

Good College Governance Consultation

Report on Respondents Feedback

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SECTION 1: EXECUTIVE SUMMARY

1.1 The effective governance of Scotland's colleges is fundamental in supporting them to improve the life chances of their students and the performances of businesses. The Good College Governance Task Group undertook a broad review of college governance and reported in 2016.

1.2 The Scottish Government published a consultation paper on Good College Governance on 18 April 2017 to take forward commitments given in the Task Group report to consult on issues arising from their consideration. In particular, views were sought on issues concerning better arrangements to improve board member recruitment, and a wider range of sanctions.

1.3 The consultation closed on 17 May 2017. 39 responses were received, 28 from organisations, and 11 from individuals. The largest category of organisational response was from colleges, with 10 colleges submitting a response. A summary of views follows.

Views on better arrangements to improve board member recruitment

1.4 28 (90%) of the 31 respondents who provided a view agreed that Scottish Ministers should have powers to determine a rate of remuneration for the chairs of assigned, incorporated colleges. The main reason given in support was that this provides parity and consistency across the sector.

1.5 Of the 30 respondents who provided a view, 17 (57%) did not agree that legislation should require two trade union nominees, for teaching and non-teaching staff respectively, to be members of a board of an incorporated college and regional board. The most common argument against such legislation was that this would create conflicts of interest due to trade unions existing primarily to represent their members' interests rather than the college interests. The main contrasting view was that trade unions had much to offer in terms of strengthening decision-making and ensuring transparency on boards.

1.6 10 (62%) of the 16 respondents who provided a view considered that should the proposal for trade union nominees on incorporated college boards proceed, then the nominees should be in addition to elected staff members, without any change to student member numbers.

1.7 32 respondents provided a view on whether provision should be made for highly regarded candidates, for which there is no immediate position, to be appointed without further open recruitment. 27 (84%) agreed with the proposal. The benefit most commonly identified was that this would avoid a further recruitment process, thereby saving time and money for both recruiters and candidates. The proposal was also viewed as having the potential to widen access to under-represented groups on boards.

1.8 21 (72%) of the 29 respondents who provided a view agreed that provision should be made in relation to a proven ability to work well as a team. However, a

concern amongst many was that this criterion should not stifle independent thinking, by resulting only in the recruitment of “group thinkers”.

1.9 Of the 31 respondents who addressed the issue, 24 (77%) considered that appointment bodies should advertise all board vacancies on the College Development Network. The key benefits of this were identified as ensuring transparency and encouraging applicants from the college sector. Several respondents, however, emphasised their view that this should not preclude advertising in other places too.

Views on more sanctions being considered so that a wider range of measures is available, if necessary

1.10 21 (75%) of the 28 respondents who provided a view considered that Ministers should have powers to suspend any or all board members, except the principal, where they consider this appropriate in order to carry out further consideration as to whether a removal order is warranted. However, many of those supporting the proposal did so on the proviso that the powers apply only in exceptional circumstances, and that very clear criteria set out when the powers should be used.

1.11 Of the 29 respondents who commented, 21 (72%) considered that Ministers should have power, when making a removal order, to include someone who has left the board but was a member during the period during which board failure was found, with the effect that the person is disqualified from any other boards. A common view was that individuals should not be able to abdicate their responsibilities by resigning ahead of the outcome of considerations, and should continue to be held accountable along with the remaining members of the board. One prominent concern was that the proposal does not allow for valid reasons for a person to resign from the board, for example, disagreement over the board's decisions.

1.12 27 respondents provided a view on whether Ministers should have powers to direct incorporated colleges and regional boards. Of these, 18 (67%) were in support; 8 (30%) considered that Ministers should have neither of these powers; and one individual supported Ministers having such powers in relation to regional boards only. Most (18 of the 23 respondents providing a view) considered that if Ministers were to have such powers, they should be limited to circumstances where they consider a board is not governing appropriately. 16 (84%) of the 19 respondents who gave a response considered that if Ministers had such powers, these should be in addition to the current power of direction that vests with regional strategic boards.

1.13 Of the 27 respondents who provided a view, 21 (78%) agreed that assigned colleges should be required by legislation to co-operate with a Scottish Funding Council (SFC) review under section 7C(7) of the Further and Higher Education (Scotland) Act 2005 (the 2005 Act). A few of the college boards expressed concern that colleges should not have two “masters”, namely the SFC and regional strategic boards.

