



# Module 2

# Values and ethical framework

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, the **Education Act 2011** had been implemented. It abolished the Young People's Learning Agency, with funding for colleges now being administered by either the Education Funding Agency and / or the Skills Funding Agency. It 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 29b 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. In some cases, the statutory provision for sixth form colleges differs from that of general further education (GFE) colleges with the **Department for Education (DfE)** overseeing the former and the **Department for Business, Innovation and Skills (BIS)** the latter; however all colleges will now be actively considering the changes that affect them and all governors will need to be aware of the implications for their own organisation. 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 GFE colleges have been encouraged formally to adopt it. It has the full support of the government and is seen 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".

The government's reform plan for the further education and skills system was set out in **New Challenges, New Chances** published on 1 December 2011 and further refined in **Rigour and Responsiveness in Skills** published in April 2013. A **summary of NCNC** is available from LSIS. In November 2011 the final report of the Independent Commission on Colleges in their Communities, **A Dynamic Nucleus**, was published. Alongside New Challenges, New Chances, these two documents establish the foundation for the future development of the further education and skills sector.

The 2013 version of the Governance Training materials incorporate these significant changes to the operation of further education but all governors are recommended to familiarise themselves with and take account of the key documents referred to in this preface. The materials enshrine the six principles set out in the Good Governance Standard for Public Services by the Independent Commission on **Good Governance in Public Services** (2005), to which all governing bodies are referred.

The **Association of Colleges** has also compiled a **Governance Resource Library** which provides a wide range of online resources for governors and which will usefully complement these materials.

The **Learning and Skills Improvement Service** which has produced these updated and much valued governance training modules will cease to exist after August 2013. It is hoped the essential updating of these resources will be regularly carried out by other existing organisations or newly-emerging ones.

## Acknowledgements

The first edition of these training materials was published by the Further Education Funding Council in 2000 and further updated and amended in 2002 following the establishment of the Learning and Skills Council in 2002. They were commissioned by LSC in 2002 under the Standards Fund and produced by a partnership of national organisations involved in further education.

This third edition of the training materials has been published by **The Learning and Skills Improvement Service (LSIS)**, as part of the **Leadership Skills for Governance** programme, and incorporates the changes brought about by the Education Act 2011 and government policy initiatives as at January 2013.

## Authors

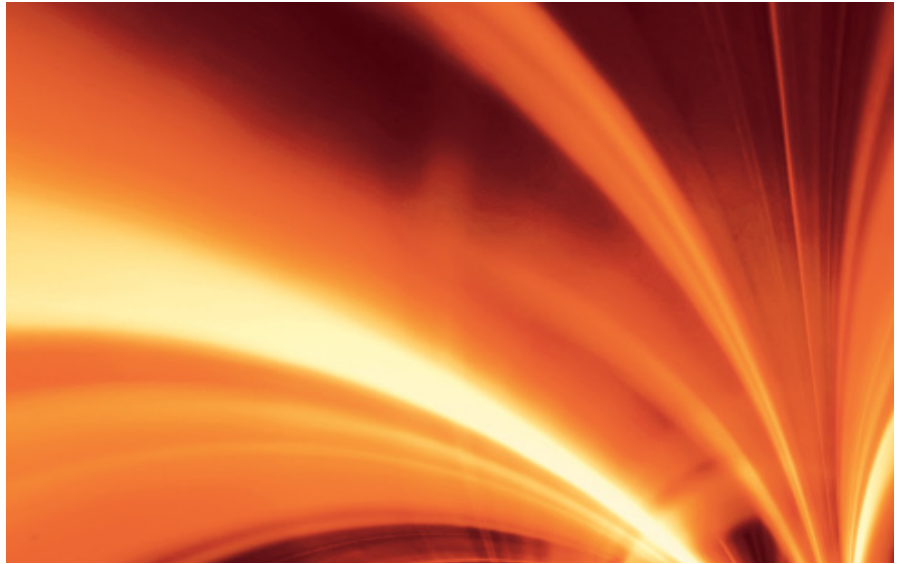
Denise Whitworth

We would like to thank the advisory group for their input into developing the modules; and the critical readers for their helpful comments on the draft materials.

Feedback on the modules should be sent to [fegovernance@lsis.org.uk](mailto:fegovernance@lsis.org.uk)

© LSIS 2013

Extracts from this publication may be reproduced for non-commercial education or training purposes on condition that the source is acknowledged and the findings not misrepresented. Otherwise, no part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical photocopying, recording, or otherwise, without the prior permission of the copyright owner.



## Contents

---

Introduction 04

---

Section 1  
The Nolan Committee's seven principles of public life 06

---

Section 2  
The code of conduct, register of interests and codes of governance 09

---

Section 3  
Whistleblowing 14

---

Section 4  
Equal opportunities 20

---

Section 5  
Human rights 25

---

Module review 30

---

Further reading 32

# Introduction

As a governor you will need to have a firm grasp of the ethical values which the governing body must adhere to. The governing body, as custodian of public funds, should strive to maintain high standards, act with integrity and behave ethically at all times. The work of the Nolan Committee (which we will look at in Section 1) and other groups looking at public service bodies, have raised awareness of these issues and many governing bodies have now adopted codes of conduct to ensure this happens.

Ethical and moral values go hand-in-hand with the legal responsibilities of governing bodies, which we look at in Module 3: The statutory framework. Indeed these values have influenced the development of the law, both through legislation and through the way in which the courts develop the law. Many of the values that we look at in this module (freedom of speech, whistleblowing, equal opportunities and human rights) are now grounded in the statute book. These values need to be embraced by the governing body and brought to the heart of everything it does. Governors play a key role with others in helping to achieve this.

Finally, an important caveat: bear in mind that some of the legal issues covered in this module are extremely complex. The aim is to give you an overview and awareness of these issues. It is not an exhaustive guide nor is it a substitute for appropriate legal advice.

## Aims

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

- explain how the Nolan Committee's seven principles of public life and other principles impact on the activities of the governing body and your role as a governor;
- describe your role in relation to the governing body's code of conduct and conflicts of interest; describe your board's position in relation to agreeing a code of governance;
- set out the reasons for having a whistleblowing policy;
- explain the governing body's role in ensuring that the organisation promotes equal opportunities; and
- explain the governors' responsibilities in relation to whistleblowing, equal opportunities and human rights and identify when specialist advice needs to be sought.

## Contents

Mark the sections you want to study and tick them off as you complete them.

To do	Done		
<input type="checkbox"/>	<input type="checkbox"/>	Section 1	The Nolan Committee's seven principles of public life
<input type="checkbox"/>	<input type="checkbox"/>	Section 2	The code of conduct, register of interests and codes of governance
<input type="checkbox"/>	<input type="checkbox"/>	Section 3	Whistleblowing
<input type="checkbox"/>	<input type="checkbox"/>	Section 4	Equal opportunities
<input type="checkbox"/>	<input type="checkbox"/>	Section 5	Human rights

## Working on the self-study activities

These materials have been designed for flexible use, so that you can work through sections and activities in your own time and at your own pace if you would find it difficult to attend external training sessions. Several governors point out the value of working on at least some of the suggested activities together with another governor or group of governors, as there is much potential to learn from each other's experience. You might find it useful to become involved in a local or regional governors' network in which these training materials are used.

## What you will need

To complete activities in this module you will need a copy of the following documents:

- the governing body's code of conduct;
- the agreed **English Colleges' Foundation Code of Governance**;
- the organisation's whistleblowing procedure;
- the organisation's sexual harassment procedure;
- the organisation's disability statement; and
- the organisation's equal opportunities policies and procedures.

