Governance Training Materials

LSIS LEARNING AND SKILLS IMPROVEMENT SERVICE

Draft

Module 10
Finance and resources

For suggestions on how to get the most out of these self-study materials, see the booklet on ‘Using the materials’.

Preface to Governance Training Materials

At the time of writing the Governance Training Modules, Education Act 2011 became law. It confirmed the abolition of the Young Peoples Learning Agency, to be replaced by the Education Funding Agency in April 2012. It also significantly reduced the complexity of colleges' Instrument and Articles of Government giving them greater flexibility to run their own affairs. The details are included in Schedule 12 of the Act which makes a number of amendments to prior legislation. Section 29 b of Schedule 12 states that 'the governing body of the institution may modify or replace its instrument of government and articles of government'. These must however comply with certain requirements set out in Part 2 of Schedule 4, thereby retaining some of the key responsibilities previously enshrined in legislation. Colleges will be considering these changes during 2012 and all governors will need to be aware of the implications for their own organisation. We recommend that governors familiarise themselves with this important piece of legislation when using the Governance Training materials.

At the same time as the Education Act 2011 was passed into law, the Association of Colleges published The English Colleges' Foundation Code of Governance. This voluntary code of practice was developed by the sector following extensive consultation and all colleges are encouraged formally to adopt it. It has the full support of the Minister and is seen by the government as 'an important milestone in making colleges more locally accountable and in freeing them to respond more effectively to local learners, employers and community partners'. It is strongly recommended that governors take full account of the Code when making use of the Governor Training Materials. The government's reform plan for the further education and skills system was set out in New Challenges, New Chances published on December 1st 2011. This is recommended as a useful guide to current sector policy, a summary of which is available from LSIS: NCNC Summary.

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This third edition of the training materials has been published by The Learning and Skills Improvement Service, as part of the Leadership Skills for Governance programme.

Authors
Joanne Dean and Chris Leg

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Feedback on the modules should be sent to fegovernance@lsis.org.uk

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Introduction

This module explores two separate elements of organisational resource, i.e. finance and human resources (HR). Readers are invited to note that the order in which these topics are covered is not intended to signify a priority of one business function over the other. Organisations may decide to structure their governing body using a Finance and General Purposes Committee (dealing with both functions at the same committee); by setting up a Human Resource Committee / Staffing Committee (to consider HR issues) or by following the Carver Model.

For most organisations, the most important resource (or 'asset') and often the most expensive, is that of the organisation's people, sometimes called its human capital.

People's services to the organisation may be engaged in different ways - directly on a contract of employment, or in a variety of other ways (for example, using an agency, employing a consultant or a contractor) that do not confer employee status. For the purpose of this module, all these people, including directly-employed employees, are referred to as 'workers'.

Whilst only those employed directly on a contract of employment with the Governing Body are its employees, nevertheless the Governing Body does have legal responsibilities for other types of workers, including responsibility for health and safety and meeting legal responsibilities under the Agency Workers Regulations 2010 and the Agency Workers (Amendment) Regulations 2011.

The terms 'personnel management' (PM), 'personnel' and 'human resource management' (HRM), 'human resources' (HR) have been subject to much academic analysis and whilst there are no universally accepted definitions, helpfully, 'people management' can be used as a generic term. Michael Armstrong, a well-known writer on HRM provides a useful definition:

"Human resource management (HRM) is a strategic, integrated and coherent approach to the employment, development and well-being of the people working in organisations."
Handbook of Human Resource Management Practice, 11th edition, Armstrong, M, 2009

Throughout this module, HRM and HR are used in the sense of Armstrong's definition and also these HRM characteristics: strategic; commercially orientated; seeing people as assets (as opposed to more variable costs); focusing on core business values and being intrinsically linked to the values of the business and needs of the organisation as a whole.

The Corporation (also known as the Governing Body) and not the principal, is the employer and as such, contracts of employment are issued in its name.

The governing body also has a key role in the financial management of the college. There are a number of statutory requirements for the governing body which require a reasonable level of understanding in order to adequately discharge them, specifically to ensure the efficient and effective use of resources, the solvency of the organisation and to safeguard the organisation's assets.

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Aims

By the end of this module you should be able to:

- outline the governing body's main legal responsibilities towards the staff that it employs directly, other workers whose services it engages and responsibilities it delegates to the principal as well as ensuring the college's solvency and the safeguarding of its assets;
- explain the role of governors in establishing and keeping under review the terms and conditions of employment for staff;
- understand financial terminology, key performance indicators and funding body requirements;
- state the difference between governors' responsibilities for senior post-holders and for other staff;
- outline the governing body's responsibilities for staff learning, development and appraisals;
- be able to adequately scrutinise and challenge the financial information presented;
- describe employee relations and how to communicate with trade union representatives and officers;
- understand the key risks facing the college and the potential impacts on its financial health, as well the role of auditors; and
- explain the role of governors in disciplinary, grievance and suspension procedures.

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Contents

Mark the sections that you will find helpful and tick them off as you complete them:

Working on the self-study activites

These materials have been designed to be used flexibly (e.g. dip in and out for reference; complete in one sitting; work through alone or with others).

What you will need

To complete the activities in this module you will need to access the following from the clerk, your organisation's intranet or HR department:

- information about the different types of contracts that your organisation uses (e.g. permanent, fixed-term, variable hours, full-time, fractional, annualised hours, apprenticeship, consultancy, senior post-holder, principal and chief executive);
- if applicable, the Trade Union Recognition Agreement, consultation, negotiation and dispute procedures;
- the staff handbook (or at least copies of key policies and procedures, e.g. disciplinary; grievance; suspension; capability; recruitment and selection; staff code of conduct; remuneration; performance appraisal; equality; 'whistle blowing'; learning and development; redundancy; employee relations and health and safety);
- all policies, procedures and contracts relating to senior post-holders;
- names and designations of the senior post-holders; and
- the clerk's contact details.

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Section 1

The governing body as the employer

Role of the corporation

The Corporation is the employer and as such, under schedule 2 (Articles of Government) of the Further Education Corporations Order 2007, is responsible for:

- the effective and efficient use of resources, the solvency of the organisation and the Corporation and safeguarding their assets;
- approving annual estimates of income and expenditure;
- the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the clerk including, where the clerk is, or is to be appointed as a member of staff, the clerk's appointment, grading, suspension, dismissal and determination of pay in the clerk's capacity as a member of staff; and
- setting a framework for the pay and conditions of service of all other staff.

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The full Further Education Corporations Order 2007 can be accessed through the following link to the Instruments and Articles of Government for FE college corporations: the Excellence Gateway

Role of the principal

The principal, as chief executive of the organisation, is responsible for the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the senior post-holders or the clerk, where the clerk is also a member of staff.

The principal is also the accounting officer of the college; therefore the governing body should require that the principal shall take personal responsibility to ensure compliance with the Instrument and Articles of Government for FE college corporations and the financial memorandum. Whilst a finance professional may be appointed to take charge of the day-to-day running of the college finances, e.g. a finance director, ultimate responsibility remains with the principal and these responsibilities cannot be delegated.

The responsibilities of the principal include:

- preparing annual estimates of income and expenditure for consideration and approval by the Corporation;
- the management of budget and resources within the estimates approved by the Corporation;
- ensuring funds are used only for the purpose for which they are given and in line with any terms and conditions attached to them;
- appearance before the Parliamentary Committee of Public Accounts on matters relating to the college's use of public and college funds, where required; and
- advising the governing body of any action or policy under consideration that is incompatible with the financial memorandum.

Line between governance and management

It is important to understand the two distinct and different roles of the governing body and the principal as outlined above and to respect the principal's right to organise, direct and manage the organisation and lead the staff. As such, she or he will be responsible for applying the policies and procedures that form the framework agreed by the governing body.

Employess and other workers

Workers services may be engaged in a variety of ways:

- *directly on a contract of employment;
- as self-employed consultants direct with the individual or through a third party, for example the Association of Colleges Create Training, Learning and Skills Network.;
- as an agency worker;
- as a contractor;
- as part of an outsourced service, such as catering, cleaning, security; or
- on a shared services basis (services concentrated in one centre that many clients access by telephone or email).

*Only those employed directly on a contract of employment with the governing body are its employees, but nevertheless the governing body does have legal responsibilities for all other types of workers, for example health and safety, the Agency Workers Regulations 2010 and the Agency Workers (Amendment) Regulations 2011. Whilst all workers must be treated in accordance with the law, it makes sense to apply good practice in addition, since well-treated workers are more likely to be motivated, creative and productive. However, care should be taken not to act in a manner that might imply an employer / employee relationship with workers who are not employees.

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Specialist and independent advice

Employment legislation and EC regulations are complex and change frequently. Hence, it is prudent for the governing body to access professional advice from within the organisation and when appropriate, externally. This will help manage the risk of mistakes that could lead to costly, time-consuming, reputation-damaging, morale-lowering litigation and avoidable settlements. The governing body might usefully consider these actions.

- Ensure that the organisation's HR function is headed up by an appropriately-qualified and experienced individual, someone who is at least a member of the Chartered Institute of Personnel and Development (CIPD).
- Consider how best to exercise its responsibility in relation to the necessary policies, procedures and actions to form a legally sound and best practice employment framework. Corporations will adopt different forms of governance and some will choose to have an employment or other appropriate committee.
- Access external independent legal advice when required, for example:

    - solicitors;
    - barristers - as part of their tender to acquire business, some law firms offer a capped number of free training sessions to their clients. Others, for a fee, offer specialist governance 'help lines';
    - AoC - for bulletins, publications, helpline and conferences; and
    - ACAS - for conciliation, mediation, arbitration advisory service on industrial relations and HRM; Codes of Practice on different aspects of industrial relations; pre-Employment Tribunal individual case dispute conciliation.

Financial memorandum

In addition to the responsibilities above, the funding body also refers to financial responsibilities in the financial memorandum, which is divided into two parts.

- Part one is a static agreement setting out the general terms and conditions of the financial relationship between the College and the funding body.
- The funding bodies contract with the college on an academic year basis, which forms the second part of the financial memorandum. This sets out the additional specific terms and conditions and contains the cash values and student volumes. This second part of the financial memorandum is to be signed by the principal and returned to the funding body to confirm acceptance by the college to the terms, conditions and contract values contained therein.

Financial reporting

The financial memorandum identifies the key financial information requirements that a college is required to produce and deadlines for their submission.

Financial plan – the funding body provides a spreadsheet template for colleges to deliver a three-year financial plan covering the forecasted out-turn for the current year, the budget for the coming year and a forecast for the following two years. This is to be submitted to the funding body by 31 July each year.

Financial statements – the funding body provides a template for preparing the annual financial statements which sets out the presentation and the methods and principles according to which they are to be prepared. This is to be submitted to the funding body by 31 December each year.

Finance record – the funding body also provides a template for the college to input extracts from the financial statements and other pertinent data into a spreadsheet model which delivers college financial data enabling, amongst other things, further education sector benchmarking. It is also a requirement that this be submitted to the funding body by 31 December each year along with the financial statements.

In addition to the above financial reporting requirements, the college is also required to:

- keep proper accounting records;
- ensure that it has an effective risk management policy including appropriate insurance arrangements;
- notify the funding body in writing of any significant deterioration in financial health; obtain funding body approval for secured borrowings amounting to more than 5 per cent of income;
- obtain funding body consent for significant capital transactions; and
- comply with all relevant UK and European regulations and requirements for the acquisition of all goods, services and works.

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Activities

With the help of the clerk, HR director or principal:

1. Identify how many staff have been designated as senior post-holders (SPHs). On what basis (e.g. permanent, fixed term.) were they engaged? Who are they and what roles do they undertake? Establish what policies and procedures exist for the management of SPHs. When were the policies and procedures last reviewed?

2. Identify how many staff the organisation employs directly and in what categories (e.g. permanent, full-time; fractional, fixed-term contracts, variable hours contract, management, professional academic, business support, apprentices).

3. How do these figures compare with previous periods? Are staffing levels increasing, decreasing or stable and what are the reasons for any changes?

4. Establish how many other workers' services are engaged (e.g. as consultants, contractors or via agencies)? What percentage of the total workforce does this represent? Has this human resource profile been achieved through strategic design, or has it simply evolved that way?

5. Find out if benchmarking data is available to your organisation (e.g. from a commercial provider, AoC, HR network). If it is, how does your organisation compare with others of similar size? If there are significant differences, establish why this might be the case. Does this point to an area for review? Or is it a deliberate difference backed by rationale in the strategic plan?

6. Find out what is the size (£) of the payroll. What is payroll expressed as a percentage of total income? How does the payroll expressed as a percentage of income compare to others in the sector and to local organisations? Are your payroll costs higher or lower by comparison and if so why?

7. Establish what is the annual staff turnover and main reasons for organisational exit.

8. Establish who your external employment advice is sourced from and what additional services they offer that governors might tap into, e.g. training, update bulletins.

9. Satisfy yourself that th ecurrent profile matche sthe overall strategy of the corporation in its future business plans, e.g. evolution of new curriculum areas.

Viewpoint

1. No one human resource profile (mix of workers, types of contract, numbers) is universally correct, but your profile must be tailored to equip your organisation to meet its particular objectives.

2. Selective use of benchmarking data can usefully point to areas for review.

   Balance the benchmarking data given to governors against the cost of producing it. Accurate HRM data is essential to enable governors to fulfil their responsibilities. However, because it can be expensive and time consuming to produce, governors need to be certain that the data they request, is both absolutely necessary and sufficient in order to allow them to manage the task.

3. HR planning and setting budgets are intrinsically linked, hence the organisational processes of both HR and finance should reflect this.

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Section 2

Terms and conditions of employment

2.1 The employment relationship, HR policies and procedures

The employment relationship between the governing body and its employees is defined by express agreements, including the contract of employment, together with terms implied by both common and statutory law. Other than for senior post-holders, the appointment process is managed by the principal and usually delegated to the director of HR (or equivalent). The role of the Corporation is to set the overall policy framework and manage the senior post-holders.

Contracts of employment

Whilst the express agreement is normally conveyed in a written form, it may be conveyed verbally at interview. Care must therefore be taken not to promise candidates at interview more favourable terms than the subsequent written contract contains.

Contracts of employment represent a legally-binding offer by the governing body, acceptance by the employee and are supported by payment. They comprise 'express terms' (such as remuneration, hours to be worked, sick pay, holiday and pension scheme membership entitlement) and 'implied terms' (e.g. conduct expected of employer and employee, custom and practice, for example to turn up for work on time) which are secondary to 'express terms' and to terms 'expressly agreed by statute' and terms 'implied by statute' (i.e. the duty to abide by statutory law).

In addition to a written statement of express terms or written particulars, a contract may also include a letter of appointment and other documents (such as staff handbook, policies, procedures). The terms 'HR policy' and 'HR procedure' are often used interchangeably but they are different. An HR policy provides general guidance on how workers should be managed within the organisation, i.e. 'big picture' concepts, reflecting the organisation's values, ethos and culture. HR procedures, however, are more concerned with the specifics and practicalities of exactly how matters are to be processed.

The role that the governing body plays is to help define the overall HR policy, i.e. specify how the organisation will fulfil its obligations towards its employees, define its philosophy and values as an employer and ensure compliance with UK employment legislation, EC employment regulations and UK official codes of practice (e.g. ACAS, EHRC).

The values governors select should reflect those of its particular organisation and will be specific to itself but might touch on:

- equity, openness and transparency;
- the belief in a joint responsibility for learning and development and that effective knowledge management can provide a route to organisational success;
- a high performance culture (with performance indicators, service level agreements, probation, discipline, capability, appraisal, performance-related pay, employee of the month and suggestion schemes);
- promoting a work-life balance (provision of a healthy, safe and, so far as is reasonably practicable a pleasant working environment); and
- the style of employee relations.

