



**West Herts College Corporation**

**INSTRUMENT AND ARTICLES  
OF GOVERNMENT**

**Approved by West Herts College Corporation  
12 February 2020**

# Instrument of Government

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**1) Interpretation of the terms used in this Instrument and Articles of Government**

Articles	Means the Articles of Government
Chair and Vice Chair	Means respectively the Chair and Vice Chair of the Corporation
Clerk	Means the Clerk to the Corporation and any reference to the Clerk includes a person acting as Clerk to the Corporation
The College	Means West Herts College which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992 as amended from time to time.
Corporation	Means the Corporation of West Herts College
External members	Those members who are not the Principal, staff or student governors
Instrument	Means this Instrument of Government
Meeting	Includes a meeting at which the members attending are present in more than one room, provided that by use of visual or tele-conferencing facilities it is possible for every person present at the meeting to communicate with each other
Necessary skills	Means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have
Principal	Means the Principal and Chief Executive of the College. Any reference to the Principal shall include a person acting as Principal
Secretary of State	Means the Secretary of State for Education
Senior post	Means the post of Principal and such other senior posts as the Corporation may decide for the purposes of the Articles
Staff matters	Means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff
Staff member and student member	Have the meanings given to them in Clause 2
The staff	Means all staff who have a contract of employment with the institution
The Students' Union	Means any association of students formed to further the educational purposes of the College and the interests of students, as students. In the case of West Herts College, the association of students is the Students' Council
ESFA	Means the Education and Skills Funding Agency

**2) Composition of the Corporation and determination of membership numbers**

a) The Corporation shall consist of:

- i) A minimum of eight and a maximum of ten external members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions and responsibilities;
  - ii) The Principal of the College, unless the Principal chooses not to be a member;
  - iii) One staff member who is a member of the college's teaching staff and has a contract of employment with the college and who has been nominated and elected by the teaching staff of the college.
  - iv) One staff member who is a member of the college's support staff and has a contract of employment with the college and who has been nominated and elected by the support staff of the college.
  - v) Two student members who are enrolled as students at the college and have been nominated and elected by their fellow students, or if the Corporation so decides, by the recognised association representing such students.
  - vi) Student member(s) must be enrolled at the College as students; employment by the college e.g. as an apprentice, and/or in part time work at the College does not preclude an enrolled student from being appointed as a Student Governor.
- b) Subject to paragraphs a) and d) the number of members of the Corporation, and the number of members of each variable category, shall be that decided by the Corporation.
  - c) The Corporation may at any time vary the determination provided that the number of members of each variable category shall be subject to the limit which applies to that category as set out in Schedule 4 of the Further and Higher Education Act 1992 as substituted by the Education Act 2011.
  - d) No determination under this clause shall terminate the appointment of any person who is already a member of the Corporation at the time when the determination is made.
  - e) The Corporation, as the appointing authority, will decide whether a person is eligible for nomination, election (where applicable) and appointment as a member of the Corporation under paragraph 2b).

### 3) **Appointment of members of the Corporation**

- a) Subject to paragraph b) the Corporation is the appointing authority in relation to the appointment of its members.
- b) If the number of members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of those members needed for a quorum.
- c) The appointing authority may decline to appoint a person as a staff or student member if:
  - i) it is satisfied that the person has been removed from office as a member of a further education corporation in the previous ten years; or
  - ii) the appointment of the person would contravene any rule or Standing Orders made under the Articles of Government concerning the number of terms of office which a person may serve; or
  - iii) the person is ineligible to be a member of the corporation because of clause 4.
- d) The Corporation may suspend a person's membership of the Corporation where it considers on reasonable grounds that it is in the interest of the Corporation, its learners or potential learners or staff to do so, or it considers it

necessary to assist the Corporation to exercise its legal powers or to discharge its legal duties.

- e) Where the office of any member becomes vacant the appointing authority shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy.