Where you need to make notes in response to activity questions, we suggest you do this in a notebook or on separate sheets of loose-leaf paper, and store the information you compile along with the module for future reference. References listed in the further reading section may also be helpful.

# Section 1

## The Nolan Committee's seven principles of public life

Public concern about the financial probity of members of parliament and other holders of public office led to the setting up in 1994 of the **Committee on Standards in Public Life** (chaired first by Lord Nolan and later by Lord Neill). The Nolan Committee made important recommendations which affect the governance of further education colleges including:

- the appointment and training of governors;
- openness;
- codes of conduct;
- conflicts of interest;
- whistleblowing; and
- the limits of commercial confidentiality.

At the heart of these recommendations is the notion that organisations are entrusted with public funds and so should demonstrate high standards in corporate governance and the conduct of public business. The Nolan Committee drew up seven principles of public life as a yardstick against which public service may be measured:

### **Selflessness**

Holders of public office should take decisions solely in terms of the interest of the public. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, and recommending individuals for rewards and benefits, holders of public office should make choices on merit alone.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands this.

### **Honesty**

Holders of public office have a duty to declare any private interest relating to their public office duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

## Leadership

Holders of public office should promote and support these principles by leadership and example.

The **Relevant Authorities (General Principles) Order, 2001** added three additional principles to those identified by the Nolan Committee:

### Respect for others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

### Duty to uphold the law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

### Stewardship (using resources prudently)

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

## Activity

### Conflicts of interest

The search committee wants to recommend the appointment of Mrs Khan as a business member of the governing body. She appears to have all the skills the governing body needs; her son attended the college and she knows it well; and her appointment would help redress the current gender and racial imbalance in the governing body. Mrs Khan works on a part-time basis for a law firm which the college instructs from time to time. She has never done any work for the college.

Are there any issues about this appointment which you would want to raise with the search committee?

### Viewpoint

The fact that Mrs Khan is employed by one of the college's professional advisers puts her in a position where she may have a conflict of interest. This may be addressed by her declaring an interest in any matter under discussion where the conflict is apparent – such as appointing or instructing legal advisers, or any matter where the governing body is considering legal advice given by her firm. This however may not be sufficient. It may not always be apparent when a conflict will arise. It could be argued that Mrs Khan's membership is in itself a conflict of interest and undermines the principles of integrity and selflessness. It may be better, and simpler for Mrs Khan and the governing body, if they did not put themselves in a position where their integrity could be unwittingly compromised.

### Responsiveness

One aspect of openness and accountability is that governing bodies need to be responsive to key stakeholder groups such as students, staff, the local community and local authorities. Note that responsiveness is not the same thing as accountability, which we will look at in Module 3:

The main statutory framework. Concerns that colleges were too isolated from their local community led to the changes to the Instrument of Government in 1999 and the latest amendment in 2007. Below are some of the ways in which governing bodies have further increased their responsiveness, going beyond what is required of them in their Instruments of Government:

- holding an annual public meeting at which the organisation's annual report and accounts are presented;
- developing a process for self-evaluation (see Module 5: The process of governance, Section 7 Self-assessment, development and inspection);
- placing a limit on the number of terms governors should normally serve;
- ensuring that decision-making is open and transparent; and
- conducting a systematic review of responsiveness and publishing the outcomes of the review in the annual report.

### **Committee on Standards in Public Life Ethics and Best Practice – what works**

In May 2012, 17 years after the publication of the original Nolan report, **The Committee on Standards in Public Life** announced a review to examine what drives high standards of ethical behaviour, to look at the key characteristics of ethically healthy organisations, and to look at the role played by codes of conduct and other mechanisms for the promotion of standards.

You may find it helpful to consider the results of this review entitled Standards Matter published in January 2013 in relation to your own College Code of Conduct – see Section 2, below.

### **Direct recruitment of 14-16 year olds by colleges** **September 2013**

Colleges will need to consider carefully the advantages and disadvantages of recruiting 14-16 year old students, both from the legal perspective and in relation to their relationships with local schools and academies. The governing body will need to be involved, to ensure that the outcome of the self-assessment is satisfactory and that there has been suitable consultation with the college's stakeholders.



## Section 2

### The code of conduct, register of interests and codes of governance

The Nolan Committee recommended that all governing bodies should have a code of conduct. This sets out how the governing body and individual governors are expected to carry out their responsibilities.

**A code of conduct might include the recognition that each governor should:**

- work co-operatively with other governors;
- act as an individual and not as a delegate or representative;
- not use the position for personal benefit;
- take up opportunities for training and development; and
- seek to attend meetings of the governing body and committees.

The code of conduct might also set out the roles and responsibilities of governors, how governors should behave in meetings and the meaning of openness and confidentiality.

As a governor you have a collective responsibility with other governors for ensuring that high standards of conduct are kept and maintained. As part of this process, the clerk maintains a register of interests of governors and should make this available to anyone wishing to inspect it. The register must be regularly updated and reviewed. If governors feel that their independence and judgement might be affected on any item, they should report this before the meeting to the clerk or the Chair, or during the meeting to the Chair. If the Chair rules that there is a conflict of interest, the governor may be asked to take no further part in the discussion or to leave the meeting for that agenda item. When in doubt, a governor should always declare an interest.

**Not all conflicts of interest are financial. For example, a governor may:**

- know or be related to a candidate for a senior post-holder's position or a person seeking membership of the governing body;
- be a member of a trade union seeking recognition in the organisation;
- be in a position as a local authority member or member of a business to use information as a governor to shape decisions affecting the organisation; or
- be related to someone who has an interest in a matter being discussed.

The next activity looks at a situation where you might be called on to give advice about the status of the code of conduct.

#### Activity

##### Signing up to the code of conduct

A member of staff is appointed to the governing body after a rather contentious election, with some strong views expressed by various candidates. The new staff governor is willing to sign the register of interests as she believes in openness and transparency in the business of the college. However she expresses reservations about one section in the code of conduct which states that governors must abide by the collective decisions taken by the governing body as a whole. She claims this would

infringe her right to freedom of speech under the Human Rights Act 1998.

You are unsure of the implications of the Act for individual members of governing bodies. You know that a refusal to sign a code of conduct may be grounds for removing a governor but you are uncertain about how this might be done. You are aware that there will be very strong feelings amongst the staff if it appears that an elected staff member is being discriminated against.

1. How could you check out the areas about which you feel uncertain?
2. Is the refusal to sign the code of conduct grounds for removing the governor?
3. What damage-limiting action could you take if the member of staff is removed or decides to resign?
4. How could you prevent this kind of situation arising in future?

### Viewpoint

1. Governors need to ensure that appropriate legal advice is provided to the governing body. If they are unsure of the legal position then professional advice should be sought from the college's solicitors.
2. The college is legally required by statute to maintain a register of interests disclosed to the governing body but is not legally required to have a code of conduct (although it will usually be a code of conduct that determines what interests, other than financial interests, should be disclosed). The grounds for removing a governor from office are very limited (see Module 3: The main statutory framework). Would refusing to sign up to the code of conduct render this staff governor 'unfit to serve'? The test is subjective (i.e. is the governing body satisfied that she is 'unfit to serve?') so this may be a difficult and controversial route to go down.
3. In the event that the staff member is removed or decides to resign, governors will need to consider the impact on staff. It will be important to communicate clearly to staff that the governing body is legally bound to maintain a register of interests and that they should also have a code of conduct.
4. In future, signing the code of conduct could be made a condition of appointment (i.e. if the selected governor refuses to sign, the appointment does not have effect). You could take steps to ensure that anyone wishing to join the governing body is aware of the requirement to sign the code of conduct and complete the register of interests. This would avoid embarrassment after the selection procedure is completed. When sending out information about vacancies, you might, as governors, usefully point out this requirement to potential governors. You could also advise the search committee to include a question on this when interviewing potential governors.

