ensure governors are apprised as to how these fit in with their other statutory and regulatory roles (maintain the college with charitable purposes, oversee use of resources, accountability for teaching and learning, etc).”

“Yes, as each college will now have its own personalised Instrument and Articles, which will give greater responsibility to the clerk to ensure that any legislative changes are reflected as and when necessary. This will require a greater knowledge than previously on the surrounding legislation (as opposed to simply adopting a pre-given modification order that will have been already reviewed by lawyers and experts). It will require wider reading and knowledge than before, with the ability to make specific and appropriate reference and potential changes to the college’s governance documents.”

“I anticipate that there may be new organisational structures; advice will be required on these from the governance perspective and the impact on the I&AG. I will need to be able to access authoritative sources of advice. I would like access to information to enable me to support corporation self-assessment.”

“Anticipate drafting amendments to the I&A in the near future and assuming company secretarial role for future companies.”

“Since 1 April 1993 clerking has been about policing regulations. Now all of a sudden it is about creativity. I think creativity has a lot to do with clerking – create, enable – clerks should not be threatened by change.”

4. Accountability, high standards of public life & assessing risk

The whole area of accountability was raised in this research as a potential result of the new freedoms. With freedom comes responsibility, and there is likely to be more pressure on the clerk to ensure the board remains accountable and works to the highest standards. Colleges who embrace the new freedoms will find a greater reliance on the 'bespoke' interpretation of their Instrument and Articles (I&As).

The relaxation of prescriptive legislation, as previously laid out in the I&As, has the potential to be double edged. On the one hand boards will have greater flexibility, but on the other they may be more vulnerable with increased responsibility. The potential for mismanagement under a more relaxed environment requires a greater reliance on the clerk to ensure accountability is thoroughly considered and adhered to, to ensure the board is 'watertight' in any changes they embark upon.

The seven principles of public life, originally set up in 1994 Committee on Standards in Public Life (the Nolan Committee) have been reviewed as recently as January 2013 in the fourteenth Report of the Committee on Standards in Public Life⁷. The seven principles are still as relevant in 2013 as they were in 1994 when they were initially recommended.

The Committee on Standards in Public Life January 2013, after consultation, revised the descriptions (Appendix 1) but kept the same seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The report concludes that "while much of the basic infrastructure to improve standards is in place, there is a great deal more to do before high ethical standards are fully internalised in the cultures of all our public institutions.":

"Our key message is this. Much of the basic infrastructure to support high standards is now in place. Most public services and public office-holders have adopted statements of high level principles and codes of practice and are subject to some form of external scrutiny. But it is self-evident, not least from recent events, that these mechanisms by themselves are not enough... High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated, especially by those in leadership positions...

...Our key message is that unless individuals and organisations genuinely take responsibility for their own standards, remaining vigilant to ensure they are upheld, they risk failing to meet the standards to which they aspire."

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 2013⁷

So what has this to do with the impact of the new freedoms and future role of the clerk?

At interview, clerks described occasions when their independence was required to ensure the college was adhering to the highest standards of public life, occasionally struggling in an environment where high standards were not embedded in the culture of the organisation. Although few in number, these examples related to the ‘triumvirate’ relationship between the chair, principal and clerk as described in Annex B. The greatest difficulties encountered were when one or more of the triumvirate disregarded the requirements embedded in these seven principles.

These examples reveal how the clerk may occasionally need to act as a reminder to the board of the requirements placed upon them not only by statute, but by the Nolan Standards of Public Life. Where boards embrace the freedoms, and with bespoke Instruments and Articles which are no longer prescriptive but revised to meet the changing needs of the college and the board, this places an even greater responsibility on the clerk to ensure the board is conducted with accountability.

The issue of ensuring accountability under the new freedoms, and the impact on their role, is described in the following comments by clerks:

“New freedoms and flexibilities mean increased accountability, so my role will be to ensure that the board demonstrates that accountability.”

“There will be more responsibility on the role of the clerk to ensure boards perform to the highest standard by virtue of the fact that colleges have more freedom. Also there is more emphasis on performance management which starts at the top of any organisation.”