#### **4) Termination of membership**

- a) A member may resign from office at any time by giving notice in writing to the Clerk.
- b) If at any time the Corporation is satisfied that any member:
  - i) is unfit or unable to discharge the functions of a members of either the Corporation or a committee; or
  - ii) has been absent from meetings of the Corporation or a committee for a period longer than six consecutive months without the prior permission of the Corporation, the Corporation may by notice in writing to that member remove the member from office and the office shall then be vacant.
- c) Any person who is a member of the Corporation by virtue of being a member of the staff at the College, including the Principal, shall cease to hold office upon ceasing to be a member of the staff and the office shall then be vacant.
- d) The Corporation may terminate the membership of an external member if after appointment they become a member of staff of the College. Thereupon, the office will be vacant.
- e) A student member shall cease to hold office:
  - i) at the end of the student's final academic year, or at such other time in the year after ceasing to be a student as the Corporation may decide; or
  - ii) if expelled from the College, and the office shall then be vacant.

#### **5) Persons who are ineligible to be members**

- a) The Corporation will decide whether a person is eligible for nomination, election and appointment as a member of the Corporation.
- b) No-one under the age of 18 years may be a member, except as a student member.
- c) The Clerk may not be a member.
- d) Subject to paragraphs e) and f), a person shall be disqualified from holding, or from continuing to hold, office as a member, if that person has been adjudged bankrupt or is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Insolvency Act 1986, or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement.
- e) Where a person is disqualified by reason of having been adjudged bankrupt or by reason of being the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking, that disqualification shall cease:
  - i) on that person's discharge from bankruptcy, unless the bankruptcy order has before then been annulled; or
  - ii) if the bankruptcy order is annulled, at the date of that annulment; or
  - iii) if the bankruptcy restrictions order is rescinded as a result of an application under section 375 of the Insolvency Act 1986, on the date so ordered by the court; or

- iv) if the interim bankruptcy restrictions order is discharged by the court, on the date of that discharge; or if the bankruptcy restrictions undertaking is annulled, at the date of that annulment.
- f) Where a person is disqualified by reason of having made a composition or arrangement with creditors, including an individual voluntary arrangement, and then pays the debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of three years from the date on which the terms of the deed of composition, arrangement or individual voluntary arrangement are fulfilled.
- g) Subject to the rules and procedures for the term of office of a member, as set out in the Corporation's Standing Orders, a person shall be disqualified from holding, or from continuing to hold, office as a member if:
  - i) within the previous five years that person has been convicted, whether in the United Kingdom or elsewhere, of any offence and has received a sentence of imprisonment, whether suspended or not, for a period of three months or more, without the option of a fine; or
  - ii) within the previous twenty years that person has been convicted as set out in sub-paragraph i) and has received a sentence of imprisonment, whether suspended or not, for a period of more than two and a half years; or
  - iii) that person has at any time been convicted as set out in sub-paragraph i) and has received a sentence of imprisonment, whether suspended or not, of more than five years.
- h) For the purpose of this regulation there shall be disregarded any conviction by or before a court outside the United Kingdom for an offence in respect of conduct which, if it had taken place in the United Kingdom, would not have constituted an offence under the law then in force anywhere in the United Kingdom.
  - i) Where a person is disqualified from acting as a charity trustee under Charities Act 2011. S178.
  - j) Upon a member of the Corporation becoming disqualified from continuing to hold office under paragraphs d) e), f), g) or i), the member shall immediately give notice of that fact to the Clerk.

**6) Members not to hold interests in matters relating to the College**

- a) The Corporation's procedures for managing conflicts of interest will be outlined within the Corporation's Standing Orders.

**7) The Conduct of the Corporation and the College**

- a) The Corporation and the College shall be conducted in accordance with the provisions of the Instrument and Articles of Government; any rules or Standing Orders made under the Instrument and Articles of Government; College rules, policies and procedures; and all legislation applying to the college and its governance.
- b) The Corporation shall approve Codes of Conduct for governors, and for staff (after consultation with staff) and contractors.

**8) Appointment of the Principal and Chief Executive**

- a) The Corporation shall appoint a person to serve as the Principal and Chief Executive of the College.