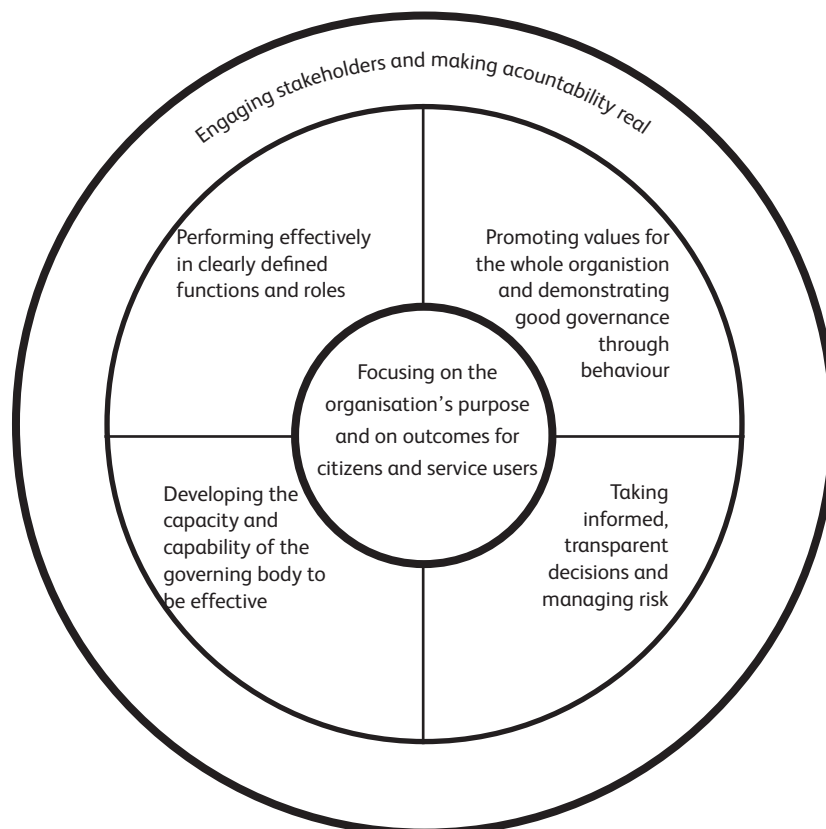
**Eversheds** has created an online service to meet the needs of governors at FE and sixth-form colleges in England. Their service includes access to a draft code of conduct which can be customised for the organisation's use.

## Codes of governance

### Brief background leading to the development of a college code of governance

Building on the Nolan principles and the additional three principles outlined in The Relevant Authorities (General Principles) Order 2001, the **Good Governance Standard for Public Services** (2004) sets out six core principles, illustrated in figure 1, that should underpin the governance arrangements of all public bodies.

Figure 1: Principles underpinning governance



1. **Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users**
  - 1.1 being clear about the organisation's purpose and its intended outcomes for citizens and service users;
  - 1.2 making sure that users receive a high quality service; and
  - 1.3 making sure that taxpayers receive value for money.
2. **Good governance means performing effectively in clearly-defined functions and roles**
  - 2.1 being clear about the functions of the governing body;
  - 2.2 being clear about the responsibilities of non-executives and the executive, and making sure that those responsibilities are carried out; and
  - 2.3 being clear about relationships between governors and the public.

3. **Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**
  - 3.1 putting organisational values into practice; and
  - 3.2 individual governors behaving in ways that uphold and exemplify effective governance.
4. **Good governance means taking informed, transparent decisions and managing risk**
  - 4.1 being rigorous and transparent about how decisions are made;
  - 4.2 having and using good quality information, advice and support; and
  - 4.3 making sure that an effective risk management system is in operation.
5. **Good governance means developing the capacity and capability of the governing body to be effective**
  - 5.1 making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;
  - 5.2 developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group; and
  - 5.3 striking a balance in the membership of the governing body, between continuity and renewal.
6. **Good governance means engaging stakeholders and making accountability real**
  - 6.1 understanding formal and informal accountability relationships;
  - 6.2 taking an active and planned approach to dialogue with and accountability to the public;
  - 6.3 taking an active and planned approach to responsibility to staff; and
  - 6.4 engaging effectively with institutional stakeholders.

Adrienne Fresko and Sue Rubenstein produced a paper, **Accountability, Authority and Leadership: A governance perspective**, informed by the Good Governance Standard in Public Services, and in response to the Foster report of 2005 (**Realising the potential: a review of the future role of FE Colleges**).

The key points they raised were highlighted in the **Review of Governance and Strategic Leadership in English Further Education** published by LSIS and the Association of Colleges (AoC) in November 2009 and sometimes called the Schofield report. This included 15 recommendations for how governance and strategic leadership in FE might be enhanced.

The first recommendation was “to develop a College Code of Governance for FE colleges to be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector”.

Alan Schofield, who was the main report editor, stated that, the recommendation for a code of governance in FE was “not intended to increase regulatory compliance, and it needs to be considered in the context of other recommendations for increasing flexibility in governance... To simply introduce a code and then maintain all existing arrangements would not be desirable.”

In November 2011, the English Colleges’ **Foundation Code of Governance** was formally endorsed by the Minister for Further Education and Skills, John Hayes, on behalf of BIS and DfE.

You may also find it helpful to refer to the UK Code on Corporate Governance, and consider how it may inform your views on the development and/or review of your organisation’s code. The **UK Corporate Governance Code** (formerly the Combined Code) sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders.

### Activity

Explore your own governing body approach to agreeing a College Code of Governance. How does this compare with other organisations across the sector? How does it relate to your code of conduct for governors and your own prior experience (if appropriate) of corporate governance?

### Viewpoint

John Hayes’ endorsement of the College Code of Governance and contribution of the foreword reflects the importance that the Government and its agencies place upon the Code in the context of the freedoms and flexibilities being extended to colleges. There is no doubt that the major emphasis on freedom and responsibility, as expressed by the Government, will be much in evidence as a result of this and governing bodies will need to address a range of new opportunities and associated risks. The Code has been designed so that it does not conflict with the existing Instrument and Articles in force for any college that was incorporated under the 1992 Act, and as subsequently amended.

Since this is a ‘Foundation’ Code, work will continue with BIS to progress strands of additional work, which will further inform, guide and support the further development of the Code.

## Section 3

### Whistleblowing

The term ‘whistleblowing’ describes a situation where an employee or ex-employee publicly discloses wrongdoings within an organisation such as fraud, financial mismanagement, breach of health and safety or environmental laws, or any other danger. This kind of public disclosure leaves the whistleblower extremely exposed because it is likely to breach obligations which are implied in all employment contracts (for example fidelity, trust, and most importantly, the duty not to use or disclose the employer’s trade secrets or confidential information). Until recently, it was common for colleges to extend these implied duties by explicitly adding confidentiality requirements or ‘gagging clauses’ to their contracts of employment. A breach of these conditions is often classed as gross misconduct justifying summary dismissal. Both the Public Accounts Committee and the second report of the Nolan Committee opposed the use of these clauses to inhibit the disclosure of maladministration or the misuse of public funds.

The key piece of whistleblowing legislation is the **Public Interest Disclosure Act 1998** (PIDA) which applies to almost all workers and employees who ordinarily work in Great Britain. The need to protect whistleblowers from victimisation was recognised in the Public Interest Disclosure Act. The PIDA is intended to encourage all employers to adopt procedures which promote openness and communication and which provide members of staff with clearly defined routes for making internal and external disclosures.