“With more freedoms and flexibilities may come more risk. It is getting the balance right, because there is still a duty to behave responsibly with public money. The clerk’s role is surely to give advice to governors who act in the best interests of the corporation. There is a certain tension (which is a challenge and not necessarily negative) between private sector ethos, public sector value for money and a private sector ethos and a public sector conscience. I see the role of the clerk as negotiating a way through these competing demands...ie ‘you can’t do that, but you could do x, y and z’. But this was equally true prior to the freedoms and flexibilities.”

Clerks at interview raised concerns around potential conflict of interest with sponsoring academies, as discussed in chapter 7. Clerks also felt law firms were benefiting financially from the new freedoms as colleges would now need to seek individual advice for models based on bespoke college Instruments and Articles of Government. Concern was also expressed that there was a lack of clarity with the new freedoms and no structure:

“I am concerned people need to recognise the clerk’s job is much more difficult now due to the new freedoms. There are now too many complexities and too many sources. Instead of the I&As corporations can choose their own, but there isn’t clarity re: Charity Act, Audit Code of Practice or Financial Memorandum. We get briefings from lawyers, and some from AoC, but it is still not clear.”

“Colleges may take risks and will need sound advice. Because of the new freedoms boards will need independent advice even more. There is still some resistance from some clerks, I think because of a lack of confidence.”

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 entail new risks, as identified in Challenge 8 of the LSIS paper ‘Challenges for FE college governance’⁸:

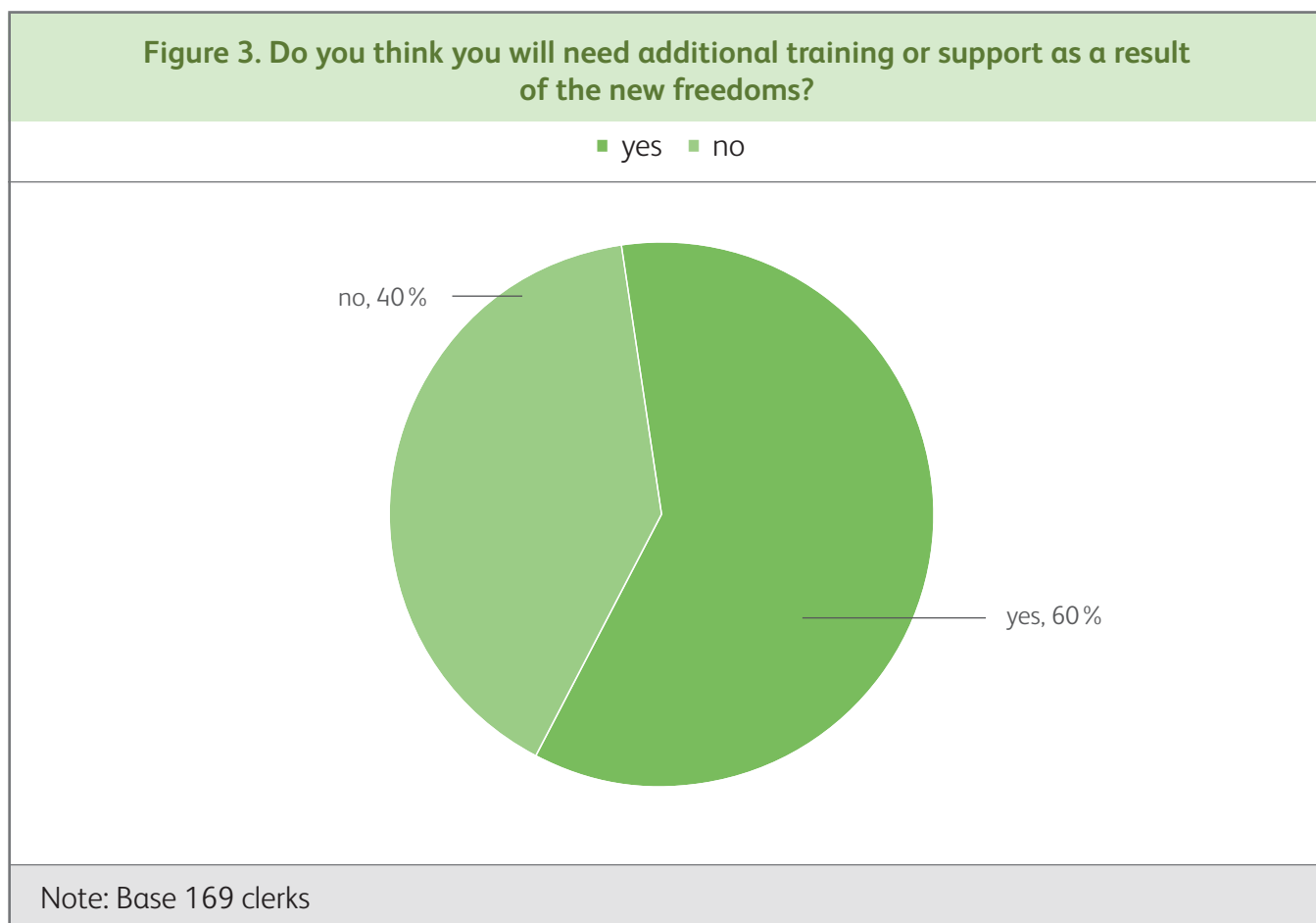
“For example, raising loans without requiring external approval, creating new bodies and adopting new models raise new risks for governors to weigh. High-performing colleges sponsoring academies in poor-performing schools, for example, risk their own reputation if things go wrong. This may challenge 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 discourage 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 any potential risks involved in embracing the new freedoms. The clerk acts as a guardian, protecting the best interests of the chair, board and college.