1.14 23 (79%) of the 29 respondents who addressed the issue agreed that the SFC should have powers to attend and address meetings if it has concerns about an assigned college's ability to meet the criteria set out in section 7(2) of the 2005 Act. This was viewed generally as reasonable and to be expected, with benefits of transparency and openness. The most common view in opposition was that attendance at, and addressing meetings where there are concerns over assigned colleges, should be a responsibility of the regional strategic boards and not the SFC.

1.15 Views were divided on whether the existing powers of the SFC and regional strategic bodies to attend and address meetings of a governing body should be extended to include relevant committee meetings. 17 (52%) of the 33 respondents who provided a view agreed. However, key arguments in opposition were that any matter warranting the intervention of the funding body should be dealt with at full board level; and committees have operational functions, whereas boards have powers over strategy, and this risked the SFC straying into operational matters.

1.16 Of the 33 respondents who provided a view, 31 (94%) considered that the powers of the Auditor General for Scotland (AGS) to conduct economy, efficiency and effectiveness examinations should be extended to include all relevant non-incorporated colleges. Common views were that AGS should oversee how public funds are used; and all colleges should be treated the same, with the AGS having the same powers over all.

1.17 23 (82%) of the 28 respondents who addressed the issue considered that legislation should make clear that the power of a person or body to appoint college board members includes a power to suspend any board member that they have appointed. This was viewed as consistent with other public sector appointments made under Scottish legislation.

Views on the equality impact of the matters covered in the consultation paper

1.18 An overarching message was that there is room for improvement in terms of addressing equalities issues in relation to the matters covered in the consultation paper, and that frameworks should be put in place to ensure sustained effort to promote diversity and equality in appointments.

1.19 Suggestions for future promotion of equalities included: regular review of processes and procedures to assess their inclusiveness; mainstreaming equalities duties into everyday practices; perceiving equalities issues to be integral and not an "add on"; focusing on diversity planning; and underpinning current legal requirements of colleges with equality impact assessments.

SECTION 2: INTRODUCTION

2.1 The effective governance of Scotland's colleges is fundamental in supporting them to improve the life chances of their students and the performance of businesses. A broad review of college governance in Scotland was undertaken by the Good College Governance Task Group, led by the Cabinet Secretary for Education and Lifelong Learning. The Group reported in 2016¹ with a series of recommendations.

2.2 A consultation paper² on Good College Governance was published by the Scottish Government on 18 April 2017, to take forward commitments given in the Task Group report to consult on issues arising from their consideration. In particular, the consultation sought wider views on:

- The Task Group's Recommendation 1 on better arrangements to be put in place to improve board member recruitment; and
- The Task Group's Recommendation 9 on consideration of more sanctions so that a wider range of measures is available.

2.3 The consultation remained open for views until 17 May 2017, although the deadline was extended for some respondents past this date.

2.4 Responses to the consultation were encouraged via Citizen Space, which most respondents used.

Consultation responses

2.5 The Scottish Government received 39 responses to the consultation. Table 2.1 overleaf shows the distribution of responses by category of respondent. A full list of respondents is in Annex 1. The respondent category applied to each response was agreed with the Scottish Government policy team.

2.6 72% of responses were submitted by organisations; 28% were from individual respondents. The largest category of respondent amongst the organisations was colleges, comprising 26% of all responses.

Analysis of responses

2.7 The analysis of responses is presented in the following 3 chapters, which follow the order of topics raised in the consultation document. The consultation posed 16 key questions, all but one containing both closed and open elements.

2.8 The analysis is based on the views of those who responded to the consultation and are not necessarily representative of the wider population.

¹ <http://www.gov.scot/Topics/Education/UniversitiesColleges/17135/CollegeGovernance/collegegoodgovernancetaskgroup>

² <http://www.gov.scot/Publications/2017/04/1785/340662>

Table 2.1 Distribution of responses by category of respondent

Category	No. of respondents	% of all respondents*
Colleges	10	26
College Boards	6	15
Unions and Student Associations	4	10
Local Authorities	2	5
Non-Ministerial Government Departments	2	5
Representative Body	1	3
Other	3	7
Total Organisations	28	72
Total Individuals	11	28
Grand total	39	100

*Percentages may not add to totals exactly due to rounding.

SECTION 3: GOOD GOVERNANCE TASK GROUP RECOMMENDATION 1: better arrangements are put in place to improve board member recruitment

Remuneration of assigned college chairs

Recommendation 1(b) of Task Group report

Scottish Ministers will consult on:

- i) whether assigned college chairs should be remunerated.

Background

Regional college chairs are remunerated; however, the chairs of assigned colleges are not. This results in the chairs of some of Scotland's largest colleges not being remunerated. The time commitment required of all college chairs is significant. There are 20 incorporated colleges, of which 11 are regional colleges.