#### What a whistleblowing policy should contain

Employers should make clear to employees what to do if they come across malpractice in the workplace. This should encourage employees to inform someone with the ability to do something about the problem. Guidance will need to reflect the circumstances of individual employers, but should make the following clear:

- The kinds of action targeted by the legislation are unacceptable and the employer attaches importance to identifying and remedying malpractice. Specific examples of unacceptable behaviour should usually be included.
- Employees should inform their line manager immediately if they become aware that any of the specified actions are happening (or have happened, or are likely to happen).
- In more serious cases (for example, if the allegation is about the actions of their line manager), the employee should feel able to raise the issue with a more senior manager, bypassing lower levels of management.
- Whistleblowers can ask for their concerns to be treated in confidence and such wishes will be respected.
- Employees will not be penalised for informing management about any of the specified actions.

#### Implementing the policy

A procedure is useful only insofar as it is followed. One problem is the reluctance many employees feel to ‘snitch’ on colleagues. Despite often showing great courage and determination, whistleblowers are not necessarily popular with their colleagues, particularly where the disclosure threatens people’s jobs. HR managers have a duty to support whistleblowers who act in good faith and it is in the long-term interests of the organisation that they should do so.

Managers may need training to ensure that matters brought to their attention are resolved in line with the policy and in a way which will cause least damage to the organisation. Policies need to have the full support of directors and senior managers and be communicated to all employees.

### **Managers notified of a concern:**

- have a responsibility to ensure that concerns raised are taken seriously;
- should, where appropriate, investigate properly and make an objective assessment of the concern;
- should keep the employee advised of progress; and
- have a responsibility to ensure that the action necessary to resolve a concern is taken.

Employers may wish to specify alternative means for employees to register concerns within the organisation where they do not wish to approach their line manager. This could be, for example, a telephone 'hotline' and / or a designated manager or officer reporting to the most senior person in the organisation.

Confidentiality clauses, which are often found in the contract of employment or staff handbook, may need to be qualified to take into account workers' rights under the Act. There has been an increase in anonymous reporting hotlines for employees. The European Commission has recommended that companies should not encourage anonymous reporting since whistleblowing schemes require the processing of personal data and are subject to data protection rules.

It is preferable to deal with whistleblowing separately rather than as an extension to or part of an existing grievance procedure, while cross-referencing procedures on discipline and grievances. This is partly because the scale of risk to the organisation and to the employee will generally be significantly greater in whistleblowing cases than in other matters. In addition, the whistleblower may have no grievance in relation to their terms and conditions or indeed in relation to the employer (it may, for example, relate to the conduct of a contractor).

In summary, the PIDA protects a worker who discloses certain types of information within certain circumstances. The term 'worker' covers people who are self-employed as well as employees who work under a contract of employment or apprenticeship. To qualify for protection the worker making the disclosure must reasonably believe that one of the following qualifying grounds applies:

- that a criminal offence is being or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with a legal obligation;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual is likely to be in danger or that the environment has been, is being or is likely to be damaged; or
- that information about a matter in one of the categories above has been, is being or is likely to be deliberately concealed.

If the disclosure fits these qualifying grounds, it is a protected disclosure provided that the worker has made it in good faith to a person or body specified in the PIDA, including:

- the employer;
- some other responsible person if the worker believes that the relevant failure relates solely or mainly to the conduct of that person or to any other matter for which that person has legal responsibility (for example, where a member of staff is concerned that health and safety requirements are being breached by a placement provider and that the safety of students may be at risk, he may want to raise his concerns with the placement provider);
- another person indicated in the procedure authorised by the employer; or
- a legal adviser in the course of obtaining legal advice.

Where the disclosure is made externally, for example to the funding body, government department, other public authority or the media, there are additional burdens placed on the whistleblower. These include showing reasonable grounds for believing the disclosure was substantially true, that it was not made for personal gain and that the disclosure was reasonable in all the circumstances. The additional requirements increase depending on whether the disclosure is made to a person or regulatory body as prescribed by the Secretary of State (such as the Inland Revenue, Data Protection Registrar or the Health and Safety Executive), and on whether it relates to some exceptionally serious failure, or is a general external disclosure.

The Nolan Committee recommended that further and higher education corporations should institute codes of practice on whistleblowing and this was endorsed by the report of the National Committee of Enquiry into Higher Education. A code of practice should encourage members of staff to raise genuine concerns about malpractice internally, without fear of adverse treatment. The procedure should balance safeguards for members of staff who raise genuine concerns about malpractice against the need to protect staff, the governing body, students and the organisation itself from unfounded allegations.

## Activity

### Reviewing your whistleblowing procedure

Does your organisation have a whistleblowing procedure in place? If it does, request a copy from your clerk and consider whether it covers the following elements of good practice:

- There should be designated members of staff to act as an accessible first point of contact for those members of staff with concerns.
- These staff members should receive training for this role.
- They should interview those concerned with the complaint. The member of staff raising the concerns should be accompanied at all interviews by a local trade union representative or a work colleague if they so wish.
- Following the interviews, the designated staff members should make recommendations to the principal on a confidential basis.
- The principal should decide what further action, if any, to take and the member of staff who first raised the concerns should be notified of the decision.
- The procedure should remain confidential at all times.
- Where the allegations concern one of the designated members of staff or the principal, there should be arrangements within the procedure for discussing the matter with, or having it considered by someone else.



- No disciplinary action should be taken against the member of staff because of a disclosure made by them in accordance with the procedure, nor should the staff member be victimised because of their actions.
- There should be a procedure for the clerk to refer unresolved concerns to the funding provider, government department or appropriate public body.

## Viewpoint

This activity may have suggested ways in which you might further develop your own governing body's procedure. If there is no procedure in place, this should be something you discuss with the clerk, principal and Chair and then raise as an item to be considered by the governors. Having an appropriate procedure will help to ensure that the organisation's response to a whistleblowing situation complies with the law and adequately protects the people involved.

The next activity gives you an opportunity to consider how you would apply the whistleblowing procedure to a specific situation.

## Activity

### Whistleblowing case study

Your Chair of governors has just received an anonymous letter at his home telling him that the principal of Learnwell College, Mr Larry Flash, (who is currently on holiday in Mauritius), has been fiddling his expenses. In particular, the letter claims that the cost of his current trip has been paid for by the college. Attached to the letter is a copy of an expenses claim form in the sum of £5,232 for travel to Mauritius for the purpose of interviewing a new personnel manager and a copy of a letter from AWOL Travel to the principal confirming reservations for a holiday for two in Mauritius at a cost of £5,232.

The Chair's view is that, "If someone is not prepared to stand by these allegations and put their name to them then I do not believe it warrants any investigation. I have worked with Larry Flash now for six years and trust him implicitly. The best place for this letter is the bin. We don't want this sort of person working at the college." A whistleblowing procedure has been on the governing body's list of outstanding matters for a long time but has not yet been implemented.

1. What advice would you give?
2. What practical steps do you think should be taken in response to the letter?
3. What would you do if there appeared to be some truth in the allegations?
4. What would you do if you or someone else on the governing body found out who wrote the letter?

## Viewpoint

Compare your own ideas with the suggestions below.

- You must make it clear that the Chair cannot simply ignore this matter and hush it up. The allegation concerns a potentially serious misuse of public funds and the college as custodian of these funds needs to investigate fully. If it is ignored, the sender of the letter may raise these concerns elsewhere – with the funding provider, the local MP, or possibly the press.
- As a first response, discussions should be held with the Chair about making urgent preliminary investigations to establish whether the letter is a hoax or whether there is some truth in it. This could be done by checking the original expenses claim and speaking to the relevant travel company. These investigations could be made by the Chair with the help, for example, of the clerk or other designated governors.
- If there appears to be some truth in the disclosure, it must be properly investigated. Depending on the facts which come out in the preliminary enquiry, it may be something which can be dealt with internally, perhaps under the leadership of the Chair, or it may be necessary to instruct the external auditors to prepare a report. The clerk may decide it is appropriate to inform the college's legal advisers and, after investigation, the full governing body and possibly the funding provider.