5. Additional training and support as a result of new freedoms

Training and support is covered in Annex C. For continuity, training and support as a result of the new freedoms are included in this annex.

Clerks were asked if they think they will need additional training or support as a result of the freedoms and flexibilities introduced in relation to college governance. Note that 169 clerks answered, but 15 chose not to answer. Six in ten (60 per cent) clerks who responded thought they would, and 40 per cent thought they would not need additional training or support.



Specific responses highlighted a need for legal training, support and advice, or refresher courses on company and charity law in particular, as well as a course on amendment of Instruments and Articles of Government:

“Wider knowledge of applicable laws, especially charity and company law.”

“Refreshers on company and charity law.”

“Company law / charity law / company secretarial responsibilities (different to those of a clerk).”

“Charity law and any other requirements to be considered when changing the IAG governance models / ways of working.”

“Possibly – briefings from Eversheds on charity law and company law have been useful. Sharing

practice [through the online governance e-library] with other clerks on changes to I&A will also be useful.”

“Charity law, company law, tying up common threads of codes of governance from different sectors in attempt to create ‘definitive’ good practice model.”

“Clear interpretation of the extent of the freedoms and the key considerations for amending the instrument and articles of government.”

“More guidance/information on what other legal requirements need to be observed in absence of prescriptive I&A (eg Charities Act or company law).

“Legal briefings will be essential to highlight any legislative changes that may impact upon governance structures and supporting documents.”

“Legal aspects of federation/shared services agreements/governance arrangements for shared service vehicle.”

Clerks also seek guidance on new models of governance, case studies and more awareness of the benefits to colleges:

“The sector needs to be aware of developments which have been of demonstrable benefit to governance and to the advancement of colleges.”

“Need to keep up with best practice in governance and be aware of structural changes required as college expands/diversifies. Also case studies from colleges who have significantly modified their arrangements would be useful.”

“To understand how far as a college we can go. To learn from other college’s approaches.”

“It will always be helpful to be kept up to speed about changes and what other colleges are doing.”

“Through networking with other colleges and finding out what other colleges are doing under this agenda.”

“Support on how governance can support strategic aims, in way of case studies and information on what is happening in wider governance sector would be helpful.”

“All the LSIS case studies, etc are not really case studies; they are more about colleges starting down a route. Outcomes and ramifications from live projects will be needed. Also, training in company / commercial law.”