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Employment policies might include:

- equality and diversity
- disciplinary matters
- grievance
- redundancy
- reward management
- learning and development, sometimes referred to as human resources development
- employee relations and employee involvement (trade union recognition)
- health and safety
- anti-bullying and harassment
- use of email, Intranet and Internet
- staff Code of Conduct (including dress code and customer service)
- Public Interest Disclosure Act 1998 (whistle blowing).

HR procedures specify how to interpret the guidelines on people management in the HR policy when issues actually occur. Procedures are concerned with the practicalities of taking action and hence tend to be more prescriptive, e.g. who will handle the issue, at what stage, within what timeframe and what the possible outcomes might be.

Activities

1. Ask for a copy of the policies and procedures (which are likely to be available via the intranet rather than as hard copy); there may also be a staff handbook.

2. Read the policies on discipline, grievance, capability, equality, whistleblowing, and health and safety procedures as a minimum.

3. Ask for and read all policies and procedures relating to senior post-holders.

4. Do the existing policies and procedures support the framework that the governing body has put in place and reflect the employment relationship that it seeks to have?

5. Do the policies and procedures clearly show the date that they were approved and when they are due to be reviewed? Are any overdue for review?

6. What is the frequency of consultation with staff / recognised trade unions? Does this include HR policies and procedures which were brought to the governing body for approval?

7. As a governing body, are you collectively clear on the differences of policies / procedures for senior post-holders and the remaining staff group?

Viewpoints

1. The governing body determines the employment relationship it wants with its employees, its values and preferred culture, through the employment framework that it creates. It understands the relationship in this framework between governance and management.

2. HR policies provide guidelines on handling issues, consistently, fairly and in line with the organisation's values. They go some way to reassuring governors that irrespective of where a worker is located within the organisation, they will be treated in accordance with the same frameworks.

3. Whilst specific HR policies (e.g. grievance, disciplinary, equality) will be brought to the governing body for approval, the initial detailed research and drafting will be undertaken by the HR function and will be presented, (by the principal or the HR director) to governors. The detail is the province of the management, whilst the overall direction is that of the governors.

4. Overly prescriptive procedures should be avoided, although some line managers prefer the certainty they give. Failure to comply exactly with your own procedure will work against the employer in an employment tribunal and the more detailed it is, the greater the chance of this occurring. All staff required to implement procedures should first be trained in how to do so properly.

5. Governors might wish to ask, when employment procedures and policies are brought to them for approval, whether they comply with current UK employment legislation, EC employment regulation, and Codes of Practice, for example those produced by the HSE, ACAS and the EHRC. (See the Further reading section at the end of this document for links.)

6. By ensuring that sound employment policies and procedures have been produced, properly consulted on and communicated to all appropriate workers, the governing body is ensuring that it is meeting its legal and moral obligations and has created an effective employment framework that reflects the type of employer it chooses to be.

7. The governing body should then leave the principal to manage within this framework, requesting periodic monitoring reports.

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2.2 Organisational entry

Human resource planning (HRP), also known as ‘Workforce Planning’, is an essential part of human resource management, budget forecasting and business planning. It enables the organisation to secure competitive advantage by recruiting, developing, retaining and promoting capable people. As such, it is within the province of governance to take an overview of HRP, monitor the implementation of the action plan, whilst leaving the principal to manage the day-to-day processes.

The HRP process requires quantitive (sometimes known as ‘hard’) analysis, i.e. how many people will be required, by when, in what areas, in order to realise the business plan, as well as qualitative, or ‘soft’ analysis, i.e. what behaviours and values are required to enhance the governors desired organisational culture.

Recruitment and selection framework

Governors need to approve a framework in which the principal can manage non-senior post-holders. This framework might address the following:

- defining requirements (using HRP analysis);
- defining individual job requirements, for example job role description, person specifications, salary (for further information see Section 2.3 below, about terms and conditions);
- identifying likely sources for the best candidates, for example hard-copy publications, on-line advertising, Job Centres, agencies, specialist recruitment consultants, head hunters organisations;
- sifting candidates by matching applications to person specification, interviewing, applying relevant tests, e.g. personality, ability, aptitude;
- pre-engagement checks, including:
  - compliance with UK Border Agency and Criminal Record Bureau, child protection and safeguarding requirements
  - checking Companies House with regard to previously self-employed workers
  - identity, qualification and address checks
  - references and occupational health checks.
- confirming the offer and issuing a contract of employment;
- induction; and
- probation.

Talent management

Having acquired the talent, it is important to manage and develop it (see Section 2.5 below for further information) and capitalise on it when considering succession planning.

Activities

1. Does the organisation have a recruitment and selection policy?

2. Does the organisation profile its applicants, monitor against the local population, existing staff profile, promotions. For more information, see 2.7 Equality below, about the Single Public Sector General Equality Duty.)

3. Does the organisation train those, including governors in relation to senior post- holders, who are expected to be involved in recruitment and selection processes in how to perform this task?

4. What child protection and safeguarding policy and procedures are in place in your organisation?

5. How does your organisation compare when benchmarked against others, for example in terms of staff turnover? Is there a systematic organisational exit interview system that supplies reasons for turnover in the different parts of the organisation, for example, promotion to posts in other organisations, to secure higher pay, better working conditions, to escape bullying, inappropriate management styles?

6. Is there a procedure in place to ensure compliance and safeguard the organisation?

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Viewpoints

1. Engaging and terminating agency workers is more complex since the advent of the Agency Workers Regulations (AWR) 2010, which require an increased information flow between the hirer, the agency and the agency worker in addition to introducing significant rights and protections for agency workers. Governors may find the AoC Child Protection and Safeguarding 'mini-site' useful; use the following AoC members' area link.

2. Organisational exit interviews can provide the employer with useful data to correct any organisational problems that may not have previously come to light and improve future recruitment and selection.

   The AoC Workforce Benchmarking Data, which includes staff turnover and sickness absence rates, may help the employer with future workforce planning, and to ascertain whether its turnover is out of the ordinary; use the following AoC members' area link.

3. Given the frequency of change to employment legislation, it is imperative that governors carefully and frequently monitor the relevance and compliance of their HR policies and procedures.

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2.3 Reward management

The corporation is responsible for the grading and determination of pay for senior post holders. In addition, it must set the framework for the pay and conditions of service for all staff.

- The governing body is free to accept, adapt or ignore the advice emanating from the annual negotiations between the Association of Colleges (AoC), the Sixth Form Colleges Employers' Forum (SFCEF) and the recognised trade unions, unless there is a specific reference to the recommendations of these bodies in the contract of employment. In considering any advice, it will need to be cognisant of what it can afford to pay, and the need to attract, retain, and motivate employees.
- The definition of reward management is that part of HRM that is concerned with managing remuneration (formally known as 'compensation and benefits').
- "Reward management is concerned with the formulation and implementation of strategies and policies in order to reward people fairly, equitably and consistently in accordance with their value to the organisation". Handbook of Human Resource Management Practice, 11th edition. Armstrong. M. 2009.
- It lays emphasis on proactively utilising remuneration as a tool for furthering strategic business aims and values (e.g. fairness, equity, consistency, transparency and the value of return to the organisation created by employees) and is at the core of employment relationships.
- Total reward management highlights the importance of all aspects of reward: financial (base salary) and non-financial (training, development, recognition, being given space and trust to achieve). Whilst total remuneration is the value of all earnings, together with other benefits received, for example development and learning, sick pay, pensions (usually with the Local Government Pension Scheme or the Teachers' Pension Agency), paid holiday, subsidised canteen, subsidised gym membership, season ticket loans, or company car.
- Flexible benefits (sometimes known as 'cafeteria benefit systems') recognise that employees need different things at different points in their life (e.g. more annual leave in return for less cash benefit or vice versa) and allow choice up to a certain amount from a set menu of benefits.

- Allowances may be paid on top of basic pay (e.g. a regional cost-of-living allowance, subsistence, overtime payments).
- The governing body must ensure that it pays at least the national minimum wage. Rates are set for adults (workers aged 21 and over); a development rate (workers aged 18-20); school leaving age but under 18 (workers aged between 16 and 17) and an apprentice rate (for apprentices under 19 or aged 19 or over and in the first year of their apprenticeship).
- In creating a reward framework, Corporations will need to create a reward strategy setting out how it will support the achievement of its business objectives through its reward policies and procedures.

The Corporation may wish to address the following in its reward policies. Notes giving further information about asterisked points are below.

- How it will ensure equal pay for work of equal value.
- How (and if) it will publicise its reward structure to employees for the sake of transparency.
- What mechanism it will use to ensure that its pay compares reasonably with what else is available in the locality.
- * Whether it wishes to apply a 'market rate' to posts that are difficult to recruit.
- What elements it wants to incorporate in 'total reward'.
- ** Whether it wants to use 'contingent rewards'.
- *** How it will grade posts (e.g. by job evaluation) and determine pay structures.
- For how long it will provide pay protection, for example after a redeployment, or a job evaluation 'downgrade'. Whilst there is no legally defined period of time, it is common for an organisation to choose between six months and two years. Indefinite pay protection would run the risk of an equal pay claim.

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*** Market rate**
There may be occasions when the organisation will wish to pay more that its usual reward systems assessment, e.g. to attract and retain a particularly talented individual and / or fill a post that is difficult to recruit. However, it should be remembered that market rate analysis is not a precise science and an employer should collect a reasonably-sized sample of data on similar jobs and only use the results for guidance.

**** Contingent and variable pay**
Contingent payments are those financial rewards over and above base pay earned through exceptional performance or acquisition of a new competence in-post. Schemes include: Performance Related Pay (PRP); Skill Based Pay; Competency Based Pay and Contribution Related Pay. They may be organisation wide, team-based or individually based. Where such payments are not consolidated into base pay, they are termed 'variable pay'. To be successful, such payments must be worth having, assessed fairly and consistently, and be within an individual's power to achieve, for example changing behaviour, enhancing skills, being more productive. There needs to be absolute clarity over exactly what the individual needs to do to achieve the reward. The disadvantages for this type of reward are that not everybody is motivated by money alone, it may de- motivate those who do not receive it, and can be bureaucratic and costly to administer.

***** Job evaluation grading of posts and pay structures**
A job evaluation scheme will help the governing body to ensure that it meets its 'equal pay for work of equal value' obligations. Job evaluation systematically ranks jobs within an organisation through the analysis of job roles and provides a platform from which to design an equitable grading structure. A salary modelling process can then be used to establish what level of pay the organisation can afford to attribute to each grade. The grade attributed will depend on the size of the job. Grading

provides the employee with the opportunity to progress financially within a grade on a 'time served' basis or linked to performance. Alternatively to a grade, an organisation may opt for a 'spot grade' / 'spot rate', i.e. no pay progression is built in, although an annual 'cost of living' increase may be applied.

In approving grade and pay structures, governing bodies will provide a considered framework within which its pay policies can be implemented by the principal. In so doing, the governing body should consider:

- its organisational culture;
- the need for equity, transparency and clarity;
- flexibility to apply market grades; and the need to control payroll costs.

In determining its grading structure, i.e. the hierarchy of grades/bands under which to group its posts, the governing body should be advised (normally by the HR director) about the options (e.g. multi-graded; broad graded; broad banded; job family and single column pay spine against what it is trying to achieve. Michael Armstrong describes these options as follows in his Handbook of Human Resource Management 11th edition:

- multi-graded - A sequence of ten or more job grades, within a narrow pay range (20-40 %), with progression normally linked to performance.
- broad graded - A sequence of six-nine grades, within a fairly broad pay range (40-50 %) with progression linked to contribution which may sometimes be controlled by thresholds.
- broad banded - A series of five to six broad (50-80 %) pay bands with progression linked to contribution and competence.
- job ('career') family-Separate grade and pay structures for 'job families' (i.e. groups containing similar jobs) with progression within these groups based on competence and/or personal contribution.
- single column pay spine-A series of incremental pay points covering all jobs with personal progression linked to individual competence and/or contribution.

In order to determine its pay structure, the governing body should be advised about the different levels of pay for jobs or groups of jobs by reference to their respective worth. It can rank the posts internally via job evaluation and externally via employers' associations' guidelines, market rate surveys, or benchmarking with other 'like' organisations. The director of HR will usually provide this advice.

The general shift in the FE and skills sector has been towards a single, spinal-column pay structure covering the whole organisation (excluding senior post-holders) and harmonisation of terms and conditions wherever affordable.

Governors have responsibilities for determining the pay and conditions of service of senior post-holders. Some governing bodies create a remuneration committee to look at the detail of setting senior post-holders' base pay, whether contingent pay is appropriate (and if so, what type of scheme) and what benefits might apply.

Draft

Activites

1. Establish whether there is a 'market rate' policy.

2. Establish whether there is a pay protection policy. Has it been reviewed against the Equality Act 2010?

3. What system does your organisation use to rank and grade its posts (e.g. by job evaluation)? Are you satisfied that this provides sufficient equal pay protection safeguards?

Viewpoints

1. Market rates should be reviewed at reasonable intervals to ensure that they are still relevant and to avoid equal pay claims.

2. Pay scales within grades should not be too lengthy since if progress up the pay scale is to be on a time-serving basis only, it may constitute age discrimination.

3. What framework for determining 'pay' and 'grading' should the governing body opt for, in order to maintain competitive rates of pay that attract, retain and motivate staff and support the overall realisation of organisational goals?

Information and guidance on the AoC National Pay Negotiations can be viewed on the AoC members' area link.

2.4 Health and safety

The Health and Safety at Work (HASAWA) Act, 1974, places specific responsibilities on the employer to manage health and safety at work effectively. This includes the management of resources, communication, documentation of procedures and systems; monitoring performance and implementing systems for improving knowledge, attitudes, motivation and a commitment to a safety culture. As the employer, the governing body will be required to produce evidence of establishing, operating and reviewing its health and safety management systems.

A governing body must ensure that:

- It produces (and periodically reviews) a health and safety policy. There must be documented arrangements to ensure the implementation of effective planning, organisation, control, monitoring and review of preventative and protective measures. These arrangements should have regard to the nature of the organisation's activities and size of its operation.
- It undertakes suitable and sufficient assessment of risk, that the findings are followed through and recorded on the main risk register to assist with such tasks as capital planning, and setting budgets.
- It appoints one or more 'competent persons' to help it comply with its statutory obligations.
- It provides adequate health and safety training to staff at induction and throughout their employment in the organisation.
- The Corporate Manslaughter and Corporate Homicide Act, 2007, made it possible for organisations to be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care. It also clarified criminal liabilities of companies where a serious failure in the management of health and safety resulted in a fatality.

- Whilst prosecutions will be of the corporate body as opposed to individuals, the liability of the directors, board members and others under health and safety legislation and criminal law remains unchanged, so the ‘corporate body’ (governing body) and individuals may still be prosecuted in respect of separate health and safety offences.

Note that Section 37 of the Health and Safety at Work Act continues to allow for the prosecution of individual directors and other senior officers following an offence by the ‘body corporate’.

Activties

1. Communication: Does your organisation have any safety representatives? A safety committee? For further information, see the Safety Representative and Safety Committee Regulations, 1977, the Health and Safety (Consultation with Employees) Regulations, 1996, and the Health and Safety Executive’s guidance document (INDG232) entitled Consulting employees on health and safety.

2. Health and safety documents, procedures and systems: Has the governing body approved a health and safety policy? If so, when is it due for review?

3. Monitoring performance: Does the governing body, or one of its committees, receive regular reports and a health and safety management plan, at least termly, to enable it to monitor the effectiveness of health and safety in the business?