Legislation provides that the Scottish Ministers set the rate of remuneration of regional college chairs.

Question 1: Should the Scottish Ministers have powers to determine a rate of remuneration for the chairs of assigned, incorporated colleges?

3.1 31 respondents answered the closed aspect of this question. A majority of 28 respondents (90%) agreed that Scottish Ministers should have powers to determine a rate of remuneration for the chairs of assigned, incorporated colleges. Three respondents, all individuals, disagreed.

3.2 35 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

3.3 Five reasons were provided in support:

- Provides parity, consistency and transparency across the sector. (12 mentions)
- Reflects the considerable time commitment and responsibilities of chairs of assigned, incorporated colleges. (7 mentions)
- To attract suitably qualified and experienced people and to open up the post of chair to under-represented groups. (4 mentions)

- To address the current anomaly whereby the chair of a small, regional college is remunerated whereas the chair of an assigned, larger college is not. (3 mentions)
- To provide a clear line of accountability to Scottish Ministers and better control over the size of remuneration. (1 mention)

Concerns about the proposal

3.4 Opposition emerged largely from concerns over college finances. Individuals suggested that the decision on whether to remunerate chairs should be left to college boards, and based on their ability to pay. The representative body considered that remunerating chairs of assigned, incorporated bodies might lead to further inconsistencies, whereby chairs of non-incorporated colleges which sit within regional strategic body structures, may not be entitled to remuneration.

Other comments

3.5 There were mixed views on whether there should be different rates of remuneration based on size of college, and time commitment, or whether rates should be the same across all institutions.

3.6 Three respondents called for the Scottish Government to fund the additional remuneration, or provide more funding to colleges to cover this. One respondent recommended regular review of remuneration, a strong business case, and due diligence to be shown in rate of pay.

Trade union nominees on incorporated college boards

Recommendation 1(b) of Task Group report

Scottish Ministers will consult on:

ii) whether trade union nominees should join incorporated college boards and the future of elected staff members.

Background

Requiring two trade union nominees to join college boards would mean the minimum size of a board must increase. At present, a regional college board must have between 15 – 18 members and an incorporated assigned college board between 13 – 18 members. The provisions ensure that the chair and non-executives always form a majority of the members of the board. Simply adding two trade union nominees would breach this.

At present, there generally is parity in the number of staff members (two) and student members (two). Requiring two further staff members nominated by trade unions would remove this parity. One way to avoid increasing the size of the board would be to replace the elected staff members by trade union nominees who would be required to act in the best interests of the college, as opposed to any individual constituency which nominated or elected them.

Question 2: Should legislation require two trade union nominees from recognised main unions for (1) teaching, and (2) non-teaching staff to be members of a board of an incorporated college and regional board?

3.7 30 respondents answered the closed aspect of this question. A majority of 17 respondents (57%) did not agree that legislation should require two trade union nominees, for teaching and non-teaching staff respectively, to be members of such boards. Whereas most of the individuals who responded were in favour of the proposal, most of the organisations who provided a view were against. Table 3.1 shows views by respondent category.

Table 3.1 Views on whether legislation should require two trade union nominees for teaching and non-teaching staff to be members of boards

Category	Yes	No	Total responding
Colleges	1	8	9
College Boards	0	4	4
Unions and Student Associations	3	0	3
Local Authorities	1	0	1
Non-Ministerial Government Departments	0	0	0
Representative Body	0	1	1
Other	1	0	1
Total Organisations	6	13	19
Total Individuals	7	4	11
Grand total	13	17	30

3.8 31 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

3.9 Those providing explicit support for the proposal were individuals and unions and student associations. An overarching view was that trade unions had much to offer in terms of strengthening decision-making and ensuring transparency on boards. They were considered to be informed, and representative of the workforce, and would ensure that staff views are heard at board level. A few respondents

commented that the forthcoming higher education model³ could be usefully followed by colleges.