Clerks also identified a need for training and support in ensuring that boards and principals are acting within their powers and a further understanding of conflict of interest and clarity:

“Possible changes in governance structure resulting in more training and briefing of governors. Having knowledge at hand on what governors can/cannot do!”

“Ensuring all board responsibilities fulfilled and that the board acts within its remit and powers. No single source of information – boards developing at different rates, with different responsibilities and differing priorities – boards no longer homogenous in nature.”

“Clerks are in desperate need of further training on frameworks, new responsibilities and liabilities, etc as an update to ICSA Clerk training.”

“Many institutions will be looking at closer working up to potential merger, but few of us have any relevant knowledge of clerking through significant organisational change. In a shrinking world there may also be increasing issues with potential conflicts of interest which clerks need support to identify and handle. (Eg when do you ask a principal to leave a potential merger discussion where his/her job could be affected?)”

“There is a need for some clarification of what the ‘new freedoms and flexibilities’ actually mean. At present there is an element of uncertainty associated with regulations such as the Joint Audit Code of Practice and the Financial Memoranda in addition to apparent confusion over the expectations and requirements of the Skills Funding Agency and the EFA in terms of regulatory influence.”

Clerks seek guidance and further training relating to colleges in the community, the sponsorship of academies, and sixth form colleges. It is as yet unclear what this training might entail:

“It is difficult to be specific, but in the case of my own college I think that governors may need more support to take on the full implications of the college’s role in the community and their role in developing the relationship with stakeholders. I guess the new clerk will need to take part in this and depending on his/her background may need significant development in this area.”

“Sponsoring an academy and what it could mean for the board of the college and what exactly its relationship is and should be with the school. The college in its community. What does this mean exactly? Our college community spans such a wide spectrum.”

“I think there is a need for further training for clerking academies.”

“Given that all colleges may be operating differently, more tailored individual support will be required.”

“I have attended several seminars and just seem to come away with, add written resolutions to your I&A and not much else seems to have changed!”

“Apart from more training on general charity law, I will need more training but I don’t know what yet!

“This is unknown territory – I don’t know what I don’t know!!”

“Support is required to keep up to date – role of organisations like ACER are critical in holding clerks’ networks, etc. Also local networks such as CENBASE have increasing importance. Attendance at other events is prohibitively expensive.”