Depending on the circumstances it may be necessary to suspend the principal and to take disciplinary action against him.

- If, during the course of the investigation, the identity of the sender is revealed, the sender may be protected under PIDA. If the sender had a reasonable belief that the principal was defrauding the college it would count as a qualifying disclosure, provided it was not made for an ulterior motive. Disclosing the information to the Chair (in the absence of a policy stating otherwise) would count as a protected disclosure. Dismissing someone who makes a protected disclosure would be automatically unfair. The member of staff may also assert his or her right to freedom of speech. Care should therefore be taken before instigating any disciplinary action. If the letter is a hoax and sent as such then disciplinary action may be appropriate.

This situation shows how important it is to have a whistleblowing procedure in place. Such a procedure gives both the whistleblower and the college clear guidelines on the right course of action.

## Anti-bribery policy and procedures

The Bribery Act 2010 came into force in July 2011 and has significant implications for schools, colleges and employers. From 1 July 2011, all businesses and organisations are accountable for ensuring the actions of their employees do not breach this legislation. Whilst most schools, colleges and other sector organisations would probably not expect to have to review their business practices in light of the legislation, the Bribery Act creates offences which can impact as heavily on education providers as they can on other businesses.

Under the Act, organisations need to have in place adequate procedures to prevent bribery occurring if they are to avail themselves of the 'adequate procedures' defence. The Ministry of Justice has published its guidance. **The Bribery Act – Guidance about procedures, March 2011**, which sets out six principles for organisations to follow to ensure compliance with the Act.

## Summary of the main provisions of the Bribery Act 2010

### The Act sets out four offences:

- Offences of bribing another person - offering, promising or giving a bribe. (Section 1)
- Offences relating to being bribed - requesting, agreeing to receive or accepting a bribe. (Section 2)
- Bribery of foreign public officials - offering, promising or giving a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her official functions. (Section 6)
- Failure of commercial organisations to prevent bribery - a commercial organisation is liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. (Section 7) For the purposes of Section 7, a person is associated with an organisation if they perform services for or on behalf of the organisation. This would include the organisation's employees, agents or subsidiaries and would be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between the organisation and the associated party.

### There are steps that colleges and other sector organisations can take as employers to ensure that they have 'adequate procedures' in place, including:

- a statement of values;
- a code of conduct;
- detailed policies and procedures, including, for example, policies on gifts, hospitality, facilitation payments, vetting outside agents and advisers, lobbying and political contributions;
- risk management procedures, for example, regular auditing of the employer's compliance function;
- training and guidance; and
- whistleblowing procedures.

## Section 4

### Equal opportunities

The promotion of equality should be at the heart of everything a college or other sector organisation does, from appointing members of the governing body to the relationships between the organisation and its staff, its students and the wider community. It is fundamental to the drive for social inclusion and the raising of standards in education. It is important that everyone, regardless of gender, race, background or disability, has access to further education.

**Equal opportunities in themselves are not a legal concept but they have been supported by a raft of legislation of which the most important references are:**

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Human Rights Act 1998
- the Learning and Skills Act 2000
- the Special Educational Needs and Disability Act 2001
- the Race Relations (Amendment) Act 2001
- the Equality Act 2010.

The law in this area is complex and you will certainly not be expected to be an expert on it. This section summarises some of the main legal provisions before looking at what the organisation should be doing to promote equal opportunities generally.

The Equality and Human Rights Commission opened in October 2007. The Commission brought together the work of the three previous equality commissions (the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission). It also took on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, and has a mandate to promote understanding of the Human Rights Act.

The **Equality Act 2010** provides a new legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The provisions of the Equality Act were brought into force at different times to allow time for the people and organisations affected by the new laws to prepare for them. Most of the provisions came into force on 1 October 2010.

On 5 April 2011 the new public sector Equality Duty came into force. The Equality Duty replaced the three previous duties on race, disability and gender, bringing them together into a single duty, and extends it to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment. The aim of the Equality Duty is for public bodies to consider the needs of all individuals in their day-to-day work, in developing policy, in delivering services, and in relation to their own employees.

The new Equality and Human Rights Commission (EHRC) codes of practice on employment, services and equal pay, reflecting the Equality Act 2010 as commenced on 1 October 2010, came into force on 6 April 2011. They replaced five existing codes issued by the predecessor bodies to the EHRC. The

new codes are aimed primarily at the specialist reader: courts or employment tribunals; lawyers; HR specialists. For the non-specialist reader, there is a range of guidance available from the EHRC and in the form of summary and quick-start guides produced by the **Government Equalities Office**. The codes are admissible in evidence in civil proceedings.

For further information see the briefing paper **'The new Equality Act 2010 – What does it mean for FE and Skills sector?'**, prepared by Dr Christine Rose, which outlines the key changes that the Act introduced for the learning and skills sector. The full report is available via the LSIS website. It should be read in conjunction with statutory and non- statutory guidance issued by the Equality and Human Rights Commission.

## **A new extended public sector Equality Duty**

Public sector duties to promote race, disability and gender equality were replaced in 2010 and extended in the Act by a new **public sector Equality Duty**.

**The Act introduced a new public sector Equality Duty, which requires organisations to give due regard to:**

- eliminating discrimination, harassment and victimisation;
- advancing equality of opportunity;
- fostering good relations; and
- encouraging persons with a protected characteristic to participate in public life or any other activities where participation is disproportionately low.

## **Specific duties regulations**

As with previous public sector duties, the general duty is underpinned by specific duties to assist organisations to meet the general duty more effectively.

**Two new specific duties were introduced in the 2010 Act:**

- to publish information
- to set and publish equality objectives.

## **Activity**

### **Equality objectives**

Organisations will now need to develop and publish their equality objectives at least every four years, alongside evidence of engagement activities. Consider your organisation's approach to agreeing their equality objectives. What steps are being taken to meet the requirements of the 2010 Act?

## Viewpoint

Research conducted by Dr Christine Rose on behalf of the Equality and Human Rights Commission explored practice in the public sector in setting equality objectives.

### These were some of the key messages:

- Develop a sound evidence base before identifying, devising and prioritising equality objectives. This ensures an organisation focuses on genuine issues within its own context.
- Ensure evidence includes qualitative and quantitative information, for workforce and service delivery.
- Provide transparency and clarity about the outcomes of information gathering activities, to demonstrate publicly the reasons for choosing objectives.
- Consider how to capture the voice of people whose opinions are rarely identified, for example people with mental health difficulties, gypsies and travellers, and people with learning difficulties, caring responsibilities or on a low income.
- Avoid equality objectives that are little more than overarching aims, top-level commitments, or maintenance of current practice. Instead, devise specific objectives that clearly demonstrate how successful implementation might lead to tangible and measurable improvements in equality.
- Prioritise objectives to focus on the most significant issues for the organisation's remit.
- Ensure people who have participated in consultation activities have an opportunity to refine equality objectives.
- Recognise that successful engagement is transparent and influential; this means making clear to all involved who participated in engagement activities how people's views influenced the choice of objectives, and how people have been involved in early and final decisions on setting and prioritising equality objectives.
- Cross-reference each equality objective with the aim or aims of the Equality Duty that the objective is attempting to meet. This ensures that all aspects of the duty have been considered.
- Evidence the link between the equality objective and the organisation's strategic or corporate objectives.