**9) Appointment of the Clerk**

- a) The Corporation shall appoint a person to serve as its Clerk.
- b) In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk.
- c) The Principal may not be appointed as Clerk or temporary Clerk.
- d) Subject to Corporation rules relating to proceedings of meetings, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.
- e) The Clerk may also be a member of staff at the College.

**10) Copies of the Instrument and Articles of Government**

A copy of this Instrument and the Articles of Government and the related Corporation approved Standing Orders shall be given free of charge to every member of the Corporation and at a charge not exceeding the cost of copying or free of charge to any other person who so requests a copy, and shall be available for inspection at the College upon request, during normal office hours, to every member of staff and every student at the College.

**11) Change of name of the Corporation**

The Corporation may change its name with the approval of the Secretary of State.

**12) Application of the Corporation Seal**

The Corporation Seal is affixed to certain documents where it is required by law or it is in the interests of the College for the document to be executed as a deed. The application of the seal of the Corporation shall be authenticated by

- a) the signature of either the Chair (or another member of the Corporation with the exception of the staff and student governors), and
- b) the signature of any other member (with the exception of the staff and student governors).

## Articles of Government

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### **1) The responsibilities of the Corporation**

The Corporation shall be responsible for the following functions:

- a) the determination and periodic review of the educational character and mission of the College and the oversight of its activities;
- b) ensuring it receives and considers information on the needs of its communities to inform its strategic discussions;
- c) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the College and the oversight of its activities;
- d) approval of the College's overarching strategy and Strategic Plan;
- e) the effective and efficient use of resources, the solvency of the College and the Corporation and safeguarding their assets;
- f) approving annual estimates of income and expenditure;
- g) 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 capacity of a member of staff.

### **2) The responsibilities of the Principal and Chief Executive**

Subject to the responsibilities of the Corporation, the Principal shall be the Chief Executive of the College, and shall be responsible for the following functions:

- a) making proposals to the Corporation about the educational character and mission of the College and implementing the decisions of the Corporation;
- b) the determination of the College's academic and other activities;
- c) preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;
- d) the organisation, direction and management of the College and leadership of the staff;
- e) the appointment, assignment, grading, appraisal, suspension, dismissal and determination of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk, where the Clerk is also a member of the staff; and
- f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.

### **3) The responsibilities of the Clerk**

The Clerk shall be responsible for advising the Corporation with regard to the operation of its powers, procedural matters, the conduct of its business and matters of governance practice.

### **4) Corporation's delegable and non-delegable functions**

- a) The Corporation shall not delegate the following functions:
  - i) the determination of the educational character and mission of the College;
  - ii) the approval of the College's overarching strategic direction and Strategic Plan;
  - iii) the approval of the annual estimates of income and expenditure;

- iv) the responsibility for ensuring the solvency of the College and the Corporation and for safeguarding their assets;
  - v) the appointment of the Principal or holder of a senior post;
  - vi) the appointment of the Clerk;
  - vii) the modification or revocation of the Instrument and Articles of Government.
- b) The Corporation may not delegate:
- i) the consideration of the case for dismissal, and
  - ii) the appointment of the Clerk, (including where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity of a member of staff); and
  - iii) the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post, other than to a committee of external members of the Corporation.
- c) The Corporation shall make rules specifying the way in which a committee having functions under paragraph 6.b.ii shall be established and conducted.

**5) Principal's delegable and non-delegable functions**

The Principal may delegate functions to the holder of any other senior post (with the exception of the Clerk), other than the management of budget and resources and any other functions that have been delegated specifically to the Principal by the Corporation.