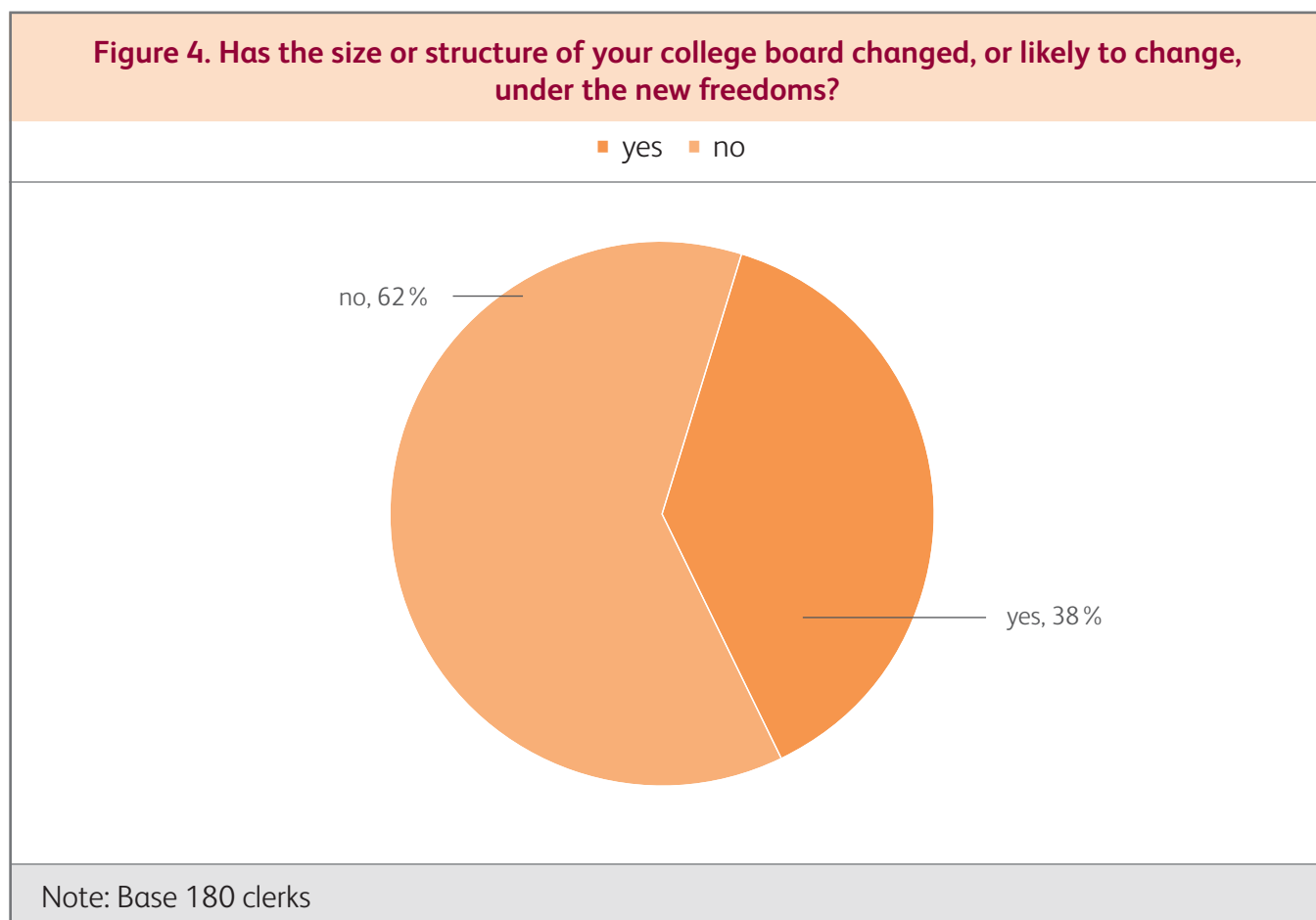
“It is difficult to be specific as we are still in the early days. Sixth form college specific training might be of benefit. Feel somewhat adrift with the divergence between GFEs and SFCs. Training materials focus on GFEs with the directives coming from BIS.”

“I think the current developments will require a greater level of understanding!”

“The role of the clerk is changing as FE changes to respond to new challenges”

6. Board size and changes to the structure resulting from the new freedoms

Clerks were asked if the size or structure of their college board has changed, or is likely to change, under the new freedoms. Nearly four in ten (38 per cent) clerks said their board had changed, or is likely to change, whilst over six in ten (62 per cent) indicated no current or likely change.



For those clerks experiencing or likely to experience changes to their board size or structure due to the new freedoms, a variety of changes emerge:

Changes in size

“The size of the board is currently at 23 following merger, over time this will reduce. The Instrument and Articles are being amended and will no longer state the number of governors required so the board will be able to operate more flexibly.”

“New I&A provide flexibility in governor numbers and we are currently running with only one student governor.”

“Went from 20 to 15 members went to Carver type model.”

Changes in structure

“Group Structure” developing with subsidiaries and joint ventures including commercial activities, charitable bodies, academy trusts, etc.”

“Group structure as companies are formed – resulting in numerous boards being overseen by one main board.”

“Size slightly reduced, structure now integrated within a group structure headed by a parent company.”

“Possible increase in membership to take account of college becoming an academy sponsor and need for college board representation on a multi-academy trust board.”

“Currently looking to reduce size of board; have just formed an additional company limited by guarantee for a Studio School and considering other company options.”

“We are currently considering greater collaboration with a neighbouring college which may impact on governance structures.”

“The board have recognised that with the establishment of subsidiaries and appointment of governors as directors on the subsidiaries, it may be prudent to increase the size and diversity of board members. Potential changes are in very early stages.”

“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 Changes’ 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.”

Policy Governance / Carver type models

“Moved to Policy Governance in September 2012.”