4. Does the governing body receive an annual health and safety report containing data, including accident statistics and trends, to enable it to ensure compliance with its legal responsibilities?

5. Does the governing body employ, or have access to, a ‘competent person’ to assist it and the principal to comply with their health and safety responsibilities? Note that it is expected that governing bodies will have appointed a principal who has an understanding, or the commitment to acquire the necessary understanding, of the impact that health and safety has on the business.

6. The Institute of Directors and Health and Safety Executive (HSE) published guidance entitled Leading health and safety at work: Leadership actions for directors and board members’ which governors may find useful in managing their health and safety responsibilities in connection with the Corporate Manslaughter and Corporate Homicide Act, 2007.

7. If you want to know more about health and safety generally, speak to your principal, health and safety manager, clerk or visit the HSE website

Viewpoints

1. In reality, the governing body will need to delegate specific health and safety tasks to others, but retains ultimate responsibility.

2. Good links between the HR and health and safety functions are essential to ensure that the employer meets its equality and occupational health obligations, e.g. in relation to disability, new or expectant mothers.

3. It is good practice for the governing body to receive an annual health and safety report and a termly report that might usefully comprise:

- a summary of all accidents, incidents, near-misses, investigation findings and follow-up actions. Specific reference should be made to items that had to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, 1995 (RIDDOR).
- the cost of accidents;
- a record of safety monitoring systems, for example safety tours, audits, inspections, 'spot checks',. and the outcomes;
- details of health and safety training provided;
- risk assessment information, general and specific, for example display screen equipment, manual handling, Control of Substances Hazardous to Health regulations (COSHH);

4. A health and safety policy should include: a general statement of intent; organisational details for achieving health and safety; arrangements and appendices. This policy should cover:

- general and specific legislation relevant to your organisation;
- responsibilities of the governing body, principal, competent person, staff and others;.
- arrangements for health and safety including risk assessment, accident reporting, first aid, fire and other emergencies;.
- any specific hazards and the precautions that need to be taken by workers of, and visitors to, the organisation;
- consultation procedures, for example safety representatives and a safety committee;
- methods of communicating health and safety information and training workers; and procedures for visitors, contractors, the public.

5. The Homicide Act, 2007: the governing body should keep its health and safety management systems under review, as outlined above. In particular, it should monitor the way in which they are managed by the principal and senior management team.

6. Although not a requirement, consideration might be given to designating one governor as the governing body's health and safety champion, whilst acknowledging that this does not dilute the collective responsibility.

2.5 Learning and developing

The governing body needs to ensure that the skills, knowledge, and capabilities of its staff are developed to enable it to achieve its goals, motivate, nurture talent, aid succession planning, improve services to learners and attract high calibre job applicants.

The governing body therefore will want to ensure that there is a Learning and Development (sometimes referred to as Human Resource Development - HRD) Strategy linked to its business strategy and that it identifies:

- learning and development needs (e.g. learning needs and skills gap analysis);
- what it aims to achieve;
- what priorities (local and national) it will (must) support;
- how those priorities will be supported;
- who is responsible for delivering which objectives;
- the resources needed;
- how evaluation will take place; and
- how the return on investment will be calculated.

Methods of learning and development can be selected to best suit an individual's learning style, time, and resources and learning objectives, for example, specific one-to-one 'on the job training'; secondment; work shadowing; internal or external short courses; formal training leading to a qualification; self -directed learning; e-learning; blended learning.

Significant changes have occurred in relation to the development of teachers since the Further Education Teacher's Qualifications (England) Regulations 2001, usually referred to as the 2001 Regulations.

Draft

The Further Education Teachers' Qualifications (England) Regulations 2007, referred to as 'the Regulations' apply to all those who teach at further education organisations, whether as employees or contractors except:

- those who teach on an occasional basis (e.g. giving commercial industrial or professional practice updates);
- teachers first employed in FE organisations before 1 September 2001, irrespective of whether or not they have qualifications;
- teachers first employed in FE organisations between September 2001 and September 2007 irrespective of whether they qualified under the 2001 Regulations.

Transitionary provisions apply for those who commenced teaching between September 2001 and September 2007 (depending on whether they enrolled on a course by 31 August 2007). The 2007 Regulations apply in full to all teachers first appointed from 1 September 2007 and introduced the following key changes:

- the introduction of professional status known as 'licensed practitioner status': Qualified Teacher Learning and Skills (QTLS) and Associate Teacher Learning and Skills (ATLS);
- the introduction of new qualifications, based on new professional teaching standards, including an initial award, a certificate qualification for teachers in associate teaching roles and a diploma qualification for teachers in full teaching roles;
- a requirement to complete the process of professional formation;
- the introduction of qualification requirements determined by a teacher's role and responsibilities, not the number of hours they teach;

- for those required to comply, a revised time-limit of five years for FE teachers to obtain the appropriate qualifications and gain QTLS / ATLS status or two years in the case of those who hold Qualified Teacher Status, and the introduction of a time limit of one year to gain the initial award.

Licensed practitioner status

The Institute for Learning (IfL) is the organisation responsible for awarding licensed practitioner status – QTLS and ATLS. The licence is awarded to those individuals who meet all the regulatory requirements, IfL requirements and the occupational standards. To attain licensed practitioner status, individuals must:

- be registered with the IfL;
- be qualified; and
- have completed a process of professional formation, whereby a teacher is required to demonstrate that they are in good professional standing and can apply the skills and knowledge gained through initial teacher training in their own teaching practice, according to occupational standards.

Continuous professional development (CPD)

Every full-time teacher must complete at least 30 hours of CPD each year. Part-time teachers must complete a pro rata proportion of the 30 hours, subject to a minimum of 6 hours each year. Every teacher must maintain a record of the CPD undertaken each year, make it available to the employer and provide the IfL with a copy each year by 31 August.

Draft

Exemptions

Governors should note that the Regulations do not apply to:

- any person employed to teach higher education courses only;
- individuals who are employed solely in a sixth-form organisation and registered with the General Teaching Council for England (GTCE).
- a teacher employed in both a school and an FE organisation and registered with the GTCE, provided such dual employment and GTCE registration commenced before 1 September 2007.

Preparing to teach in the lifelong learning sector

No person may teach in a further education organisation unless that person holds a Preparing to Teach Award or its equivalent. If a person does not hold this award, then they may be employed in a teaching role for a period not exceeding one year. IfL FAQs Guide. Therefore the governing body can appoint the individual and they can teach whilst working towards the relevant award.

Full teaching role

The governing body may not employ a person in a full teaching role unless that person:

- holds the Diploma in Teaching in the Lifelong Learning Sector (DTLLS) at Level 5 or above, approved by the Secretary of State, or its equivalent; and
- holds a specialist subject qualification, approved by the Secretary of State (where the Secretary of State has decided that such a qualification is necessary), or its equivalent;
- has obtained such an award (as may be approved by IfL and the Secretary of

State), for the purposes of demonstrating that a person has the necessary literacy, numeracy and information and communications technology skills to teach;
- has successfully completed a process of professional formation; and
- holds QTLS status.

If the individual does not meet these requirements then the governing body may not employ them 'in a full teaching role for a period not exceeding five years'.

Associate teaching role

The governing body may not employ a person in an associate teaching role unless they:

- hold a Certificate in Teaching in the Lifelong Learning Sector at Level 3 or 4, approved by the Secretary of State, or its equivalent;
- hold a specialist subject qualification approved by the Secretary of State, where the Secretary of State has decided that such a qualification is necessary, or its equivalent;
- have completed such a programme to the satisfaction of the IfL, or have obtained such award as may be approved by the Secretary of State, for the purposes of demonstrating that a person has the necessary literacy, numeracy and information and communications technology skills to teach;
- have completed, to the satisfaction of the IfL, a process of professional formation; and
- hold ATLS status.

Activities

1. What are the development and learning priorities for your organisation's senior post-holders? Have they been discussed, agreed and recorded at senior post-holders' appraisal and development meetings? Have they been costed and placed into the budget?

2. What comments were made in your last Ofsted inspection about staff skills, learning and development opportunities? Have any criticisms been addressed? Are all staff (and not just teaching and learning staff) needs addressed in your strategy?

3. How does the governing body evaluate the success and return on its investment for this function? How did the learning and development strategy support the achievement of the business plan objectives last year?

4. How does the governing body monitor and ensure that it and its teaching and learning staff are complying with the requirements of the Further Education Teachers' Continuing Professional Development and Registration (England) Regulations 2007.

Viewpoints

1. The Investor in People (IiP) award is by no means essential, nor is it being endorsed here, but it can provide a useful best practice framework for your organisation's learning and development strategy. IiP also flags a commitment to CPD for existing staff and would-be job applicants. Investors in people.

2. IfL administer grants, on behalf of the Department for Business, Innovation and Skills (BIS), for teachers studying a part-time, in-service diploma level initial teacher training (ITT) course in the lifelong learning (FE and skills) sector. This grant is a contribution

towards ITT course fee costs to help FE employers discharge their responsibilities for staff development and meet the requirements of the FE teacher regulations. However, since it will cease after 2012, governing bodies need to plan for this now.

3. Membership of IfL is mandatory, as is the licence to practice for teachers and trainers in further education and skills. The conferral of the professional status of Qualified Teacher Learning and Skills (QTLS) and Associate Teacher Learning and Skills (ATLS) is made through IfL's system of professional formation. Further information is provided on the IfL website.

4. There is no obligation on the employer to pay professional membership fees on behalf of employees. The governing body may therefore wish to consider what approach it is currently taking towards other compulsory professional membership.

5. Although government is ceasing to fund IfL membership, the following remain as regulatory requirements:

    - The requirement for individuals to register with the IfL and undertake minimum continuing professional development (CPD) each year; and
    - The requirement for individuals to obtain a relevant teaching qualification within a set period.

Draft

2.6 Performance management and appraisal

The HRM system of performance management attempts to improve performance systematically by:

- interlinking overall organisational performance objectives, with those of departmental, team and individual objectives;
- agreeing SMART targets;
- reviewing progress towards achieving those targets;
- taking any necessary steps to address slippage and adjust actions for unplanned, external environmental change.

Performance management differs from performance appraisal: the former is a holistic, whole organisation approach to setting, monitoring, reviewing and adjusting organisation, team and individual targets in an integrated way in order to meet the overall mission. Performance appraisal however is more narrowly focused on the individual employee's performance over the previous year, agreeing targets for the next year, inter-year reviews and an individual development plan linked to the achievement of the overall organisational plan.

For schemes to be successful it follows that the appraisee should take a proactive role in the process and joint responsibility with the appraiser for making a success of the exercise (i.e. it should not 'be done to them'). The appraisee should give thought to likely targets, development and learning opportunities, and may be undertake a self-assessment prior to the interview to identify areas for development.

The appraiser should normally be the line manager, given their first-hand knowledge of the appraisee's performance and abilities.

When determining the performance appraisal framework, governors need to reflect what it is that they are trying to achieve in their performance appraisal policy statement which might include: for all employees to be clear of what their role is; what they are expected to deliver; by when and what ‘success’ will look like; what support they might expect to help them deliver, in order that the organisation achieves its overall objectives.

The governing body needs then to ensure that its performance appraisal procedure describes how this is to be achieved in practice, without being overly prescriptive or bureaucratic, allowing time out of the normal routine for frank, two-way discussions and feedback. Such a procedure might touch on:

- preparation, for example to complete a self-assessment, locate the current job role description and person specification, look for suitable and affordable development opportunities, carry out observations of key tasks;
- who the appraiser will be (normally the line manager);
- how the appraisal interview should be conducted: any standard agenda items, venue to be somewhere that avoids interruptions, expected behaviours;
- outcomes: o agreed, SMART targets o agreed personal development plan;
- in-year review;
- when to repeat the performance appraisal cycle;
- the timescale of the performance appraisal cycle; and
- the appeals procedure.

Activities

1. Obtain a copy of your organisation’s performance appraisal policy and procedure. Do they successfully link individual appraisal targets and development plans with those of the overall organisation? If so, how?

2. Does the governing body receive reports on the scheme’s effectiveness? If a grading scheme is used, do the grade distributions appear reasonable, i.e. are percentages of grades allocated in line with overall organisational effectiveness? Have all staff (including fractional staff) been appraised in accordance with the performance appraisal cycle. If not, why? Is the scheme still fit for purpose?

3. Does the governing body receive reports on the use and outcomes of staff capability and disciplinary procedures?

Viewpoints

1. Individuals should only be subject to the performance appraisal scheme if they are employees. Hence the performance of those on probation will be assessed under the probationary procedures, until they are confirmed in post.

2. It is imperative to the success of such schemes that the governing body ensures that the principal has consulted widely on the draft before implementation; is seen to be leading its implementation, from the top; launches it with adequate training (and periodic refresher training); monitors the scheme to ensure that everybody receives their appraisal on time and that agreed outcomes are followed up.

2.7 Equality

The Equality Act 2010 consolidates previous equality legislation under one single Act, thereby simplifying and rendering it easier to follow as well as developing existing legislation to make it more effective. However, whilst many former concepts of discrimination remain the same, some have been added.

The protected characteristics (i.e. the various strands of discrimination) under the Act include: age; disability: gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation; marriage and civil partnership.

The responsible body under the Act in respect of further education organisations in England and Wales is the governing body.

The governing body is legally responsible for acts of discrimination, harassment and victimisation undertaken by its workers during the course of their employment as well as for its 'agents' (such as contractors, consultants, agency workers. taking action on its behalf), irrespective of whether it knew or approved of those acts. If however the employer can show that it took 'all reasonable steps' to prevent its employees and agents from not complying with the law, it will not be held responsible. Irrespective of whether the employer is also liable, employees / agents of a further education organisation are personally liable for their own acts of victimisation, discrimination or harassment, even if they were unaware that they their actions were illegal, unless instructed that they were not illegal by the employer or principal. In that case, the employer or principal's action of making a false statement to get the employee / agent to act unlawfully will have committed a criminal offence and be liable for a fine (in August 2011 this was up to £5,000).

In the event that an individual believes that they have been discriminated against, it is important that the governing body has ensured that there is a complaints procedure in place, that has been publicised, that can be used to assess discrimination, harassment and victimisation complaints, and attempts to resolve the dispute outside court.

The Single Public Sector General Equality Duty (in force from April 2011) gives public bodies (including further education organisations) the legal responsibility to show that they are:

- eliminating unlawful discrimination, harassment and victimisation;
- proactively progressing equality (e.g. in their policymaking, delivery of services and public sector employment); and
- fostering good relations.

The Act created a single duty in respect of all characteristics (except marriage and civil partnerships).

To comply with this new duty, the governing body will require reports from the principal on the information gathered from his / her consultations with stakeholders in respect of the new strands and use this information to formulate and help prioritise necessary actions.

The Equality Act 2010 (Specific Duties) Regulations 2011 came into force in September 2011 and are intended to facilitate public authorities' compliance with the general duty to publish equality information.

Governors need to be aware of the Public Sector Equality Duty and the need to have due regard to it when making decisions about any of the organisation's functions, including HR, financial and organisational decisions.

Draft

These regulations require public authorities, (including learning and skills organisations) to:

- publish equality objectives at least every four years. There will be a requirement for the first equality objectives to be published by 6 April 2012; and
- publish information to demonstrate compliance with the general equality duty by 31 January 2012 and at least annually thereafter. This will include information relating to employees (for public authorities with 150 or more staff) and others affected by their policies and practices. There will be flexibility for public authorities to decide what information to publish.