**6) Appointment and promotion of staff**

- a) The Corporation will appoint the Principal, and senior postholders, including the Clerk.
- b) For such appointments, the Corporation will appoint a selection panel consisting of:
  - i) at least five members of the Corporation including the Chair or the Vice Chair, or both, where the vacancy is for the post of Principal; or
  - ii) at least three other members of the Corporation which may include the Principal, where the vacancy is for any other senior post, including that of Clerk.
- c) The members of the selection panel shall:
  - i) decide on the arrangements for advertising and selecting the applicants to interview;
  - ii) interview the applicants; and
  - iii) make recommendations to the Corporation for appointment.
- d) The Corporation shall consider the recommendation of the selection panel and decide upon the final appointment to be made.
- e) If the members of the selection panel are unable to agree on a person to recommend to the Corporation, or if the Corporation does not approve their recommendation, the Corporation may make an appointment itself of a person from amongst those interviewed, or it may require the panel to repeat the steps specified in paragraph c with or without first re-advertising the vacancy.
- f) Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff:
  - i) may be required to act as Principal or in the place of any other senior post holder; and

- ii) if so required, shall have all the duties and responsibilities of the Principal or such other senior post holder during the period of the vacancy or temporary absence.
- g) The Principal shall have responsibility for selecting for appointment all members of staff other than:
  - i) senior post holders; and
  - ii) where the Clerk is also to be appointed as a member of staff, the Clerk in the role of a member of staff.

**7) Suspension and dismissal of the Clerk**

- a) Where the Clerk is also a member of staff at the institution, s/he is to be treated as a senior post holder.
- b) Where the Clerk is suspended or dismissed as a member of staff, that suspension or dismissal shall not affect the position of the Clerk in the separate role of Clerk to the Corporation.

**8) Academic freedom**

In approving the Code of Conduct of staff the Corporation shall have regard to the need to ensure that academic staff at the College have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the College.

**9) Co-operation with government funding agencies**

The Corporation shall co-operate with any person authorised by the government funding agencies to audit any returns of numbers of students or claims for financial assistance, and shall give any such person access to any documents or records held by the Corporation, including computer records.

**10) Internal Audit**

- a) The Corporation shall, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other control to ensure that they contribute to the proper, economic, efficient and effective use of the Corporation's resources.
- b) The Corporation may arrange for the examination and evaluation mentioned in paragraph (1) to be carried out on its behalf by internal auditors.
- c) The Corporation shall not appoint persons as internal auditors to carry out the activities referred to in paragraph (1) if those persons are already appointed as external auditors.

**11) Accounts and audit of accounts**

- a) The Corporation shall:
  - i) ensure the preparation of monthly management accounts, to include monthly income and expenditure, the latest budget forecast, the balance sheet and a cash flow report.
  - ii) maintain proper accounts and proper records in relation to the accounts; and
  - iii) prepare a statement of accounts for each financial year of the Corporation.
- b) The statement shall:

- i) give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year; and
- ii) comply with any directions given by government funding agencies as to the information to be contained in it, the manner in which the information is to be presented, the methods and principles according to which it is to be prepared and the time and manner of publication.
- c) The accounts and the statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.
- d) The Corporation shall not appoint persons as external auditors in respect of any financial year if those persons are already appointed as internal auditors.
- e) Auditors shall be appointed and audit work conducted in accordance with any requirements of government funding agencies.
- f) The "financial year" means the first financial year and, except as provided for in paragraph h), each successive period of twelve months.
- g) The "first financial year" means the period from the date the Corporation was established up to the second 31st July following that date, or up to some other date which has been chosen by the Corporation with the government funding agencies approval.
- h) If the Corporation is dissolved:
  - i) the last financial year shall end on the date of dissolution; and
  - ii) the Corporation may decide, with the government funding agencies approval, that what would otherwise be the last two financial years, shall be a single financial year for the purpose of this article.

## **12) Rules and Standing Orders**

The Corporation shall have the power to make rules and Standing Orders relating to the government and conduct of the College and these rules and Standing Orders shall be subject to the provisions of the Instrument and Articles of Government.

## **13) Modification or replacement of the Instrument and Articles of Government**

- a) Subject to paragraph b) the Corporation may by resolution of the members modify or replace its Instrument and Articles of Government, after consultation with any other persons who, in the Corporation's view, are likely to be affected by the proposed changes.
- b) The Corporation shall not make changes to the Instrument or Articles of Government that would result in the body ceasing to be a charity.

## **14) Dissolution of the Corporation**

- a) The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.
- b) The Corporation shall ensure that a copy of the draft resolution to dissolve the Corporation on a specified date shall be published at least one month before the proposed date of such resolution.