“Towards more Carver-esque arrangements.”

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

“Carver-style model to be implemented.”

“Went from 20 to 15 members went to Carver type model.”

“Discussions re moving to Carver – however awaiting new Chair and new principal”

“It hasn’t changed yet, but we are looking at a potential Carver model and one that allows for innovative strategic partnerships.”

Changes in future

“Currently considering a range of options for the future.”

“There is a possibility of change but at a very early stage.”

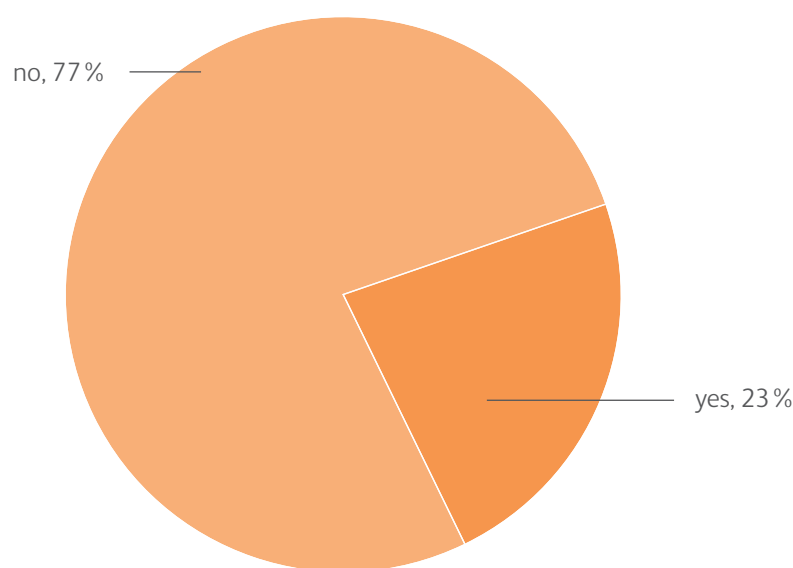
“Possibly to be reviewed within the year.”

7. Academy sponsorship and clerking

Clerks were asked if their college sponsors an academy, studio school or any other educational institution. Almost a quarter (23 per cent) of all clerks indicated that their college sponsors an educational institution; the remainder (77 per cent) indicated their college does not sponsor an academy, studio school or any other educational institution.

Figure 5. Does your college sponsor an academy, studio school or any other educational institution?

■ yes ■ no



Note: Base 179 clerks

Academy sponsorship is by far the most frequent type of college sponsorship. A small number of colleges are sponsoring university technical colleges (UTC) or studio schools. Some colleges are sponsoring more than one educational institution:

“Two Studio Schools and in process of sponsoring academy.”

“Sponsor to one primary academy and one secondary academy Educational Partner in a Foundation School.”

“Main sponsor of two academies (one of which is a studio school & co-sponsor of five academies.”

“The college is the sponsor for a multi academy trust – this was approved by the board 12 months ago.”

“UTC and looking at academy sponsorship.”

“Co-sponsors a UTC and has applied to run a Studio School – awaiting approval to proceed.”

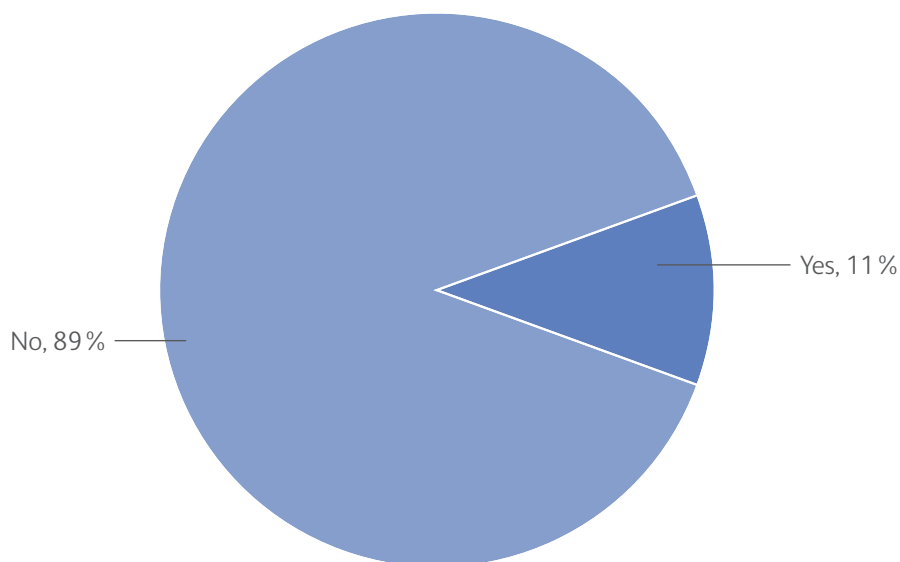
“Sponsors one academy (secondary school academy conversion); also sponsors a multi-academy trust, which currently runs one studio school but is set up to expand in the future.”