Equal pay was addressed by the Equal Pay Act 1970 and has been addressed further by the Equality Act 2010. There has been considerable litigation on this issue involving local authorities and the health service and is likely to extend to the FE and skills sector.

An equal pay audit will help your organisation identify likely issues which, if found, can be addressed before anybody need resort to litigation. It can be expensive to address such imbalances. It is imperative therefore that HR and finance professionals liaise throughout to ensure that appropriate and timely financial planning takes place to manage the situation.

Activities

1. Governors may wish to read the detail in the Equality and Human Rights Commission's document entitled 'Guidance for employers about their rights under the Equality Act 2010' This covers the key areas of: recruitment; working hours, flexible working and time off; pay and benefits; career development – training, promotion, promotion and transfer; managing workers; dismissal, redundancy, retirement and after a worker has left; equality policies, equality training and monitoring; when you are responsible for what other people do; the duty to make reasonable adjustments for disabled people and what to do if someone says that they have been discriminated against.

2. Governors may want to ask what equality training has been put in place for employees and governors to minimise the risk of victimisation, discrimination, harassment or any other breach of the Equality Act.

3. Governors may want to ask about the policy and procedure in place to deal with an allegation of discrimination, harassment or victimisation and how that has been communicated to workers.

4. Does your organisation's equality action plan contain SMART targets and show progress towards the:

   - elimination of discrimination, harassment and victimisation?
   - advancement of equality of opportunity?
   - fostering of good relations?

5. What arrangements does the organisation have in place for consulting with local groups with a particular interest in equality, such as the local authority, youth clubs, student groups, religious faith groups?

Viewpoint

1. This is a relatively new area of responsibility and more guidance will most likely become available to governing bodies as the new Act becomes embedded.

2. Governors may wish to view the Equality and Human Rights Commission

3. Whilst not endorsing any external awards in particular, governors may consider using them to audit their own equality processes and flag commitment to others. For example, the Positive About Disabled People (two tick symbol) is awarded by Jobcentre Plus to employers who have made a commitment to employ, keep and develop the abilities of disabled staff.

4. Governors may find the AoC Equality and Diversity mini-site a useful resource in meeting its employer equality duties:

Draft

Section 3

The governing body and senior post-holders

Senior post-holders comprise “the post of the principal and such other senior posts as the Corporation may decide” for the purposes of the Articles of Government. The governing body decides how many senior post-holders there will be (in addition to the ‘given’ of the principal). Being a member of the senior management / leadership team does not automatically confer senior post-holder status on those individuals.

The governing body’s relationship with senior post-holders differs from that with other staff because it has direct control over appointing, appraising, determining pay and conditions of its senior post-holders, although in reality it is the principal who supervises these individuals on a daily basis.

3.1 Determining pay and conditions

Whilst the Instrument and Articles of Government do not require the governing body to set up a remuneration committee (as they do with an audit and search committee), many find it useful to do so, in order to look at the detail and devise an appropriate level of pay (and pay increases).

Draft

Pay may be determined in a number of ways, but since incorporation in 1993, this tends not to be by collective bargaining, but more on unilateral decisions by the employer. It is imperative that when determining pay, governing bodies comply with employment law, equality law and European Community regulations. Other external factors include the market rate for particular specialisms; benchmark data for similar sized organisations; ability to pay; and whether the pay increases and benefits’ packages for senior post- holders significantly differ from those that non senior post-holders might be getting, being mindful that different treatment can lead to resentment and division.

In addition, some governing bodies have a performance-related pay system either linked to individual performance or team performance. Perhaps less commonly now, some senior post-holders’ pay is expressed as a percentage of the principal’s pay.

Activties

1. What mechanism does your governing body use to determine the principal’s pay and conditions? Those of other senior post-holders? Is there a remuneration committee or, if not, what other arrangements are in place to consider these matters?

2. What mechanisms does your organisation have in place to ensure that the equal pay for work of equal value principles outlined in the Equality Act 2010 are adhered to?

Viewpoints

1. Whatever system of determining pay is chosen, it should be legal, fair, open, transparent and stand up to scrutiny under audit. Implementing a job evaluation scheme can help to achieve this.

2. In addition to pay, benefits packages (including such benefits as private health care, a car) may be approved, for which there will be tax implications.

3. The AoC produces an Annual Survey of Remuneration of Middle Managers and Post holders. This can be useful for reference and benchmarking, rather than slavishly followed for setting pay.

3.2 Appointing a principal and appointing (and promoting) other senior post-holders

The appointment of the principal and senior post-holders is a non-delegable function (Article of Government, 9d).

Note that the appointment of the clerk is also reserved to the Corporation but the clerk is not a senior post-holder unless the governing body so determine.

Where a vacancy for a senior post-holder occurs, the Corporation must ensure that:

- the post is advertised nationally;
- a selection panel is formed, comprising a minimum of five Corporation members, including the Chair and Vice Chair, to appoint a principal (the principal and a minimum of three Corporation members to appoint other senior post-holders); and
- the selection panel will decide the arrangements to select candidates for interview, interview the candidates and where they can, recommend one for appointment by the Corporation.

If the Corporation approves the selection panel's recommendation, the successful candidate will be offered a contract of employment.

Failure to agree - In the unlikely event that the selection panel are unable to agree on a single candidate to be recommended to the Corporation for appointment or, the Corporation feels unable to accept the recommended candidate, then the Corporation may make an appointment itself of a person from amongst the candidates already interviewed. OR the governing body may require the Selection Panel to repeat the process e.g. determining the arrangements for short listing candidates to interview: interviewing them; where able to recommend one individual for appointment. This may be done without first re-advertising the post.

Temporary arrangements – Where there is a senior post vacancy (or a senior post-holder is temporarily absent), until the vacancy is filled (or the senior post-holder returns to work), another member of staff may be required by the principal to 'act up' and provide cover. However, the Corporation requires the Secretary of State's consent before making a temporary appointment to the post of principal or other senior post-holder where the intention is not to issue the individual with a contract of employment with the Corporation.

The Corporation must appoint the clerk. The clerk may be a member of staff and directly employed on a contract, self-employed or supplied through a specialist agency but cannot be the principal of the organisation. Currently the majority of clerks are appointed independently of the senior management team. In the absence of its usual clerk, the Corporation may appoint a temporary clerk (other than the principal).

Draft

Consideration should be given to creating a succession plan. A succession plan can be defined as:

“Planning the availability of internal candidates for promotion into key positions. Its importance lays in ensuring that there are suitable candidates to take over key positions in the event of strategic changes or replacements of individuals” An Introduction to Human Resource Management, Wendy Bloisi, London Metropolitan University, 2007

Succession planning is most commonly used to fill leadership roles due to turnover or new roles resulting from a strategic shift in the business but can be applied across the organisation.

It necessitates:

- analysing the skills and functions of employees;
- auditing the senior leadership team’s skills and roles, and identifying internal and external future supply pools; and
- talent management - individual career path planning, e.g. via appraisal, fast track promotion routes for ‘high fliers’, planned development and learning opportunities to match future need.

Activities

1. What are the names and designations of the senior post-holders within your organisation?

2. How does the employer/employee relationship between the governing body and senior post-holders differ from that with other staff?

3. Does your organisation have a senior post-holders’ succession plan?

4. If the current principal gives notice of his/her retirement or resignation, what steps should the governing body and clerk take to recruit a successor?

5. What would be the differences if the notice of retirement or resignation was from a senior post-holder rather than the principal?

Viewpoints

1. The principal is de facto a senior post-holder and the governing body is not obliged to create any more senior posts. On the one hand, senior post-holder status is a useful recruitment tool to attract high calibre, ambitious candidates and thereby also assist with succession planning.

2. On the other hand the fewer the senior post-holders, the less direct control the governing body needs to take or can exercise (and therefore the greater control the principal has) over the appointment, appraisal, etc. of key staff. The exact mix is a choice for the governing body to make to best suit its needs and preferred style as the employer.

3. The principal may delegate the power to dismiss a non-senior post-holder.

4. It is helpful to add the rationale for deciding to designate a particular post as a senior post in the governing body minute recording that decision.

5. When recruiting senior post-holders, governing bodies may decide that the arrangements for selecting candidates for interview could be managed in-house with the support of the HR function and clerk; could engage a third party (e.g. a specialist recruitment agency) or could be managed in-house with some external input, e.g. the use of occupational psychologists to conduct personality tests, team type analysis, or in-tray-tests.

   In drawing up a contract for the principal or other senior post-holders, the Corporation could opt to adapt the AoC Model Contracts of Employment for the principal and CEO and senior post-holders see AoC members' area.

6. It will help manage the risk of an interruption to Corporation business if there is a contingency plan to cover the eventuality of the clerk being temporarily unable to fulfil her / his duties, for example, have the contact details of a third-party specialist agency; form a reciprocal cover arrangement with the clerk of another organisation that is not in direct competition with your own; or, where there is a deputy clerk, ensure the job description requires the post-holder to cover in the absence of the clerk.

7. Ensure that at least one member of the selection panel recruiting the clerk has detailed experience of governance (ideally in the FE and skills sector) to test the candidates' knowledge at an appropriate level.

8. The Executive Leadership Development Programme (ELDP) is designed to meet the needs of both long-serving and first-time principals and chief executives in FE colleges (including specialist and sixth-form colleges), adult and community learning providers and work-based learning providers. It may be something for governors to consider with their principals.

Draft

3.3 Ensuring the development of senior post-holders

Having spent considerable time, effort and money to recruit the right principal, other senior post-holders and a clerk, it would be counterproductive not to have a professional development and learning policy for them, supported by a suitable budget. An agreed CPD plan linked to achieving corporate targets and individual senior post- holders' responsibilities and aspirations will be useful in retaining good people, helping with succession planning and keeping your most valuable assets' knowledge current and useful to the organisation.

Activity

1. Establish how the principal and other senior post-holders' professional development and learning needs are identified, met and evaluated.

2. Is the budget adequate for its purpose?

Viewpoints

1. A personal development plan might usefully be agreed annually between each senior post-holder and his / her reviewer.

2. It is usual for the principal to have operational management of the learning and development budget for other senior post-holders and approve in-year applications rather than for it to go to the Corporation.

3. CPD is the joint responsibility of the senior post-holders and their employer, i.e. it is not a one-way responsibility.

4. In a rapidly changing environment (like that o fthe FE and skills sector), knowledg eand skills can become out of date quickly and competitive edge lost. Hence it is important for the employer to maintain the culture of a learning environment.

3.3 Ensuring the development of senior post-holders

The governing body needs to ensure that there is a fair and open system for appraising its senior post-holders that:

- enables Specific (Stretching), Measurable, Agreed, (Appropriate, Achievable), Realistic and Timely (SMART) targets to be agreed between the appraisee (reviewee) and appraiser (reviewer);
- evaluates subsequent performance against those SMART targets, giving positive and negative feedback where warranted;
- gives space for consideration of the individual's developmental needs to fulfil their current role, any additional responsibilities that are planned for them to take on and their own career aspirations. It is useful for the governing body to know what their senior post-holders short-, medium- and long-term career plans are to help with its HR recruitment and succession planning; and
- where performance-related pay (PRP) schemes exist, the appraisal scheme may be used to justify payment of or not paying the PRP element and to quantify how much of it much has been earned. However, it is advisable to keep this discussion separate if the governing body wants the appraisee to be frank, admit where there may be problems and seek support where needed.

Draft

Performance management and appraisal of the principal

It is essential to have a system in place to appraise the principal given the complexity of the relationship between governance, leadership and management in the FE and skills sector; the need to offer support in what can be a lonely role; continually develop the competencies of the post holder; manage his / her performance; set objectives; and ensure compliance and accountability.

The appraisal arrangements need to be agreed by the governing body, reviewed regularly and made explicit to the principal on appointment. When determining such arrangements, the governing body may wish to consider the following matters:

- **Who should conduct the appraisal**
  Given the need to be frank and open, a one-to-one appraisal, ideally conducted by the Chair (or Vice Chair) is more likely to be conducive to meaningful dialogue than appraisal by panel. The agreed outcome, as opposed to a detailed record of the discussion, might then be shared more widely, e.g. with a remuneration committee. Advice may always be sought from the HR director.

- **Before the appraisal interview**
  Identify stakeholders, their interests and individuals who might usefully be asked to provide a written input on the principal's performance in his / her role and collate the relevant documentation to be considered at the appraisal interview, for example a 360- degree feedback questionnaire completed by staff, partnership personnel and other stakeholders that come into regular contact with the principal; senior post-holders exit

interview summaries; the most recent Ofsted report; audit reports; data on progress against the key performance indicators (KPIs) set previously; CPD record: job role description and a self-assessment. Governors need to decide what their key objectives in conducting the appraisal interview are, and set targets accordingly. For example, governors might wish to link an individual's targets to the strategic priorities of the organisation in order to ensure that the overall aims are realised. The appraisal will then take place against these targets.

- **The interview agenda**
  - Performance management: Review performance (both strengths and weaknesses) against previously agreed objectives.
  - Agree objectives: Set SMART (short-, medium- and long-term) targets linked to the business plan. Identify barriers and discuss how to overcome them.
  - Support, learning and development: Identify appropriate CPD for your principal's needs. Review the usefulness of the support given by the chair and governing body to the principal.

Activities

Read the following three brief scenarios and then answer the question immediately below each scenario.

1. Following budget cuts and a reorganisation resulting in fewer senior managers, each senior post-holder is expected to have a broader portfolio next academic year than the one that they were appointed to deliver and have had experience of, and training in to date. What steps could be agreed at the senior post-holders' appraisals that might ease their transition into this new role?

2. A long serving senior post-holder is approaching appraisal as a hurdle to be crossed, rather than entering positively into it as a genuine review of performance and an opportunity to agree development needs.

   What steps might be taken to engage this individual with the process?

3. The principal has indicated that she/he is too busy to undertake any continuing professional development in the academic year following their appointment, arguing that when appointed they were deemed qualified to perform the role.

   What business case might you put to dissuade the principal of this view?

Viewpoints

1. Appraisal systems might include a variety of techniques in addition to the one-to-one interview with the appraiser, for example self- assessment by the appraisee; 360-degree feedback; feedback on observation of task performance; peer appraisal; results of external assessments, e.g. Ofsted, audits.

2. Support mechanisms might include assigning a mentor (internal or external to the organisation) to a senior post-holder; arranging a work shadowing experience and / or visits to a known 'best practice' organisation.

3. Any matter relating to capability, disciplinary issues or probation. should be dealt with under the appropriate procedure rather than be tackled in an appraisal interview. Governors may find it helpful to view the following:
    - the AoC Model Disciplinary and Grievance Procedures for Senior Post-holders: Members' area link.

4. Failure to update skills and knowledge continually in a rapidly changing external environment will damage senior post-holders' ability to respond effectively to new challenges and opportunities in the interests of the organisation and reduce their personal currency as leaders.

5. Non pay-related senior post-holders' appraisals may be conducted by the principal. When determining the salary of senior post-holders, the governing body may wish to seek advice from the principal (i.e. the day-to-day line manager); the HR director in relation to equal pay, the context of 'pay freeze' or increases due to all other staff); the finance director (in relation to affordability) and refer to available senior post-holder salary benchmarking data, such as the AoC commission.

6. Keep the principal's appraisal simple (no more than six objectives with clear success criteria); keep it strategic (it is for the principal to determine the detail of how s/he will achieve the outcomes required); be honest with your feedback, backing it with facts, and be realistic.

Draft

Section 4

Employee relations

Employee (or employer) relations (ER) refer to the management of the employment relationship, i.e. terms and conditions of employment; matters arising from that employment; pay bargaining; two-way communication mechanisms between employees and the employer.