As the Equality Act 2010 harmonised the previous equality legislation, it is important to recognise that much of what is required of FE and skills providers is already being carried out by them.

For further information check the Equality and Human Rights Commission (EHRC) website, specifically for the guidance: **[What equality law means for you as an education provider-further and higher education.](#)**

## Disability discrimination

The Disability Rights Commission closed on 28 September 2007. Its responsibility for helping secure civil rights for disabled people transferred to the new **Equality and Human Rights Commission** which opened for business on 1 October 2007.

The Equality and Human Rights Commission is required by law to have a Disability Committee. This was considered necessary by the Government because of the highly distinctive nature of disability equality law, in particular the duties to make reasonable adjustments, and the complex technical and ethical issues associated with promoting disability equality. The Disability Committee has decision-making powers in relation to those matters which solely concern disability, and the Commission must seek the advice of the Disability Committee on all matters which relate to disability in a significant way. Information about the Commission's work on disability equality can be found via **their website**.

### Activity

#### Reviewing your organisation's disability statement.

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA). However, the Disability Equality Duty in the DDA continues to apply.

#### Review your organisation's disability statement to make sure it complies with current regulations. Check that it covers the following points:

- your organisation's policies on the provision of facilities for education;
- the name of staff members with special responsibility for admission arrangements for students with disabilities;
- educational facilities and support arrangements for handling complaints and appeals;
- additional support or special arrangements during examinations and assessments;
- counselling and welfare arrangements; and
- physical access to educational and other facilities.

### Viewpoint

If this review suggests that there are gaps in the scope of your organisation's disability statement, you may want to note down the areas for action in the 'Action planner', and discuss them with the principal, clerk or Chair of governors.

In September 2011, the Equalities and Human Rights Commission (EHRC) published **Hidden in plain sight**, the inquiry's final report into disability-related harassment and how well this is currently being addressed by public authorities.

#### What does equality mean in practice for governors?

To consider what this means for governors, we need to look at the governing body's role in promoting equality. The governing body needs to consider how the organisation and its management are responding to the following responsibilities:

- ensuring there is no unlawful discrimination;
- acting positively where appropriate;
- ensuring awareness of diversity issues;

- promoting the organisation's ability to respond to a diverse student body and community at large; and
- publishing information and setting and publishing equality objectives to demonstrate compliance with the general public sector equality duty.

To avoid unlawful discrimination, the governing body needs to ensure that the job descriptions of key staff include a requirement to be aware of discrimination issues as they affect particular areas of the organisation's activity. The governing body also needs to ensure that all the relevant equality policies and procedures are in place, that staff and students are aware of them, and that key staff are trained in their importance. Such policies should be kept under review.

**To make sure an equality policy is put into practice in an organisation, the Equality and Human Rights Commission states that there should be:**

- a demonstrable commitment to the policy from the very top of your organisation;
- the agreement, understanding and support of all your staff and stakeholders (such as trade unions) for the policy's implementation;
- involvement of your learners, staff and stakeholders in the drafting of the policy;
- extensive promotion of the policy both within your organisation and to potential workers, contractors and suppliers;
- training provided to all your staff to explain what the equality policy says and what it means to them;
- incorporation of the policy into your organisation's business strategy;
- an explicit willingness to challenge and, if necessary, discipline anyone not following the policy;
- reference made to the equality policy in other policies within your organisation; and
- an action plan in place which includes a commitment to a regular policy review. Your review should examine your progress in delivering the action plan and ensure that this information is shared.

The Equalities and Human Rights Commission published a consultation in October 2011 which sought views to help the EHRC develop its strategic plan for 2012-2015. The plan will cover the commission's goals and priorities and is due to be laid before parliament in April 2012.



## Section 5

### Human rights

This section looks at sector organisations' legal responsibilities for ensuring the individual freedoms set out in the Human Rights Act and at their specific responsibilities for academic freedom and freedom of speech.

#### The Human Rights Act

The Human Rights Act 1998 (also known as the Act, or the HRA) came into force in the United Kingdom in October 2000. It is composed of a series of sections that have the effect of codifying the protections in the European Convention on Human Rights into UK law. All public bodies (such as courts, police, local governments, hospitals, publicly-funded schools) and other bodies carrying out public functions have to comply with the Convention.

The rights guaranteed by the Convention are now directly enforceable in the UK courts. The HRA has important implications for colleges and other sector organisations but the extent of those implications will only emerge as the law is tested.

- The Human Rights Act makes it unlawful for a public authority to act in a way which is incompatible with Convention rights 'see box below'; it creates a new cause of legal action against public authorities in the UK courts.
- It requires all legislation to be interpreted so as to be compatible with the HRA wherever possible. Where it is not possible to do this, the courts generally have the power to quash subordinate legislation such as statutory instruments. The courts cannot set aside primary legislation but they can make a 'declaration of incompatibility' in order to prompt government action to amend the legislation.
- It requires UK courts and tribunals to take into account the case law of the European Court in Strasbourg.

#### The Convention rights

The Convention guarantees a number of rights and freedoms. **These include the right to:**

- not suffer degrading or inhuman treatment – Article 3;
- a fair trial – Article 6 (see below for further detail);
- respect for private and family life, home and correspondence – Article 8;
- freedom of thought, conscience and religion – Article 9;
- freedom of expression – Article 10;
- freedom of assembly and association – Article 11;
- prohibition of discrimination in the enjoyment of Convention rights – Article 14;
- peaceful enjoyment of possessions and protection of property – Article 1 of First Protocol; and
- access to education – Article 2 of First Protocol.

With the exception of Article 6, the rights set out above are ‘qualified rights’. **Interference with them is permissible only so long as what is done:**

- has its basis in law;
- is necessary in a democratic society, i.e. it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued (an important concept known as ‘the principle of proportionality’); and
- is related to one of the permissible aims set out in the relevant article (e.g. for the protection of public health and order or for the protection of the rights and freedoms of others).

This means that at times a balance has to be struck between competing interests such as the rights of a particular student or member of staff against the rights of others in the organisation, and the public interest.

### Are colleges public authorities?

The HRA does not define what a public authority is. Some bodies are clearly public authorities, such as local authorities, courts, DfE, Ofsted, and maintained schools. Such public authorities must comply with the HRA in all their activities. Although colleges may be excluded from this designation this is very unlikely to make any difference to their responsibilities under the HRA.

The HRA also covers private organisations which carry out functions of a public nature but only in respect of their public functions, not their private functions.

There has been some debate as to whether colleges are public authorities or whether they fall into the hybrid category. There is a strong argument that further education corporations, as they are statutory, are public authorities, but some commentators regard them as hybrids. Colleges with different legal structures are likely to be regarded as hybrid public authorities. The significance is that if the college is regarded as a hybrid, the HRA will cover the college’s relationship with students (i.e. the provision of education) which will be regarded as a public function but not the college’s activities as an employer which will be seen as private. However, until the matter is decided by the courts it is safest to err on the side of caution and ensure that your organisation complies with the HRA in all its activities.

### Article 6: the right to a fair trial

This states that everyone in the determination of their ‘civil rights or obligations’ is entitled to a **fair and public hearing** within a **reasonable time** by an **independent and impartial tribunal**.

How does this affect colleges? The requirements of Article 6 may be satisfied if there is a right of appeal to a judicial body which in itself complies with the requirements of Article 6. This is the case where a member of staff who is dismissed has the right to bring a claim before an industrial tribunal. In the case of an excluded student, however, sometimes the only legal action they can bring is one of judicial review. This is only a limited review and does not itself satisfy the requirements of Article 6. Therefore if a student is excluded following a disciplinary procedure which does not comply with the requirements of Article 6, the college may have infringed this right. Nobody can say with certainty how the HRA will impact on the relationship between the governing body and college staff and students until there is a body of case law which tells us how the courts interpret the Act. Some Articles, however, are likely to be more relevant than others. The following activity gives you a chance to think about aspects of college functions that might be affected.