Clerking academies, studio schools or other educational institutions

Clerks were also asked if, linked to their role as college clerk, they also clerk any other academy, studio school or other educational institution. Just over one in ten (11 per cent) of all clerks are clerking another institution; the remainder, the majority (89 per cent) are not clerking another institution linked to their college.

Figure 6. Linked to your role as college clerk, do you also clerk any other academy, studio school or any other education institution?

■ yes ■ no



Note: Base 180 clerks

The majority of clerks clerk academies sponsored by their college, some more than one institution, with only a very small minority clerking UTCs or studio schools:

“Two (soon to be three) schools and three subsidiary companies.”

“Company secretary for multi-academy trust and service main trust board meetings but do not clerk local governing body meetings which are committees of the board.”

“The college is the lead sponsor for an academy which also clerk on a service level agreement with the college.”

“Clerk to the college’s sponsor multi-academy trust.”

“Currently providing advice on governance issues for the UTC Directors.”

Potential issues for the role of the clerk and sponsorship

As part of the in-depth interviews, sponsorship and clerking of academies or other educational institutions was discussed under the umbrella heading of new freedoms. Potential problems were highlighted by clerks at interview.

Among the potential issues was the impact on their time and additional expectations. There were suggestions that although the work associated with clerking additional institutions could be sustained in the short term, this would not be possible in the long run. However, one clerk, whose college sponsored an academy, found their commitments increased considerably, including clerking the sponsored academy. As a result of this sponsorship the clerk secured a deputy clerk to assist with the additional duties.

Clerks at interview, who were ICSA qualified, also questioned whether some clerks were ready to manage the complexities of sponsored academies or other institutions, particularly inexperienced clerks.

As well as the extra time commitments involved, clerks at interview raised concerns about potential conflict of interest. Clerks had sought legal advice, but they could still see the potential for problems, including pecuniary interests, for example with college human resources/HR or finance.

“Part of me is a bit concerned about colleges sponsoring academies and the role of the clerk, for example clerks becoming a company secretary of a subsidiary body. Surely there must be a question of independence, or conflict of interest? It’s just convenience.”

“I could see a potential conflict of interest as company secretary for the parent company and clerk to the college.”

“I can see problems and potential conflict of interest with colleges sponsoring academies, both for the governors and the clerk. The clerk is supposed to give independent advice. How can the clerk clerk both organisations, ie both the college and the sponsored academy? That is a rhetorical question by the way!”

8. Appendix 1. The seven principles of public life

Preamble	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.
Selflessness	Holders of public office should act solely in terms of the public interest.
Integrity	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.
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	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.
Openness	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.
Honesty	Holders of public office should be truthful.
Leadership	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>Source : Committee on Standards in Public Life Fourteenth Report of the Committee on Standards in Public Life Standards matter <i>A review of best practice in promoting good behaviour in public life Cm 8519 January 2013</i></p>	

9. List of acronyms

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

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Learning and Skills Improvement Service
Friars House, Manor House Drive
Coventry CV1 2TE

t 024 7662 7900
e enquiries@lsis.org.uk
www.lsis.org.uk

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Registered office Friars House, Manor House Drive, Coventry CV1 2TE