Various parties play different roles in ER such as the State, the European Union, the governing body, management, HR function, employers' organisations (e.g. the AoC), trade unions and employee representatives.

The function is governed by a legal framework, EC Directives, ACAS, and Employment Tribunals.

Subsumed under the overall umbrella of employee relations is the industrial relations function (IR). IR deals with the relationship between management and trade unions and covers such things as: collective agreements (where they exist); collective bargaining; dealing with disputes; the employment relationship; and the working environment. Industrial relations will be affected by the external environment, such as the politics of the government of the day; the state of the economy; European Union regulations and initiatives, as well as the internal organisational environment.

Inevitably since the payroll is such a significant percentage of the budget, it becomes a focus in times of contraction. This may lead to pay freezes, redundancies, overtime bans, reduced hours, less favourable special leave arrangements, the need for multi-tasking and greater flexibility from the workforce. All of these matters will be managed under employee relations' mechanisms.

The governing body needs to agree an employee relations framework which enshrines their philosophy and the type of relationship they want to engender with employees and trade unions for example management-led, highly consultative, power sharing.).

The ER framework may cover:

- a trade union recognition agreement;
- collective bargaining arrangements;
- employer relations procedures (grievance, disciplinary, redundancy, etc.); and
- the extent of involvement (above that required by law that an employer is willing to allow employees and unions).

If a good working relationship can be built between management and union representatives, most issues can be resolved informally or by using the formal internal processes. However, if the employer cannot resolve a dispute, it may look externally for help in its dispute resolution in the form of conciliation, arbitration or mediation (e.g. from ACAS).

Draft

Activities

Establish via your clerk, HR director or principal:

1. Whether you have a Trade Union Recognition Agreement. If you do, when was it last reviewed?

2. What unions does your organisation recognise? Does this need to be reviewed in the light of significant rising / falling union membership numbers?

3. Whether you have a Dispute Resolution Procedure and if so, does it specify the role of the governors and the appropriate timing of their required intervention?

4. What communications procedures (face to face, team briefings, joint consultative committee, electronic and hard copy notices / briefings), exist and whether you have an Employee Voice Scheme.

Viewpoints

1. The most commonly recognised unions in the FE and skills sector include: AMiE; ATL; GMB; UCU; UNISON and Unite – the Union.

2. Day-to-day employee relations are the province of management and not governance. It is imperative therefore that governors resist any attempts made to lobby them inappropriately with a view to bypassing the correct procedure, undermining the management and getting governors involved prematurely. If governors are later required to make an impartial judgement (e.g. as part of the disputes procedure, complaints procedure, grievance / disciplinary allegation against the principal, or dismissal appeal), and if they have no prior detailed knowledge of the matter, then their objectivity cannot be called into question for this reason.

3. Nevertheless, there may be occasions when there is an allegation / complaint against the principal that requires governors' investigation, in which case the matter should be referred to the clerk, so that s/he can advise on the appropriate procedure and individuals to deal with it.

4. A staff voice scheme, staff attitude survey, or an Investors in People assessment may prove useful as barometers for the governing body to get an overview on how its employees currently view the employment relationship.

Section 5

Disciplinary, dismissal, grievance and suspension procedures

After consulting with staff in accordance with their employee relations' procedures, the governing body must approve:

- a grievance procedure for all staff;
- procedures for the suspension of all staff;
- disciplinary and dismissal procedures for senior post holders; and
- disciplinary and dismissal procedures for staff other than senior post-holders.

However:

- Where the clerk is also a member of staff at the organisation, the clerk is to be treated as a senior post-holder for the purposes of suspension, disciplinary matters or dismissal.
- Where the clerk is suspended or dismissed, under the above arrangements, that suspension or dismissal shall not affect the position of the clerk in his / her separate role of clerk to the Corporation.
- The Corporation shall not delegate:
    - the consideration of the case for dismissal; or
    - the power to determine an appeal in connection with the dismissal of the principal, the clerk or holder of a senior post, other than to a committee of members of the Corporation.

Draft

Key characteristic of fair procedures include:

- Issues should be raised and dealt with promptly.
- Treatment should be consistent.
- Investigations should be used to establish facts.
- Employers must inform the employee of the issue and allow them to respond.
- The employee should be given the opportunity to be accompanied at any formal disciplinary or grievance meeting.
- The employee should be allowed to appeal against any formal decision made.
- Relevant current legislation, including Codes of Practice and Articles and Instruments of Government, should be complied with.

Disciplinary action and dismissal

Disciplinary action needs to be taken where an employee breaches the standards required in the staff code of conduct ('misconduct') or his / her terms and conditions of employment.

Procedural stages include: informing the employee of the problem; holding a meeting with the employee to discuss the problem; allowing the employee to be accompanied at the meeting if the outcome could be a formal warning; taking some other disciplinary action or confirming a warning or other disciplinary action at an appeal; deciding on an appropriate course of action; giving the opportunity to appeal.

All employees have a statutory right to be accompanied by a colleague from the same organisation or a trade union representative when asked to attend a formal disciplinary meeting when they make a reasonable request to do so.

Senior post-holders' hearings and appeals
Formal disciplinary action against a senior post-holder or the clerk, short of dismissal, should be heard by a disciplinary panel comprising two to three governors unconnected with the issue and any appeal against the decision heard by a separate appeals committee.

The dismissal of a senior post-holder or the clerk should be heard by a special committee comprising three governors (not previously involved) and any appeal heard by an appeals committee made up of governors not previously involved in the case and ideally led by the chair of governors.
All of these panels and committees should exclude staff and student governors. The original investigating officer cannot subsequently serve on the disciplinary panel, special committee or appeal committee.

Senior post-holder investigations
Allegations should be investigated by an individual nominated by the governing body, be they internal to the organisation (e.g. the principal, a governor) or an external investigator. Whilst the investigatory meeting itself is not a formal disciplinary hearing, should the governing body deem it appropriate after the investigation, one will be set up. An investigation may not be necessary in all cases, e.g. if both sides agree on the facts of the case.

Draft

Note that if the issue is with the clerk, another clerk should be appointed to fulfil his / her role in the proceedings and the clerk should be dealt with under the senior post-holder procedures.

Informal procedure
Sometimes the nature of the issue can be dealt with informally, e.g. with verbal advice, warning or reprimand, that is not recorded on the employee's file.

Senior post-holder formal procedure
Verbal warning. A note of this relatively low-level sanction will be placed on file for a time-limited period and then discarded if the required improvements are achieved.

Senior post-holder first written warning
This is normally given by a disciplinary panel where the senior post-holder commits a serious act of misconduct, or fails to comply with a current verbal warning, or commits a further misconduct offence. The clerk will send a letter detailing the misconduct, improvements sought, timeframe within which improvement is required, that a further misconduct within the life of the warning may result in a final written warning and the right of appeal.

Senior post-holder final written warning
Governors may issue a final written warning to a senior post-holder where they failed to comply with the first written warning, a further offence of misconduct / work performance continues to be unsatisfactory or where circumstances are considered not to merit a summary dismissal but sufficient to trigger a final warning. Misconduct cases require a clerk's letter specifying the misconduct committed, improvements required and by when, and that further offence within the time period specified may result in termination.

Senior post-holder dismissal
If the special committee conclude at the disciplinary meeting that dismissal is the only option (due to the senior post-holder's failure to comply with a final written warning or committing further offences of misconduct / unsatisfactory work performance) the clerk will communicate the decision, reasons for the decision and right of appeal to the senior post- holder.

Senior post-holder gross misconduct and summary dismissal
The governing body may summarily dismiss a senior post-holder without notice or pay in lieu of notice, where, following an investigation and disciplinary meeting, the senior post- holder has been judged guilty of gross misconduct, e.g. theft, deliberate falsification of the organisation's records, bribery, corruption, bullying, a criminal offence. The clerk, on behalf of the governing body will write to the senior post-holder describing the alleged gross misconduct leading to the dismissal, the reasons they were deemed guilty and explain the right of appeal.

Senior post-holder appeal
A senior post-holder's appeal would be heard by an appeal committee of the governing body, excluding those involved in the process, the principal, staff and student governors. The disciplinary penalty will be reviewed and the outcome notified in writing. Where possible, the chair of governors should be left off the disciplinary panel and special committee in order to be able to serve on the appeal committee.

Draft

Grievance

The ACAS definition of grievances is: concerns, problems or complaints that employees raise with their employers.

Procedural stages include: employee to try and resolve the matter informally;* if that fails, employee to let the employer know the nature of the grievance; hold a meeting with the employee to discuss the grievance; allow the employee to be accompanied at the meeting; decide on appropriate action; allow the employee to take the grievance further if not resolved, i.e. to appeal. Governors need to give thought to who the most appropriate person / panel of people, might be to investigate grievances against its principal and other senior post-holders (excluding staff and student governors). It may want an external investigator if the nature of the grievance warrants this.

*In the event of a grievance being brought against a senior post-holder by another employee, once the grievance reaches the formal stage then the written grievance should be sent to the clerk who should ensure that the matter is investigated promptly. The clerk should seek advice from the HR director / manager; take steps to maintain confidentiality; organise meetings and be present to take notes; provide relevant advice; witness proceedings and convey the outcomes.

Collective grievances occur where grievances are raised on behalf of two or more employees by a representative of a recognised trade union and should be handled under the organisation's collective grievance procedure.

Suspension

Occasionally a suspension from duty may prove necessary, e.g. during an investigation pending the formal disciplinary hearing. However, an individual should only be suspended if there is a strong likelihood that his / her continued presence on site would be likely to endanger the safety of individuals, property or equipment, or that evidence might be removed, destroyed, or otherwise tampered with, or witnesses intimidated.

The decision to suspend a senior post-holder is ultimately the responsibility of the governing body, but may be exercised by the Chair or Vice Chair or the principal where delegated.

A suspension is not to be entered into lightly, should be for a fixed period, kept under review and on full pay (unless the contract of employment or procedure expressly states the circumstances where it should be without pay), notified to the individual, kept under review and made clear that it is not in itself a disciplinary action. Where somebody is suspended, they should have the suspension and reasons for it confirmed in writing without delay.

Activities

1. FollowingtheDisputeResolutionReview(DRR),whentheGovernmentchangedthe way that problems at work were dealt with, ACAS created the 'Code of Practice 1 – Disciplinary and Grievance Procedures' (April 2009) that gave authoritative advice on this area, was approved by Parliament and referred to by Employment Tribunals. Governors may wish to read it www.acas.org.uk/dgcode2009. To accompany this Code, ACAS produced a non-statutory guide giving information on handling disciplinary and grievances at work.

2. Read the following brief scenarios and then answer (either alone or with others) the question immediately below the scenario.

   - The Director of Finance, a senior post-holder, has been accused of fraud following an audit report.

   What actions should be taken, by whom and under what procedures?

   - The Principal has been accused by his Deputy (a senior post-holder) of having an 'over-bearing management style' She cites in her letter of complaint to the Clerk, the Principal's 'unreasonable' behaviour, e.g. continually telephoning her outside of working hours, sending critical emails and copying others in, undermining her authority in front of other colleagues by dismissing ideas expressed at management meetings, and failing to undertake her appraisal.

   What action should the clerk and governing body take?

3. Which governors would not be suitable to hear a grievance against a senior post- holder?

Viewpoints

1. Governors may wish to deal with matters of bullying, harassment or Public Information Disclosure Act ('whistle blowing') under separate procedures.

2. Disciplinary matters and capability are different issues and hence governors should consider having two separate policies and procedures for these issues.

3. Where there is a disciplinary issue, or a grievance raised against a worker other than an employee (e.g. an agency worker), the matter must be referred to the supplier (agency) for action.

4. Where an employee has been charged / convicted of a criminal offence, consideration should be given to the nature of the offence, how it impacts on their continued suitability to do the job, and their relationship with the employer, colleagues and service-users (including the reputation of the organisation), rather than automatically triggering a disciplinary action,

5. If, after a proper investigation, the individual concerned is found not to have been in the wrong, they may nevertheless perceive that the suspension was a punishment, might be viewed by others as such and consider their reputation tarnished. His/her return to work should therefore be handled carefully by the management and HR staff involved.

6. Disciplinary issues, dismissal, grievance and suspension between the CEO and Corporation can be complex and difficult, in which cases, governors would be advised to seek external advice, e.g. from solicitors.

7. Governors should ensure that their disciplinary and grievance procedures reflect the requirements of the Articles of Government, current employment law and the ACAS Code of Practice.

The following AoC guidance documents may assist:

- Guidance on dealing with grievances by employees that involve complaints against senior post-holders, September 2008;
- Model grievance procedure for senior post-holders when handling grievance brought by an employee who is him / herself a senior post-holder; and
- Disciplinary procedures for senior post-holders.

Section 6

Financial key performance indicators (KPIs)

In order to monitor the college's finances adequately, it is important to agree a number of key financial measures against which the college is to be assessed. The funding body has defined three key areas, in order to assess a college's financial health:

- solvency or adjusted current ratio
- performance
- gearing.

The college key performance indicators (KPIs) are then scored according to these measures, resulting in an overall financial health score and grade. The grades follow the Ofsted grading categories: Outstanding, Good, Satisfactory and Inadequate. More detail on this is contained in Section 8. The sector average for each measure is included, based upon the college finance records submitted to the funding bodies for the 2009/10 academic year. These are useful guides, however it should be noted that a wide variety of colleges of differing size, type and financial health is included within this sample. For benchmarking purposes, you may decide to narrow down this sample to include, for example, only colleges of a similar size to your own or to include only colleges with either your current, or aspiring, financial health.

Draft

Solvency

This is a measure of an organisation's ability to meet its financial liabilities in the short- term. It therefore relates to current assets such as cash and other assets that can be relatively quickly turned into cash, such as stocks, debtors and creditors due for payment within one year, including overdrafts, trade creditors (goods or services provided on short credit terms, e.g. 28 days' or 30 days' credit) and taxes owing to HMRC.

The funding bodies use one KPI for measuring a college's solvency:

Adjusted current ratio
This is the ratio between current assets and creditors falling due within one year. The adjusted current ratio used by the Skills Funding Agency excludes restricted cash from disposal of fixed assets held for future reinvestment, and assets held for resale.

The sector average for 2009/10 was 1.46 : 1.

$$\frac{\text{Cash + Debtors + Stocks: 1}}{\text{Creditors falling due within one year}}$$

Adjusted cash days in hand
This is another useful measure of solvency and gives you an indication of how long your current cash reserves would last if all sources of income ceased immediately and typical levels of expenditure continued to be incurred.

The sector average for 2009/10 was 54.14 days.

Cash x 365 days

Adjusted Income

Performance

This is a measure of an organisation's ability to generate a surplus of income over expenditure.

Operating surplus as a % of income
The operating position is a measure of an organisation's profitability and is measured through assessing the operating surplus (or deficit) as a percentage of income. This ratio excludes surpluses or deficits relating to asset disposals, taxation and reserve movements.

The sector average for 2009/10 was 2.2 %.

Income – Expenditure x 100

Income

Draft

Performance ratio
The Skills Funding Agency (SFA) has introduced a new measure of profitability, referred to as the performance ratio. The income figure used above is adjusted to exclude any non- cash items, such as capital grant releases and pension finance income, as well as excluding any one-off exceptional support income. Similarly, the expenditure figure used above is adjusted to exclude depreciation, taxation and other pension-related adjustments. These adjustments aim to provide a better measure of the underlying operating position, and a more useful measure for comparison purposes. This is the KPI now used by the SFA to assess a college's financial health.

Adjusted Operating Surplus / (Deficit) x 100

Adjusted Income

Gearing

This is a measure of an organisation's level of debt.