## Activity

### Human rights

Which rights or freedoms could potentially be infringed in the following situations? Look back at the table of Convention rights and decide which articles, if any, you think might apply to the following activities:

- monitoring staff email communications;
- asking staff to undergo medical checks;
- disciplining a whistleblower for disclosing information to a local councillor;
- declining to allow Muslim and Jewish staff time off for major religious holidays;
- refusing a place to a student applicant;
- excluding a student after exam failure; and
- holding exams on a religious holiday observed by ethnic minority students.

## Viewpoint

Governors are not expected to be experts on the HRA. Governors will, however, want to know that someone in the organisation's management team is keeping their eye on the ball. This activity is intended to alert you to the possible implications of some of your organisation's activities. We suggest you compare your own thoughts with the discussion and further explanation below, bearing in mind that no-one yet knows what case law will decide in the future.

### Rights of staff

If colleges are hybrid public authorities, their employment activities may not be covered by the HRA. The dividing line between public and private activities, however, may not always be clear and colleges should bring a respect for human rights to the forefront of all they do.

- **Article 3** – the right not to suffer degrading or inhuman treatment could be breached in instances of serious sex and race discrimination which cause humiliation and mental distress.
- **Article 8** – the right to respect for private and family life could be infringed by a number of common activities including:
  - CCTV surveillance;
  - monitoring email communications;
  - recording staff phone calls; and
  - medical checks or compulsory or random drug testing.

These are, however, qualified rights and can be overridden where there is lawful justification. For example monitoring of emails may be justified if its purpose is to ensure that offensive or abusive emails are not sent, thereby protecting the rights and freedom of others. It is also worth noting that the Telecommunications (Lawful Business Practice) (Interception of Telecommunications) Regulations 2000 give employers quite wide powers to intercept communications.

- **Article 9** – freedom of religion could be breached where an employee is not able to practise their religion, for instance people of minority faiths not being allowed time off for religious holidays.
- **Article 10** – freedom of expression. The Public Interest Disclosure Act (PIDA) may be subject to a challenge of compatibility because only a limited number of disclosures are protected and these must be to certain 'designated' persons. The restrictions might compromise the right of freedom of speech. See the information below on academic freedom and freedom of speech.

## Rights of students

Students are able to rely on the rights of privacy and family life, religion and freedom of expression just as staff are able to do.

- **Article 9** – where the institution has significant numbers of students with religious faiths whose major festivals occur during term-time, reasonable attempts should be made to avoid holding exams on those days.
- Students may wish to rely on the right to education set out in **Article 1 of the First Protocol** to the Convention, for example in trying to dispute a refusal of a place or to challenge exclusion after exam failure. However, it is unclear whether the right to education extends beyond compulsory school age. The Court of Human Rights has held that universities are entitled to insist that an applicant has the ability to pass the course and this is likely to apply to many courses offered by FE colleges.
- However, once a student is on a course they will have contractual rights against the organisation which are likely to be civil rights. When an organisation makes a decision affecting these rights they will have to respect the right to a fair trial set out in Article 6.

We hope this exploratory discussion of the HRA has shown how important it is that the organisation reviews its internal procedures, and keeps them under review to make sure that they are compliant with the HRA. If the organisation wishes to do something which may infringe the rights of students or staff it is important that such action is the subject of a clear policy statement so that students and staff are aware of what the organisation is doing, that it can justify the action under the provisions of the HRA and that the interference with rights and freedoms is kept to an absolute minimum.

## Academic freedom and freedom of speech

Article 10 of the Convention reinforces the importance of the principles of academic freedom and freedom of speech, which are closely related. These principles have long been regarded as of vital significance by the education sector and were already enshrined in our legislation.

The principle of academic freedom is embedded in the articles of government of further education corporations and often repeated in the contracts of employment of academic staff and in staff disciplinary procedures. This right is linked to intellectual property rights and the use of the internet to disseminate materials. It reflects the importance which society attaches to the right of individuals to pursue lines of teaching or research which may be unpopular or controversial. One of the effects of Article 10 may be to extend the right of academic freedom to all staff, not just academics.

Under the provisions of the **Education Act (No. 2) 1986**, the governing body of a college is required to take such steps as are reasonably practicable to ensure freedom of speech within the law for students, members of staff and for visiting speakers. Governing bodies are also required to ensure that no one is denied the use of the organisation's premises on the grounds of his or her beliefs, views, policies or objectives. A code of practice setting out the procedures for meetings held on the premises and the conduct expected of those attending should be maintained.

## Activity

### Reviewing the values which underpin the work of governors

You may find it useful to review the topics covered in this module and to identify any areas in which you would feel you would benefit from additional training or development, or further legal advice. Use the checklist below to help you identify the areas in which you consider you are fairly knowledgeable and those in which you feel less confident. Note down any areas to follow up in the 'Action planner'.

Score 1 – 5, where 1 equals not at all confident and 5 equals fairly knowledgeable.

- Nolan principles
- Code of conduct
- Register of interests
- Public Information Disclosure Act
- Whistleblowing procedure
- Disability statement
- Equality Act 2010
- Human Rights Act
- Freedom of speech
- Academic freedom

## Viewpoint

The social and ethical values which underpin the work of FE colleges and other sector organisations are codified in a complex legal framework. You cannot be an expert in all areas, but you need to be aware of this framework and clear about when to seek further legal advice. You also need to be aware of best practice within the sector so that you can collectively as governors achieve high standards, not simply the minimum required by law.

You will find it very valuable to compare your governing body's approach to these issues with that of other organisations. Regular contact with other governors will enable you to exchange information and ideas about developing best practice.

## Module review

This module has looked at the ethical and moral values which govern and influence your work as a governor. **If you have worked through this module you should be able to:**

- explain how the Nolan Committee's seven principles of public life impact on the activities of the governing body and your role as a governor;
- describe governors' responsibilities in relation to the governing body's code of conduct and conflicts of interest;
- set out the reasons for having a whistleblowing policy;
- explain the governing body's role in ensuring that the organisation promotes equal opportunities; and
- explain the governors' responsibilities in relation to whistleblowing, equality and human rights and identify when specialist advice needs to be sought.

### Summary of key learning points

The recommendations of the Nolan Committee and its seven principles of public life have had an important impact on the governance of FE colleges and on the role of the clerk.

Governing bodies need to consider ways of becoming more responsive to their key stakeholder groups.

Every governing body should have an agreed code of conduct as well as a register of governors' financial and other interests.

A whistleblowing procedure is important to provide guidelines for staff wishing to raise concerns about wrongdoings within the college (e.g. fraud, financial mismanagement or health and safety issues) and guidance to the organisation on how to deal with such disclosures.

Whistleblowers are protected by the Public Interest Disclosure Act from dismissal or victimisation provided the disclosure meets the criteria set out in the Act.

It is unlawful to discriminate against students and staff on the grounds of sex, marital status, sexual orientation, colour, race, nationality or ethnic or national origins.

It is unlawful to discriminate against staff for reasons relating to their disability or to fail to make reasonable adjustments to accommodate the requirements of staff or job applicants. This includes modifying equipment, altering working practices and making physical alterations to premises.

Every college is required to publish a disability statement annually. This should be approved by the governing body.

The governing body should start with itself in the promotion of equal opportunities within the organisation and thus lead by example.

The full implications of the Human Rights Act 1998 for colleges and other sector organisations are as yet uncertain but it will continue to have an impact upon a number of the organisation's activities.