Concerns about the proposal

3.10 Four main arguments were made repeatedly.

- Would create conflicts of interest due to trade unions existing primarily to represent their members' interests rather than the college interests. (The case of *Laverie vs Scottish Ministers* (2016) was referred to in which the Lord Clerk set out clearly the absolute principle of collective responsibility on all board members.) (18 mentions)
- The status quo works well and there has not been a case made to change this. (8 mentions)
- The priority is to give a voice to staff and they already have this through the current nomination and voting system. Union members can already put themselves forward in this process. (8 mentions)
- The proposal would create an imbalance between executive and non-executive members on boards, and also staff and student representatives. (8 mentions)

3.11 A few other arguments were put forward by a small number of respondents:

- Could disenfranchise non-trade union members. (4 mentions)
- Boards could end up becoming too big, inefficient and cumbersome. (3 mentions)
- Will have cost implications with more paid staff on the board. (2 mentions)
- Complicated where there are multi trade unions, and exacerbated where regional boards have several colleges in their region. (2 mentions)
- Could result in other special interest groups seeking representation on boards as of right. (1 mention)

Question 3: If so, should the nominees (1) be in addition to elected staff members (without any change to student member numbers); (2) be in addition to elected staff members (with an increase in student member numbers); or (3) replace elected staff members.

3.12 16 respondents answered the closed aspect of this question. A majority of 10 respondents (62%) considered that the nominees should be in addition to elected staff members, without any change to student member numbers. Table 3.2 overleaf shows views by respondent category.

Table 3.2 Views on whether nominees should be in addition to elected staff (no change to student numbers); in addition to elected staff (with increase to student numbers); or should replace elected staff members

³ Section 10(1) of the Higher Education Governance (Scotland) Act 2016

Category	In addition – no change to student member numbers	In addition – with increase in student member numbers	Replace elected staff members	Total responding
Colleges	3	0	1	4
College Boards	0	0	1	1
Unions and Student Associations	2	0	1	3
Local Authorities	1	0	0	1
Non-Ministerial Government Departments	0	0	0	0
Representative Body	0	0	0	0
Other	0	0	0	0
Total Organisations	6	0	3	9
Total Individuals	4	3	0	7
Grand total	10	3	3	16

3.13 11 respondents provided commentary to support their view (many other respondents referred to their previous comments in relation to question 2).

3.14 Most of the commentary focused on what were perceived to be the benefits of option 1: namely trade union nominees, in addition to elected staff members, with no change to student member numbers. This was viewed as the fairest option, enabling staff views to be heard from a range of perspectives, including those at the front line of delivery, and inclusive of both union and non-union staff members.

3.15 A key disadvantage of option 1 and option 2 was identified as an increase in the size of the board. Option 3 was supported as avoiding increasing the numbers and make-up of the board. The view of one college was that there would not be any need for existing staff members, as trade union nominees would provide the voice of staff.

Ministers' powers to issue guidance on appointments

Recommendation 1(b) of Task Group report

Scottish Ministers will consult on:

iii) amending appointments guidance to make provision for highly regarded candidates for which there is no immediate position.

Background

It has been put to the Scottish Government that guidance should be more flexible by recognising that an open recruitment process may identify otherwise suitable candidates for which there is no immediate position, and that there should be a mechanism by which they can join a board without necessarily going through a further open recruitment process for non-executive board members. The consultation paper outlined proposals for additions to the Ministerial guidance to facilitate this.

Question 4: Should provision be made for highly regarded candidates for which there is no immediate position to be appointed without further open recruitment, along the lines proposed?

3.16 32 respondents answered the closed aspect of this question. A majority of 27 respondents (84%) considered that provision should be made for highly regarded candidates, for which there is no immediate position to be appointed without further open recruitment. Seven respondents disagreed, five of them individuals, one college and one respondent from the "other" category.

3.17 33 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

3.18 The most commonly identified benefit (8 specific mentions) was that avoiding a further recruitment process when suitable candidates have already been identified, will save time and money for both recruiters and candidates.

3.19 Other benefits of the proposal were identified:

- Has the potential to widen access to under-represented groups on boards; could form part of positive action to balance board membership; could provide would-be board members with the opportunity to become involved in associated positions, such as membership of board committees, prior to stepping up to full board membership. (5 mentions)
- Fits with current informal recruitment processes; will formalise efficient operations. (4 mentions)
- Provides flexibility in recruitment. (4 mentions)

- Less likely to “lose” talented people. (2 mentions)

Concerns about the proposal

3.20 Three key reasons were provided to oppose the proposal. Four respondents, including three individuals, expressed concern that the proposal could be viewed as lacking transparency, could be open to misuse, and amounted to a “jobs for the boys” approach.

3.21 Three respondents across different sectors considered that the phrase “highly regarded” was too subjective to be part of a rigorous selection procedure.

3.22 One individual and a respondent from the “other” category suggested that other highly suitable candidates may emerge during the proposed 12 months holding time, and could be denied an opportunity to apply for board membership.

3.23 One individual commented that the proposed practice is not the norm in other sectors, and therefore should not be adopted.