Borrowing as a % of income
This is a measure of the level of borrowings expressed as a percentage of income and is a good measure of how high the level of borrowings is relative to the size of the organisation.

The sector average for 2009/10 was 20.35 %.

$$\frac{\text{Loans + Overdrafts + Finance Leases x 100}}{\text{Adjusted Income}}$$

Gearing ratio
This ratio shows the level of borrowings as a percentage of the accumulated reserves (excluding pension reserve), referred to as 'net assets'. Net assets are a reflection of an organisation's financial stability over a long period of time and the SFA use this measure to calculate a college's level of gearing for financial health calculation purposes.

The sector average for 2009/10 was 18.41 %.

$$\frac{\text{Loans + Overdrafts + Finance Leases x 100}}{\text{Net Assets}}$$

Draft

Other useful KPIs

There are many other KPIs that you may find useful in accurately assessing the financial health of the organisation. Below are some suggestions, though this is not intended to be an exhaustive list.

Pay costs as a % of income
This ratio is a measure of how much of the organisation's income is spent on staffing. This is therefore useful in ascertaining whether or not the organisation is obtaining value for money from its human resource.

The sector average for 2009/10 was 65.39 %.

$$\frac{\text{Pay costs including contract tuition services x 100}}{\text{Adjusted Income}}$$

Dependency on YPLA / SFA income

Calculating the Young People's Learning Agency (YPLA) and SFA income as a percentage of total income would give an indication of the organisation's relative reliance on these income sources. These are the key funding bodies for the FE and skills sector, so you would expect this percentage to be high. However, it may be considered prudent to try to minimise the reliance on any one source of income in order to minimise the financial risks facing the organisation of any one funding stream ending or materially reducing.

The sector average for 2009/10 was 77.88 %.

$$\frac{\text{YPLA Income + SFA Income x 100}}{\text{Adjusted Income}}$$

Cash generation

This is a ratio that measures the amount of cash generated by the normal operations of an organisation. It therefore shows how much of an organisation's income is left over after normal operating expenditure, e.g. staffing, premises running costs, etc. It does not include interest payments, capital expenditure, receipts from the sale of fixed assets or loan and finance lease repayments. Whereas the operating position of the organisation may contain some large non-cash items, such as depreciation and capital grant releases, this is a measure based solely on the cash transactions of the organisation.

The sector average for 2009/10 was 6.57 %.

$$\frac{\text{Net cash flow from operating activities x 100}}{\text{Adjusted Income}}$$

Draft

Administration costs

This gives an indication of the proportion of the organisation's annual expenditure that is incurred on administration staff and non-staff costs and can therefore be used to give an indication of the level of efficiency in an organisation's back office functions.

The sector average for 2009/10 was 18.84 %.

$$\frac{\text{Administration Costs x 100}}{\text{Total Expenditure}}$$

Activities

1. Obtain the organisation's most recent set of audited financial statements.
2. Calculate as many of the above ratios as you are able.
3. Obtain a copy of the finance record that corresponds with the financial statements obtained.
4. Check your calculations against the ratios automatically calculated by the finance record.

Viewpoints

1. KPIs are a useful measure of financial performance and allow comparison with other organisations.

2. The funding body has reduced the number that it uses to calculate a college's financial health, so it is essential that a college has targets for at least these three KPIs (solvency, performance and gearing).

3. Additional KPIs will also aid governors in deciding if the organisation is providing good value for money; the use of sector benchmarks will aid this process.

4. Organisations will struggle to balance their budget if they are unable to contain their pay costs and obtain value for money from their staff, therefore also include some sort of measure of the level of pay expenditure and staff utilisation, some of which are mentioned above.

Draft

Section 7

Financial planning

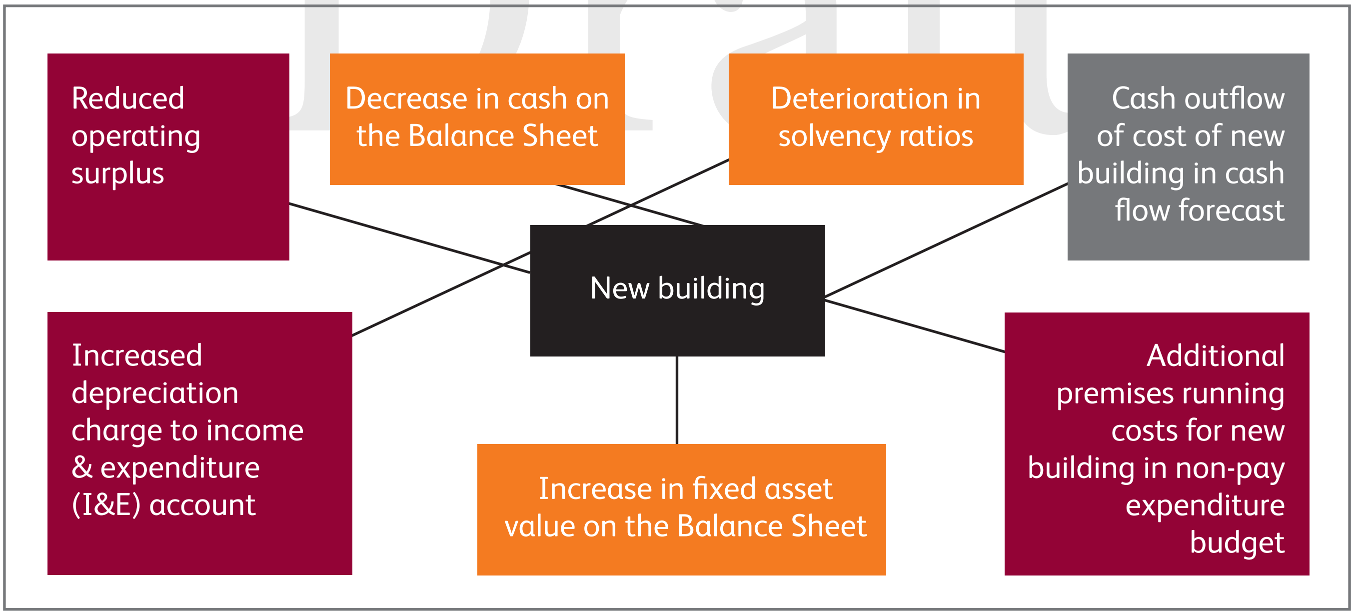
A key element in the financial planning cycle is approving the annual budget. This budget should agree with the corresponding year in the three-year financial plan and this financial plan needs to be delivered to the funding body by 31 July. Whilst the finance committee may review the budget and make recommendations for its approval, it is the responsibility of every governor to satisfy themselves that the budget can be approved in order adequately to discharge their statutory responsibility for ensuring the solvency of the college. This can only be done at a full governing body meeting.

Approving the budget

It is therefore imperative that governors obtain sufficient evidence and assurances to be able reasonably to ensure that the budget is based upon sound assumptions, prior to giving approval. The budget also needs to be consistent with any other strategic plans, as there will inevitably be a cost attached to many of the organisation's plans.

Draft

The diagram below shows an example of some of the financial impacts of a strategy to construct a new building from cash reserves which should be considered for budgeting purposes.



In order to approve the budget, governors should obtain certain assurances and / or a written report setting out the key assumptions contained therein. As demonstrated above, it is also important to ensure that it is consistent with other aspects of the organisation's strategic and operational plans. Some suggestions for useful consistency checks could include:

- Key further education grant income budgets should be based on the relevant funding body contracts.
- Student recruitment targets should be supported by detailed curriculum plans to ensure that they are deliverable and that the assumed level of student demand exists.
- Sufficient teaching resource should be contained within the budget to deliver the curriculum plan and teaching hours allocated to each course should correspond with the funded level of

guided learning hours (GLH). "Over-teaching" a course is effectively delivering teaching hours free of charge, whilst still incurring a cost to the organisation.
- Pay budgets should be consistent with the college's human resource strategy, new legislation and planned workforce levels.
- Adequate levels of inflation (especially fuel costs, which have seen exceptionally high levels of inflation in recent years), cost of living and incremental pay awards, changes to employers' national insurance rates and employer's pension contributions should have been factored into the budget.
- The cost impacts of new strategic plans should have been separately identified and included in the budget.

In addition to applying logical consistency checks, the governors should also consider the credibility of the information being presented. The accuracy of previous budgeting would be a good guide to how reliable the information being presented may be and this can be checked through comparing previous years' accounts against the original budgets.

The typical format for budget information should include the following:

- income & expenditure (I&E) account
- balance sheet
- cash flow forecast
- capital expenditure plans
- key assumptions.

The governors may also require additional evidence relating to some of the consistency checks suggested above.

Draft

Approving the financial plan

The financial plan produced should show the current year's forecast, the following year's budget and budget for a minimum of a further two years, though this could be for up to ten years in total. The financial plan is intended to help the governing body, and the appropriate funding body, to assess the financial effect of a college's strategic plans. The format for the financial plan is provided as a spreadsheet template by the funding body, and can be expanded to up to 10-years hence.

Many of the methodologies for arriving at the budget will also apply to the production of the financial plan and governors need to follow similar principles when satisfying themselves that the financial plan is equally realistic and credible. The college will not have any definitive contract information for future years upon which to base the income forecasts, but the funding bodies may publish guidance to give the college recommended assumptions to use.

Activities

1. Obtain a copy of the college's most recent set of audited financial statements.

2. Obtain a copy of the original budget for that year.

3. How accurate was the original budget compared to the final out-turn?

4. Did you receive adequate explanation for any differences during the year?

5. Obtain a copy of the most recent financial plan.

6. Is there sufficient explanation of what the key assumptions are and how they have been arrived at?

7. Do you agree that the assumptions are both prudent and realistic?

8. Is there sufficient analysis to provide assurances that these assumptions have been sufficiently thought through?

9. Does college management have a proven track record of accurate financial forecasting and budgeting?

Viewpoints

1. The FE and skills sector has seen significant changes in recent years, many of which have had a material impact on organisations' finances, often with insufficient prior notice. There may, therefore, be good reason why budgets have differed from actual financial results. However, the credibility of the financial information being presented should be a factor for governors to consider when approving the budget.

2. With income streams largely seeing no inflation or even deflation and inflationary and other cost pressures ever-present, the organisation will have to seek continuing efficiency gains and growth in order to just maintain the operating surplus at its current level, let alone improve on it.

3. Be wary of income forecasts showing short-term significant growth, especially in areas that have been traditionally difficult markets, such as full-cost recovery and international markets or where funding bodies have expressly forewarned of future funding reductions.

4. Management will be facing some very difficult decisions in this regard and governors need to be aware of the risk of over-estimating income-generating possibilities and suppressing expenditure inflation and other cost pressures in order to balance the budget.

Section 8

Financial health grading

As discussed in Section 6, the funding bodies measure a college's financial health through a combination of three KPIs: solvency, performance and gearing. These are derived from the college's financial plan as discussed in Section 7 above. This is required to be approved by governors and submitted to the relevant funding body by 31 July of each year.

The methodology for grading financial health uses grade definitions and indicators summarised in this chart:

Grade	Definition	Indicators
1 Outstanding	A provider that has very robust finances to fulfil its contractual obligations and to respond successfully to opportunities or adverse circumstances.	Normally, a provider with excellent / good indicators for solvency (current ratio), performance (cash-based operating surplus/(deficit) to income ratio), and gearing (borrowing to net assets ratio).
2 Good	A provider that has sufficiently robust finances to fulfil its contractual obligations, and to respond successfully to most opportunities or adverse circumstances.	Normally, a provider with at least two good indicators for solvency, performance and gearing.
3 Satisfactory	A provider that appears to have sufficient resources to fulfil its contractual obligations, but also appears likely to have limited capacity to respond successfully to opportunities or adverse circumstances.	Normally, a provider with at least two satisfactory indicators for solvency, performance and gearing.
4 Inadequate	A provider that is in financial difficulty and very likely to be dependent on the goodwill of others. There is a significant risk of providers in this group not being able to fulfil contractual obligations because of weak financial health.	Normally, a provider with at least two inadequate indicators for solvency, performance and gearing.

Draft

The scoring for each of the three KPIs is as follows:

Score	Solvency ratio	Performance ratio	Gearing ratio
0	< 0.5	<0 %	>= 90 % or negative
10	>= 0.5	>= 0 %	< 90 %
20	>= 0.6	>= 1 %	< 80 %
30	>= 0.7	>= 2 %	< 70 %
40	>= 0.8	>= 3 %	< 60 %
50	>= 1.0	>= 4 %	< 50 %
60	>= 1.2	>= 5 %	< 40 %
70	>= 1.4	>= 6 %	< 30 %
80	>= 1.6	>= 7 %	< 20 %
90	>= 1.8	>= 8 %	< 10 %
100	>= 2.0	>= 9 %	0 %

Draft

The scores for the three KPIs above are then totalled, leading to the overall financial health grade as follows:

Score	Grade
240 - 300	Outstanding
180 - 230	Good
120 – 170	Satisfactory
<= 110	Inadequate

The college has the ability to moderate this financial health grade in relation to certain circumstances, such as when the college is undertaking a significant capital project, or has incurred significant one-off staff restructuring costs or professional fees.

This financial health grade should then be self-assessed by the college and the governors should confirm this self-assessment, although it is not expected to differ from the auto- score grading, except in very exceptional circumstances.

Where a college’s financial health is graded as ‘inadequate’ for the first year (either in relation to the forecast or to the actual out-turn from the financial statements) or the second budgeted year, the college will receive a Financial Notice to Improve from the funding body.

Additionally, where a college’s financial health is identified as declining year-on-year, this will normally form the basis for the relevant funding body requiring a financial improvement plan or equivalent, except where a college is implementing a major capital project.

Activities

1. Obtain a copy of the college's current financial plan.

2. Identify your current financial health group and the financial health group for the final year of the financial plan.

3. Do these differ and, if so, what has caused the change?

4. Is it a realistic forecast in the current economic climate and factoring in your own local issues?

Viewpoints

1. The sector is faced with the challenge of managing continuing inflationary cost pressures during a period of reducing national funding rates, programme weightings and contract sizes for certain age groups and types of provision.

2. It may be increasingly difficult for colleges to meet the criteria for the higher bandings of financial health given these factors.

3. Governors should be aware of the 'more for less' culture and be mindful of seeking an appropriate balance of financial stability whilst still maintaining suitable levels of pay and other investments in the college infrastructure.

Section 9

Setting and monitoring financial targets

The use of KPIs, as discussed in Section 6, is an important element of the financial management of the organisation but the KPIs are relatively uninformative without some form of comparator. Using a combination of funding body financial health measures, FE and skills sector benchmarks and the organisation's own historical performance, it should be possible to set challenging but achievable strategic financial targets. Financial targets can be set over a variety of periods, e.g. monthly or annual, or they can be indefinite.

Example

A college wishes to invest in a new building with an estimated cost of £1.5 million. In order to achieve this, the college needs to grow higher cash balances by £500,000 per annum over the next three years to be able to afford this investment without further borrowings. The college needs to target a calculated level of cash generation in the budget, set at 7% and, during this period, the college also has a floor target for the current ratio of 1.5 : 1 and a minimum of 30 cash days in hand to ensure the college has an acceptable level of solvency at all times. This is an example of long-term, medium-term and short-term target-setting all working towards one clear financial strategy

Draft

Setting financial targets

Taking the organisation's financial position forward by one year based on the budgeted income, expenditure and other cash movements, such as loan repayments and capital expenditure budgets, will enable the organisation to forecast its KPIs for the year-end. Having gone through a rigorous budget approval process, it would be inconsistent to impose financial targets that differ from the ones resulting from meeting the budgeted outcomes.