Academic freedom and freedom of speech are fundamental to the activities in a college; they reflect the importance which society attaches to the right to express views or pursue lines of teaching or research which may be unpopular or controversial.

The law on whistleblowing, equality and human rights is complex. You need not be an expert on these legal areas but you need sufficient awareness of the law to know the responsibilities of the governing body and to know when legal advice should be sought.

The values discussed in this module cannot be looked at in isolation. They impact on all the issues looked at in the other modules. They should underpin all the activities of the governing body and reinforce the importance of ongoing training and development.

### **Where next?**

You have now completed work on Module 2: Values and ethical framework. If there are areas in which you need more guidance or information, they may be covered in other modules in the pack. Note down what further information, support or guidance you would like.

### **Putting it into action**

We hope that working through this module has raised useful questions, increased your awareness of issues and given you ideas for practical action that you would like to follow up. We suggest that you note down any questions or action points that you want to follow up within your own organisation.

## Further reading

### Section 1: The Nolan Committee's seven principles of public life

The Committee on Standards in Public Life has its own [website](#).

**The Second Report of the Committee on Standards in Public Life**, May 1996 Volume 1: Report (Cm 3270-I) published by The Stationery Office, or you can access the full text, abstract or summary online.

**The Fourth Report of the Committee on Standards in Public Life: Review of Standards of conduct in executive NDPBs, NHS Trusts and local public spending bodies**, November 1997 is available online as an abstract or summary.

### **The Relevant Authorities (General Principles) Order, 2001**

#### **Policy Improving the quality of further education and skills training**

Department of Business Innovation and Skills, New Challenges, New Chances, Further Education and Skills System 2011 Reform Plan: Building a World Class skills system.

**A dynamic nucleus. Colleges at the heart of local communities** – The Final Report of the Independent Commission on Colleges in their Communities, November 2011 – Baroness Sharp of Guildford.

#### **Thinking Outside the College Planning and Delivering Local Accountability**

An Action Framework for Colleges in the Further Education Sector, November 2011. The aim of this AoC / LSIS study is to research effective practice for how colleges develop accountability to their communities: approaches to identifying and meeting the needs of local communities, and how they engage effectively with strategic partners in their localities to achieve civic and community priorities, both economic and social. Also explored is how colleges contribute to local social renewal.

#### **Professionalism in Further Education Final Report of the Independent Review Panel**

October 2012. Established by the Minister of State for Further Education, Skills and Lifelong Learning.

#### **14-16 Enrolment in colleges** - FAQs

### Section 2: The code of conduct, register of interests and codes of governance

**A Review of Governance and Strategic Leadership in English Further Education**, Allan Schofield, Jo Matthews, Simon Shaw, LSIS, 2009

**The Committee on the Financial Aspects of Corporate Governance**, Cadbury, A., Gee and Company, 1992

**Good Governance Standards for Public Services**, the Independent Commission on Good Governance in Public Services, chaired by Sir Alan Langlands, 2004

**Accountability, Authority and Leadership**: a Governance Perspective, Fresko A and Rubenstein S, Foresight Partnership, 2005



**The UK Corporate Governance Code 2010** and associated guidance

### **Corporate governance publications**

**Local Government - Taking the lead: self regulation in local government**, February 2011

**The new world we're in 2011...Strategic implications**, LSIS, February 2011.

Pulling together the policy analysis, key propositions and challenges emerging from the LSIS national policy seminars held in the summer of 2010, from regional policy seminars held in the autumn 2010 and from discussions with the LSIS Board and Council during that period.

**Public Value: The Next Steps to Public Service Reform, The Work Foundation, 2009.**

**Ethical Breakdowns: Good People Often Let Bad Things Happen. Why?**, Max H Bazerman and Ann E Tenbrunsel, Harvard Business Review, April 2011

## **Section 3: Whistleblowing**

### **CIPD factsheet**

Whistleblowing: law and practice, Bowers J., Fodder M. and Lewis J., Oxford University Press, 2007

**Employment tribunal claims and the Public Interest Disclosure Act:** government response, BIS, 2010

**PAS 1998:2008 Whistleblowing arrangements: Code of practice**, BIS, 2008. This publicly available specification (PAS) has been developed by Public Concern at Work in collaboration with the British Standards Institution (BSI). Complete a short form to get your free copy.

### **Advice on whistleblowing can be obtained from:**

- **DirectGov – whistleblowing in the workplace**  
Find out what whistleblowing in the work place is, and how workers are protected if they blow the whistle about workplace wrongdoing.
- **Public Concern at Work**  
Public Concern at Work (PCaW) is the independent authority on public interest whistleblowing. Established as a charity in 1993, PCaW has played a leading role in putting whistleblowing on the governance agenda and in developing legislation in the UK and abroad.

**Whistleblowing**, a guide from GOV.UK

## Section 4: Equal opportunities

**The new Equality Act 2010 – What does it mean for the FE and skill sector?**, LSIS, 2011.

This briefing sets out for providers some of the key changes the Act will bring. These include a new extended Public Sector Equality Duty, revisions to definitions of discrimination and a widening of the scope of positive action. It should be read in conjunction with statutory and non-statutory guidance issued by the Equality and Human Rights Commission.

**Government Equalities Office**

**Equality Act 2010**

The Equality and Human Rights Commission is producing statutory **Codes of Practice on the Equality Act 2010.**

**The Department for Business, Innovation and Skills.**

**Equality and Human Rights Commission – Equality Act starter kit**

This resource is designed to help those interested to understand the essentials of the law. It assumes no prior knowledge and it splits the Act into nine ‘bite-size’ modules, each taking a maximum of ten minutes to complete.

**Engagement and the equality duty:** A guide for public authorities, Equality and Human Rights Commission, **January 2011.**

**Resources on the protected characteristics,** Equality and Human Rights Commission

The **Equality Act – what’s new for employers?**, ACAS, 2011.

**TUC Guide to Equality Law 2011**

In the Government reshuffle on 4 September 2012, responsibility for equality moved to the **Department for Culture Media and Sport.**

## Section 5: Human rights

The **Home Office website** has some useful information on the Equality and Human Rights Commission (EHRC).

The **Equality and Human Rights Commission** has a statutory remit to promote and monitor human rights and to protect, enforce and promote equality across the nine ‘protected’ grounds: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

In 2010, the Equality and Human Rights Commission (EHRC) set up an inquiry to examine the extent to which respect for human rights for individuals is embedded in public service delivery. The **inquiry heard how human rights had helped organisations improve the services they provide.**

**Find out more about human rights.**

**EHRC guidance and good practice publications for employers**

## **Human Rights publications can be found here, including:**

### **Ours to own - understanding human rights, 2008**

This guide looks at what human rights mean in the context of everyday life, how they have affected real people and why they are therefore so important.

### **Human Rights Inquiry - full report, 2009**

Report on research into the Human Rights Act's first ten years which makes a number of recommendations to help embed human rights in the public sector.

### **Human Rights Inquiry report - executive summary, 2009**

Summary version of the Human Rights Inquiry report setting out the Inquiry's findings and the Commission's recommendations.

### **An employer's guide to... Creating an inclusive workplace, 2010**

This guide contains a range of ideas to help you use human rights principles to create an inclusive workplace.

## **British Institute of Human Rights**

School of Law, Queen Mary University of London, Mile End Road, London, E1 4NS BIHR is an independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK, and may provide some helpful resources.

Friars House, Manor House Drive  
Coventry CV1 2TE  
t 024 7662 7900  
e [enquiries@lisis.org.uk](mailto:enquiries@lisis.org.uk)  
[www.lisis.org.uk](http://www.lisis.org.uk)