Alongside these budgeted targets, the governing body should also consider suitable on- going targets to ensure that they are discharging their responsibility of safeguarding the organisation's solvency. For example, the governing body could set a target that there should always be a minimum number of cash days in hand, current ratio or actual bank balance.

As with all targets, financial targets need to be specific, measurable, achievable, relevant and time-bound (SMART targets). An example of this is set out below:

<table>
<tr>
<td>Specific:
Operating surplus is a clearly defined term that is a widely-used financial measure</td>
<td>Measurable:
The operating surplus is a standard KPI that can be calculated</td>
<td>Achievable:
The targeted operating surplus is comparable to that of the previous year</td>
<td>Relevant:
The operating surplus is a key measure of the college's cost effectiveness</td>
<td>Time-bound:
The college has a clearly-defined deadline by which the target must be achieved</td>
</tr>
<tr>
<td colspan="5">Target: The college will achieve an operating surplus of 1.5 % in the 2011/12 academic year.</td>
</tr>
</table>

The KPI targets should be clearly defined with no ambiguity. Some KPIs can be open to a certain amount of interpretation and therefore calculated in different ways, with options to include and exclude certain items in the calculation. It should be clearly defined how these ratios are to be calculated and they should be consistent with whatever comparator is being used. For example, a KPI being compared against a previous year, where a one-off item was included in the calculation, would not give a true and fair measure.

Monitoring financial targets

Once the budget and the KPIs have been agreed by governors, a timetable for monitoring the organisation's performance against those KPIs along with the format of the reporting should also be agreed.

Some of the data for the KPIs can be fairly easily calculated and compared, e.g. the current ratio (solvency KPI) can be measured and forecasted monthly once all the proper month-end accounting has taken place.

Other targets are more difficult to monitor and will depend greatly on the college's ability to keep on top of certain internal processes. For example, the monitoring of the funding body income will depend greatly on the ability of the Management Information System (MIS) function's ability to provide timely and accurate management information. The inputting and recording of student information is a complicated process and is critical to the provision of an organisation's management information. Errors within this could result in inaccurate management information being provided, leading to ill-informed decision- making at senior leadership level.

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Example
The 16-18 recruitment target for a college is 2,000 full-time students and by the end of October, the MIS function reports that there are only 1,500. The college will not be able to meet its target as there is very little that the college can do to make up a significant shortfall in 16-18 full-time recruitment after the September in-take. The MIS function then reports that 200 student records were incorrectly entered, resulting in invalid data, and, therefore these students hadn't been counted, along with a further 300 student records that hadn't been input when the report was produced. Therefore, the college has, in fact, met its 2,000 full-time student target. This demonstrates how critical accurate and timely data-input and validation can be.

Monthly reporting

Good practice for the provision of financial reporting includes the production of monthly management accounts, which could easily be expanded to include data on other areas of an organisation's business that impact on its finances, such as the student recruitment targets mentioned above.

As a minimum, governors should expect to be presented with the following information, ideally on a monthly basis, within 2-3 weeks of the end of the reporting month. These deadlines should be set and agreed at the beginning of the academic year.

Financial commentary

An important element of management accounting is a written report explaining any variances between budget and actual results, how they affect the forecasted position and details of any intended remedial actions, if any are possible. This report should cover the key funding body contract positions for the organisation, identifying where there has been or is forecasted to be any over- or under-recruitment of students and its associated financial impact. Failure to meet student recruitment targets may not have an immediate financial impact, as some contracts do not contain provision for the claw-back of funding in-year associated with under-performance. However, this will have an impact on future contract levels, so will have a financial impact in the future and is, therefore, no less important for the long-term stability of the college's finances.

Income and expenditure account (I&E)

The typical layout for an income and expenditure account, contained within the monthly management accounts might be as follows:

	Current Month			Cumulative (year-to-date)			Full Year		
	Actual	Budget	Variance	Actual	Budget	Variance	Actual	Budget	Variance
Income	A	B	A-B	C	D	C-D	E	F	E-F
Expenditure	A	B	B-A	C	D	D-C	E	F	F-E
Surplus / Deficit	A	B	A-B	C	D	C-D	E	F	E-F

Current convention would be for negative variances to be shown in brackets.

- Income higher than budget is good news'
- Income lower than budget is 'bad news'
- Expenditure lower than budget is 'good news'
- Expenditure higher than budget is 'bad news'
- The 'bad news' is shown in (brackets)

Other conventions could include the use of a traffic light colour-coding system to highlight favourable and adverse variances or text could be used next to the variance to indicate whether it is favourable or adverse.

Balance sheet

The layout for the balance sheet could be similar to the above suggested format for the I&E account, with the exception that a balance sheet is always a 'snapshot' at a fixed point in time, usually a month-end or a year-end. Therefore the current month and cumulative figures shown in the I&E account example above will be the same, so only one set of figures would be required.

Cash flow forecast

The statutory accounts include a cash flow statement which is a backward-looking review of the cash movements over the year. However, for management accounting purposes, a more useful report would give you a forward-looking view, often referred to as a cash flow forecast. The cash projection is in effect an early-warning system for any forecasted cash flow problems. It will advise governors of when the organisation is going to run low on its cash reserves and potentially have difficulty in paying its creditors or staff.

Capital expenditure

Capital expenditure differs from revenue expenditure in that it is expenditure on items that are expected to have a useful economic life of more than 12 months, whereas revenue expenditure is more consumable in nature. The governors should have already approved the capital expenditure plans of the college at the same time as signing off the revenue budget. It is therefore important that governors receive a report on capital expenditure and how this compares with the capital budget that was approved. Again, a critical piece of information here is an accurate forecast of expenditure for the year.

Debtors' report

A simple report setting out the higher-value debts owing to the organisation, how long the money has been owing and how likely it is to be recovered is useful information for governors. Artificially inflating debtors improves the appearance of the short-term solvency of the organisation and, as such, the current ratio. It is therefore important that only genuinely recoverable debts are included.

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Creditors' report

As with the debtors report above, it is useful for governors to be aware of how effectively the organisation is able to meet its payments to creditors. Any poor payment performance can result in reputational damage to the organisation, delays in goods and services being received and potential difficulties in obtaining credit with suppliers.

Additional information on the repayment of any material borrowings could also be useful.

KPIs

Any KPIs that have been agreed need to be reported against and can be presented in a simple, easy-to-understand format, an example of which is below:

Current Ratio

Targeted Year-End	1.5 : 1	
Current Month-End	1.4 : 1	Below Target
Forecasted Year-End	1.5 : 1	On Target

Contribution analysis

A key measure of the cost-effectiveness of the income-generating areas of the organisation, such as the curriculum departments, is the use of contribution analysis. This is a method of producing income budgets at curriculum department level based on their student recruitment targets. The curriculum departments will have drawn up curriculum plans to deliver the student targets and can therefore be costed to produce the staffing budget and non-pay expenditure budgets. The surplus of income over expenditure here is known as the 'contribution' to overheads.

This analysis needs to include all sources of income, including course fees. Some departments may have a unique mix of income, such as learning difficulties and disabilities provision generating additional learning support funding to subsidise the small groups and additional teaching support required for these students.

The simplest way to arrive at a contribution is to calculate the staffing cost of each curriculum department as a proportion of its income. As a guide, the sector average for 2009/10 was for teaching pay costs to constitute 38 per cent of college income, leaving a contribution to overheads of 62 per cent.

A more detailed contribution analysis would also include other teaching costs, such as teaching materials. As a guide, the sector average for 2009/10 was for 45 per cent of the college's income to be spent on all direct teaching costs, therefore leaving a contribution to overheads of 55 per cent. It is important that a standard is set as to which costs are to be included in the contribution calculations and which are not, giving a fair result across all curriculum departments. This measure of efficiency can be used alongside other human resource measures such as each individual member of teaching staff's timetabled teaching hours as a proportion of their contracted hours.

Draft

Managing budget pressures

Where the management accounting process has identified adverse pressures on the budget, it is important that governors request the production of robust and achievable action plans from management to retrieve the situation, wherever possible.. Once these action plans have been minuted, they can be followed up in the next meeting to ensure sufficient progress is being made and tangible improvements in the forecasted position are being achieved.

Activities

An example of how the quality of the financial reporting you have been receiving can be assessed is to compare the changes to the forecast throughout the year, including the final set of management accounts, to the final year-end result.

1. How closely does the year-end result match the original budget?
2. How closely does the year-end result match the forecast from the July management accounts?
3. Are you satisfied with the explanations you have received for the differences and that they were both unavoidable and unforeseeable?

Viewpoints

1. Whilst this section has put forward some suggested formats for useful in-year financial reporting, there are no prescribed templates to follow in the way that the annual financial statements are pre-determined by the funding body. Governors need to ensure that the reports that are received are fit for purpose, timely and understandable.

2. In-year financial reporting is not exclusively based upon the reporting of pure fact. In reality, some of the most critical elements, such as budgeting and forecasting, require a far higher level of skill and experience than simply interpreting and following a set of accounting rules to arrive at a set of financial statements in a prescribed template.

3. It is therefore an important element of financial governance to ensure that the financial reports that you are presented with are sufficiently challenged to ensure that the assumptions and logic applied are consistent and credible.

Draft

Section 10

Audit and financial assurance

It could be argued that there is a potential conflict of interests between the management's responsibility for the organisation's ultimate success or failure and those same individuals often being the governors' single source of information. The use of auditors is therefore an essential method of obtaining professional and independent assurances.

The audit committee

The Further Education Corporations Order, 1992 sets out the requirement for governors to establish a committee, to be known as the 'audit committee', to:

- advise on matters relating to the college's audit arrangements; and
- systems of internal control. Further details on the audit committee are contained in Module 8.

Internal auditors

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Internal auditors are used to provide assurances to the governors that:

- Internal controls are adequate.
- Governance processes are effective and efficient.
- Strategic objectives are being met.

The internal auditors are expected to provide recommendations for improvement in those areas where opportunities or deficiencies are identified.

While management is responsible for internal controls, the internal audit activities should provide assurance to management and the audit committee that internal controls are adequate.

External auditors

The external auditor, sometimes referred to as the 'financial statements auditor', has a statutory duty to make a report to governors on the truth and fairness of the organisation's annual financial report. This report must state the auditor's opinion on whether the statements have been prepared in accordance with the relevant guidelines and legislation, whether they give a true and fair view and to report any reservations.

Funding body financial assurance arrangements

The funding bodies have additional responsibilities towards the organisation and have published an audit code of practice. The purpose of the code is primarily to ensure that:

- public money is expended in accordance with the requirements of regularity and propriety; and
- public money is used for the purposes that it was intended.

A draft version of the Joint Audit Code of Practice is on this link:

The funding body's responsibilities fall into four main categories:

1. Internal control: that the systems of internal control, risk management and governance are adequate and effective for the purpose of securing the organisation's objectives and adhering to statutory, funding body and other requirements. Assurance over the organisation's system of internal control is usually obtained from the internal audit annual report where required, or financial management and control evaluation return, or both.

2. Regularity and propriety: that expenditure has been incurred in a regular and proper manner. Assurance over an organisation's regularity and propriety is obtained from the regularity audit opinions.

3. Accounting requirements: that the organisation's annual financial reports are produced in accordance with accounting requirements established by the funding bodies and accounting profession. Assurance over an organisation's accounting requirements is obtained from the financial statements and financial statement management letters.

4. Use of funds: that the organisation has earned the funding paid to it, in accordance with its funding agreements. Assurance in this area is sometimes derived from the work of the organisation's financial statement auditors, but can also be derived from direct funding assurance work carried out on the organisation's funding claims.

Draft

Activities

1. Do you know who your organisation's auditors are?

2. How long have they been the organisation's auditors?

3. Are you aware of the internal auditor's planned programme of audit work?

4. Were you involved in determining what should be included into the planned programme of audit work?

5. Do you feel that it covers the key risks that governors should be receiving assurances for?

Viewpoints

1. The use of auditors can often be governors' only truly independent view of the organisation's activities, but is a finite resource. It is therefore essential that internal auditors provide assurances to the governing body on the areas of highest risk to the organisation's finances, covered in the next section.

2. External auditors should be providing assurances on the financial statements, which include a thorough investigation of the appropriateness of the organisation's expenditure and the accuracy of the organisation's income.

Section 11

Risk management

The financial plan should be based upon suitably robust plans and levels of activity. However, given the level of uncertainty in the current economic climate and other challenges facing the organisation, it is prudent to have in place robust risk assessment processes and contingency planning.

Sensitivity analysis

Schedule 5 of the financial planning template provided by the funding body contains a section that requires the organisation to consider what it would do in the event of certain key financial assumptions proving adversely inaccurate, including such key financial areas as funding body income and staff costs.

The financial plan should be based upon the most likely outcomes. The sensitivity analysis should therefore be used to re-forecast given the worst-case scenario that the organisation believes it could face, by modelling the effect of an adverse percentage change against the prescribed key areas of the financial plan.

There are narrative boxes to accompany each sensitivity to be used to record an explanation of why the selected percentage changes have been chosen and what the organisation would do to minimise the impact on its finances.

The model identifies the change to the operating position for each sensitivity and then re- states the three main KPIs: performance, adjusted current ratio (solvency) and gearing. The financial plan template then re-states the combined impact from all the sensitivities on the college's financial health, giving the revised financial health score. This will give governors an indication of the potential impact on the financial health of the college.

If there are significant changes possible, leading to critical impacts on the college's financial health, it is considered essential by the funding body that a second financial plan be produced in full to reflect this alternative scenario.

Risk management plan

The funding bodies have previously requested that risk management plans be submitted to accompany the financial plans, but this is no longer a requirement. Organisations are still expected to keep this document updated on an on-going basis and there is published guidance which sets out the requirements for risk management planning to allow organisations to comply with the Turnbull Report on the Combined Code of Corporate Governance.

It is useful to assess both the likelihood and the probable impact of each risk in turn to establish its overall level of importance to the organisation, and it aids accountability if the responsibility for each risk is assigned to an individual (or their post) within the organisation.

Risks are sometimes measured using a scoring system. For example, a score out of ten could be assigned to the level of impact for each risk and a score out of ten could be used to measure the likelihood of the risk occurring. These could then be multiplied together to arrive at a risk percentage. The higher the result, the more robust the contingency planning needs to be.

Draft

Example 1:
Risk of severe earthquake destroying the college
Likelihood 1
Impact 10
Risk Score 10%

Example 2:
Risk of under-recruitment of 16-18 students
Likelihood 8
Impact 8
Risk Score 64%

This methodology is useful to simplify the risk assessment process and make it easier to understand but standardisation is essential if this is to be used across the organisation by different individuals.

It is suggested that organisations' plans should cover the following types of risks:

- strategic
- compliance
- operational
- financial
- reputational.

In practice, these risk types will overlap and it is probable that even non-financial risks will result in a financial impact on the organisation. Some examples of risks typically arising in college risk management plans might include:

- poor student recruitment, retention and achievement
- inability to adequately recruit and retain key staff
- weak financial solvency and financial health
- unsatisfactory buildings / learning environment
- ineffective MIS function
- poor Ofsted inspection / audit result
- negative publicity.

Disaster recovery plan

Organisations are expected to have in place contingency plans that would be required in the event of a major disaster affecting day-today operations. In addition to the usual risks of fire, flood or other 'acts of God', organisations should consider the effects of events such as failure of information technology services, corruption or loss of essential data, sudden loss of key staff or default of major suppliers.

Organisations are recommended to establish a formal process to define and allocate responsibilities for action to be taken in the event of any major disaster occurrence. As a minimum, this process should identify a key manager who will take on the role of business continuity management. The person in this position would take control of the implementation plan and identify such support as necessary.

Draft

The main initial aspects of this role would be to:

- implement immediate emergency reaction;
- notify and mobilise support services;
- control central coordination;
- assess actual and potential damage;
- communicate clear instructions and guidance; and
- restore essential functions.

Organisations should be clear in establishing contingency plans and of the need for regular review and assessment of the plans' functionality. Regular testing, monitoring and feedback should ensure that the need for updating is considered.

Good practice self-assessment checklist

The funding body has published a self-assessment checklist as part of the financial planning handbook to assist organisations in reviewing their risk and disaster management plans. It is not considered that all elements of the checklist would apply to all organisations but it is a useful prompt to select those items considered to be important to your organisation and agree an appropriate review process with management.

The key headings are:

- Senior management supports and promotes risk management
- The organisation's culture supports well thought-through risk-taking and innovation
- Risk management policies and the benefits of effective risk management are clearly communicated to all staff
- Risk management is embedded in management processes
- Management of risks is closely linked to the achievement of objectives
- Risks associated with other organisations are assessed and managed

Activities

1. Obtain a copy of your organisation's risk management plan.

2. How recently was it updated?

3. Does it identify all the key risks you would expect?

4. Have the likelihood and impact of each risk been estimated and scored?

5. Is the contingency planning sufficiently thorough and does it cover all the significant risks?

Draft

Viewpoints

1. The funding body assesses a college's financial health based on its financial plan and financial statements and will issue a Financial Notice to Improve if the financial health is inadequate. There is therefore a risk that forecasts and budgets contained within the financial plan are either overly optimistic to avoid giving the funding body this picture of the college's finances, or give an overly optimistic view of the speed and extent of a financial recovery from a currently inadequate financial health assessment.

2. Governors need to be aware of all the key risks facing the organisation and their potential impact on financial health to ensure that they have been adequately considered in the preparation of the financial plan. Appropriate and challenging scrutiny in this area will ensure that the financial plan is based on the most likely outcomes and that governors can avoid, as far as is possible, the risk of nasty surprises.

3. Risks have been identified in each section throughout this module; it is clear that robust risk assessment is an essential skill for effective financial governance. This includes being able to assess the credibility of the financial data being presented to you and the people presenting it.

Draft

Section 12

Funding methodology

The methodology behind learning and skills funding is extremely complicated and there are too many intricacies to go into in sufficient detail in this section. However, given the usually substantial proportion of an organisation's income that comes from the funding bodies, it is useful to at least have a basic understanding of some of the key elements that affect an organisation's funding body income and some of the terminology that you may encounter.

Funding bodies

Funding for learners aged 16-18 comes from the Young People's Learning Agency (YPLA) and funding for learners aged 19 or over and apprentices of all ages post-16 comes from the Skills Funding Agency (SFA). The qualifying date for determining which funding body a student falls into is 31 August each year. Any student aged 19 or over on this date will be classified as an adult for funding purposes and fall under the SFA's remit. Conversely, any student aged 18 or under on this date will be funded by the YPLA.

Draft

Funding formula

The elements that make up the funding formula are as follows:

- Standard learner number (SLN)
- National funding rate
- Provider factor
- Additional Learning Support (ALS).

Funding = (SLN x National Funding Rate x Provider Factor) + ALS

Standard Learner number (SLN)

The SLN is a measure of the volume of activity associated with a qualification and in classroom-based learning. SLN values are directly related to the guided learning hours (GLH). SLN values for apprenticeship frameworks are based on a variety of sources of information including activity costing research, data and Sector Skills Councils.

Listed SLN values are used where there is a high degree of consistency amongst organisations in the number of GLH used to deliver the learning aim. The values for individually-listed learning aims are fixed irrespective of the time actually taken to complete. Unlisted SLN values are determined by the actual GLH that an organisation delivers.

National funding rates

The national funding rates are the same for all colleges and are reviewed annually by the funding bodies. The national rates per SLN for 2011/12 are:

16-18 Learner responsive	£2,920
16-18 Apprenticeships	£2,862
Adult skills budget classroom learning	£2,615
19-24 Apprenticeships	£2,615
25+ Apprenticeships	£2,092

Provider factor

While the SLN gives a robust measure of volume of learning, the provider factor is an additional measure that reflects the relative cost of certain types of provision, comprising the following drivers of relative cost:

- programme weighting (e.g. students on a motor vehicle course would attract 30 per cent more funding than students on a business studies course);
- disadvantage uplift (e.g. students living in wards deemed as ‘deprived’ attract more funding, based upon the Index of Multiple Deprivation 2004);
- area costs (e.g. students studying in inner London receive 20 per cent more funding than students studying in Lancashire);
- short programme modifier (this gives an uplift to students on programmes of less than 225 GLH);
- care standards (relates to residential accommodation for 16 and 17 year-olds); and success factor (see below).

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Success factor

The success rate is calculated as the percentage of students that achieve their learning outcomes related to the number who start (see section below to understand at what point the student will ‘count’).

In calculating the success factor, the cost of delivering provision for learners who have not achieved is recognised, and therefore the minimum success factor will be 50 per cent in recognition of the work the college has done with those students.

The success factor is then the mid-point between the success rate and 100 per cent, as calculated by this formula:

$$\text{Success factor} = 50\,\% + \frac{\text{Success rate }\%}{2}$$

The success factor is the only element of the provider factor that actually reduces the level of income an organisation receives and is, therefore, a system of rewarding organisations with better success rates by funding them at a higher rate than an organisation with lower success rates for the same qualifications.

The formula for calculating the organisation's provider factor is summarised below.

Provider factor = Programme weighting
x Disadvantage uplift
x Area costs factor
x Short programme modifier
x Care standards factor
x Success factor

Draft

Additional learning support (ALS)

ALS is any activity that provides direct support for learning to individual students, over and above that which is normally provided, e.g. one-to-one support provided by a classroom assistant. The need for additional learning support may arise from a learning difficulty and/or disability. The cost of this support is paid for through a separate funding stream from the funding bodies.

When does a student count as a 'start'?

A threshold applies to all learning based on the planned number of days between the actual start date and the planned end date. In order for a student to be funded they have to remain 'in learning' up to and including the 'threshold day' as per the table below:

Planned number of days in learning	Threshold
Less than 14 days (< 2 weeks)	1 day
Between 14 and 168 days (2 weeks – 24 weeks)	14 days (2 weeks)
More than168 days (>= 24 weeks)	42 days (6 weeks)

Only when a student reaches this threshold will the organisation generate any funding for them and this is also the point at which they count for success rate purposes. Therefore, the benefits of keeping a learner for one day after the threshold would result in the full amount of funding being drawn down, but they would also count as a non-retained student and, therefore reduce the organisation's success rates.

Contract management

The action taken for under- or over-performance against contract will vary between each funding body and has often varied year-on-year, so it is important to keep up-to-date with the current funding body policies.

For 2011/12, the YPLA will not adjust most organisations' funding in-year but may review future funding allocations for organisations who consistently under-deliver against their contract.
In 2011/12, the SFA will invite some organisations to provide a mid-year forecast of expected performance by the year-end, against the overall cash profile. These organisations will not be subject to in-year clawback of funding at this stage and all reconciliation will take place at the final funding claim stage.

However, the SFA will take account of any forecast cash under-delivery in agreeing allocations for the following academic year, including looking at the accuracy of previous years' mid-year forecasts. There will be no automatic payments for over-delivery but the Skills Funding Agency may wish to discuss increases to an organisation's maximum contract value if there are funds released to the sector during the year due to forecasted under-performance from other organisations.

Draft

Module review

After working through this module you should now understand and feel comfortable with:

- outlining the governing body's main legal responsibilities towards the organisation's finances, the staff that it employs directly, other workers whose services it engages and responsibilities it delegates to the principal;
- explaining the strategic role of governors in establishing and keeping under review the terms and conditions of employment for staff;
- stating the difference between governors' responsibilities for senior post-holders and for other staff;
- outlining the governing body's responsibilities for staff learning, development and appraisals;
- describing the organisation's employee relations and how it deals with trade union representatives and officers;
- explaining the role of governors in disciplinary, grievance and suspension procedures;
- the governing body's responsibilities towards the organisation's solvency, safeguarding of its assets and approving the annual budget;
- the use of financial information and implementing action plans where indicators are adverse; and
- the use of risk management to identify key risks and the preparation of contingency plans.

More questions? Why not re-read anything that particularly interested you, seek assistance from the organisation's finance director, human resource director / manager or pursue a theme through the further reading list below?

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Summary of key learning points

In this module you have looked at a range of resource matters including human resource, (including recruitment, disciplinary, grievance, suspension, dismissal, equality, employer relations, reward management, performance management and appraisal) financial and risk management in your college. You have explored your own responsibility as a member of the governing body in terms of being an employer and for ensuring the solvency of the institution. As clerk, you will have looked at your responsibilities in terms of supporting the governing body in meeting its responsibilities.

You will have noted that the governing body is the employer, that it has a different level of responsibility and role to play in relation to its direct employees, senior post holder employees and other workers whose services it may engage indirectly.

You will understand what the distinct roles of the governing body, the principal and clerk are, that they are all vital but different and understand the need to respect the boundaries between the roles. Employment law is complex and changes frequently. We have therefore looked at internal and external sources of advice that the governing body utilise in order to help it to meet its responsibilities as an employer.

Readers will be acutely aware of the need to have financial considerations in mind when acting as the employer. For example when determining how workforce reward will be managed.

You will have read many references to the importance of governors satisfying themselves that the assumptions behind budgets and other financial plans have been robustly challenged, that they are based upon all available facts and related guidance and that the individuals presenting the data are credible. You should also have an idea of the types of financial information that you should expect to see and how to interpret and challenge it.

You will have studied the need for an adequate risk management approach as a key methodology for ascertaining the most probable and high-impacting risks facing any strategic plans presented and that suitable contingency planning should be in place to minimise the impact of any such adverse eventualities.

Where next?

As an individual - You have now completed work on Module 10. If there are areas in which you need more guidance or information, they may be covered in other modules. Turn to 'Check your current knowledge and skills' in 'Using the materials'. This self-assessment questionnaire will help you to decide which modules or sections of modules may help to fill these gaps. Tick the useful sections for further study.

If you cannot find the information you need within these materials, turn to the 'Action planner' in 'Using the Materials'. Note down what further information, support or guidance you would like. The 'Action planner' gives advice on who may be able to help, and how.

Putting it into action

We hope that working through this module has raised useful questions, increased your awareness of issues and given your ideas for practical action that you would like to follow up. The 'Action planner' in 'Using the Materials' contains a section where you can note down any questions or action points that you want to follow up within your own college.

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Glossary

ACAS: The Advisory, Conciliation and Arbitration Service. Can assist governors with employee relations responsibilities by supplying up-to-date information, independent advice, and training. ACAS can work with employers and employees to resolve ER problems and thereby improve performance.

ACM: Association of College Managers. (See Amie)

ALS: Additional learning support

AMiE: The Association of Managers in Education. The trade union and professional association for leaders and managers in colleges and schools arising from a partnership between ACM (Association of College Managers) and ATL.

AoC: Association of Colleges A not-for-profit organisation created by colleges for colleges. Membership subscriptions and commercially generated revenue sustain its work in representing and promoting the interests of colleges and in the provision of support services.

ATL: Association of Teachers and Lecturers ATLS: Associate teacher learning and skills

BIS: Department for Business, Innovation and Skills

CPD: Continuing professional development (any activity undertaken by individuals for the purposes of updating their knowledge, e.g. for teachers: ‘of the subjects they teach or developing their teaching skills’).

CTLLS: Certificate in teaching in the lifelong learning sector

DfE: Department for Education

DTLLS: Diploma in teaching in the lifelong learning sector

EHRC: Equality and Human Rights Commission (replaced the CRE and EOC)

GLH: Guided learning hours – the number of hours of teaching allocated to each course

GMB: A trade union

HSE: Health and Safety Executive The HSE is the national independent regulator for work related health, safety and illness. The range of activities include shaping and reviewing regulations, producing research and statistics, enforcing the law, advising and guiding service users.

Harassment: Unwanted conduct that has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

IiP: Investors in People A people management tool intended to help organisations reach an externally recognised standard, help to meet business objectives by developing and harnessing the skills of its people.

IfL: Institute for Learning

KPIs: Key performance indicators

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LSIS: Learning and Skills Improvement Service A sector- owned body that aims to accelerate the drive for excellence in the learning and skills sector by building the sector's own capacity to design, commission and deliver improvement and strategic change.

MIS: Management information systems

PTLLS: Preparing to teach in the lifelong learning sector

QTLS: Qualified teacher learning and skills

QTS: Qualified teacher status
SFA: Skills Funding Agency

SLN: Standard learner number

SMART: Targets that are Specific (stretching), Measurable, Agreed (appropriate, achievable), Realistic and Timed

UCU: University and College Union. A teaching staff trade union.

UNISON: A trade union.

Unite – the Union: A trade union

Victimisation: Unfair treatment of an employee who has made or supported a complaint.

YPLA: Young People's Learning Agency

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Further reading

LSIS Governance training and support

The Association of Colleges (AoC) site has a great deal of useful information. In order to access the members' area, with information for governors, you have to create a member's account.

- AoC Employment Bulletins
- AoC Workforce Benchmarking Data – including staff turnover and sickness absence rates
- AoC Child protection and safeguarding 'mini-site'
- AoC Model contracts of employment for senior post-holders
- AoC Model disciplinary and grievance procedures for senior post-holders
- AoC Employment A-Z library – provides links to various guides and model documents for managing employment law matters
- AoC Guidance on dealing with grievances that involve complaints against senior post- holders
- Information and guidance on national pay negotiations

The following two AoC sites are available without logging in to the members' area.

- AoC Equality and diversity 'mini-site'
- AoC Governance website - information about AoC's work on representing and supporting governors in colleges, including the AoC governor's council and networking events
- Chartered Institute of Personnel and Development The CIPD offer organisations support to build their HR and leadership capabilities and are a source of training, and resources in the HR and development field
- Chartered Management Institute A source of practical management support, advice, training, qualifications and research
- Consulting employees on health and safety HSE guidance document, 2008 (INDG232)
- Discipline and grievances at work: The ACAS guide, 2011 (ACAS/H02)
- Disclosure of Information to Trade Unions, 2003 (ACAS/CP02)
- Equality and Human Rights Commission
    - Equality Act Codes of Practice, 2011
    - Equality Act Advice and Guidance
    - FAQs on the equality duty
- The Further Education Teachers Qualifications (England) Regulations 2001
- The Further Education Teachers Qualifications (England) Regulations 2007
- Health and Safety at Work, An Essential Guide for Managers, Jeremy Stranks, 2010 ISBN 978 0 7494 5148
- HR Law Live': Mills & Reeve LLP Solicitors provide an HR blog which is accessible to all with the option to sign up to automatic alerts / feeds
- Leading health and safety at work: Leadership actions for directors and board members, HSE and Institute of Directors, 2011(INDG417) http://www.hse.gov.uk/pubns/indg417.pdf
- People Management Source of current thinking and practice in HR M. Contains a searchable database of archive, analysis, legal news, case studies, and reviews on HR matters
- Personnel Today Source of current thinking and practice in HRM. Specialist services include salary surveys, HR health checks and benchmarking
- Time Off for Trade Union Duties and Activities, 2010 (ACAS/CP03)
- Trade Union Congress Provides governors with a useful source on current employee relations thinking, publications, events and workers' rights
- The National Minimum Wage (Amendment) (no. 2) Regulations, 2011

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Friars House, Manor House Drive
Coventry CV1 2TE
t 024 7662 7900
e enquiries@lsis.org.uk
www.lsis.org.uk