Other comments

3.24 Several respondents suggested that should the proposal be put into practice, a framework of checks and balances should also be put in place including:

- “Highly regarded” should be clearly defined.
- The period of time during which such candidates are considered for postings should be clearly defined.
- The impact on diversity of selection should be closely monitored.
- The practice should operate only in exceptional circumstances, which are fully explained.
- Highly suitable candidates need not necessarily be offered a permanent position on the board – this could be temporary, or they could be utilised in an associated role, such as providing expertise on a board committee.

3.25 The 12 month period suggested in the consultation was welcomed specifically by five respondents. Two respondents called for this to be shortened to 6 months; one requested a period longer than 12 months.

Recruitment of board members with demonstrable ability to work well as a team

Recommendation 1(b) of Task Group report

Scottish Ministers will consult on:

- iii) amending appointments guidance to make provision...to encourage the recruitment of board members with demonstrable ability to work well as a team.

Question 5: Should provision be made in relation to a proven ability to work well as a team?

3.26 29 respondents answered the closed aspect of this question. A majority of 21 respondents (72%) considered that provision should be made in relation to proven ability to work well as a team. Eight respondents disagreed, six individuals and two colleges.

3.27 33 respondents provided commentary on the proposal and their views are summarised below.

3.28 Several of the colleges and college boards reported that consideration of ability to work well in a team is already part of their selection processes. Many respondents acknowledged what they perceived to be the benefits of team working at board level. Two respondents suggested that it may be difficult to demonstrate objectively the ability to work well in a team.

3.29 One concern which emerged in responses of those both for and against the proposal, was that of stifling independent thinking by recruiting only “group thinkers”. Several respondents supported including people who would challenge others on the board, and cautioned against recruiting only those who “are like” the other board members. One respondent from the “Other” category suggested adding to the guidance, “ability to work within a diverse team” in order to send out the message that diversity is valued, in addition to team work.

3.30 The other key reasons for opposing the proposal were:

- This is too prescriptive and recruitment should be left to the appointments panel. (5 mentions)
- Team working is just one of the criteria for selection and should not be singled out over others. (3 mentions)
- Team working should be a “given” and does not need guidance to emphasise it. (2 mentions)

Advertising

Recommendation 1(a) (ii) of Task Group report

Appointment bodies should advertise all board vacancies on CDN⁴ website (this may encourage more from college sector to consider applying).

Question 6: Should appointing bodies advertise all board vacancies on CDN website?

3.31 31 respondents answered the closed aspect of this question. A majority of 24 respondents (77%) considered that appointment bodies should advertise all board

⁴ College Development Network

vacancies on the CDN website. Seven respondents disagreed, four individuals and three colleges.

3.32 29 respondents provided commentary on the proposal and their views are summarised below.

3.33 The benefits of advertising on the CDN website were highlighted by a few respondents as ensuring transparency and encouraging applicants from the college sector. Two colleges commented that this was already their standard practice.

3.34 Ten respondents from across a range of sectors gave their support for advertising on the CDN website, but emphasised that this should not be at the exclusion of other places where vacancies could be advertised, particularly if under-represented groups are to be targeted. A few of the respondents who did not answer the closed part of the question, commented that recruitment should follow good practice in terms of fairness, transparency and equality.

3.35 The timeframe of two weeks, suggested by the Task Group, between date of advertising and closing date for applications, was welcomed by four respondents. However, two of these (both colleges) commented that this should not be prescribed, as on occasions such operational issues are out of their hands.

3.36 The main reason given by the colleges and individuals opposing the proposal was that there should not be prescription to this level of operational detail. They emphasised that boards would use the most effective routes to advertising available to them, which may include two weeks of publicity on the CDN website, but this should not be set in stone.

3.37 One college argued that, for consistency, appointments should be through the Public Appointment Scotland website. They considered that websites such as the CDN website could then highlight these opportunities, but should not be involved in the appointment application process.

SECTION 4: GOOD GOVERNANCE TASK GROUP RECOMMENDATION 9: more sanctions are considered so that a wider range of measures is available, if necessary

Possible sanctions

Recommendation 9(a) of Task Group report

Scottish Ministers will consult on:

i) Ministerial powers

i. to suspend any or all board members (except the principal) when considering a removal order.

ii. bar people from college boards, even if they have since left the board.

iii. to direct colleges in the face of a board not governing appropriately.

ii) requiring co-operation of assigned colleges in SFC reviews. Meantime, this should be given effect through the Financial Memorandum mechanisms.

iii) SFC's powers to attend and address meetings in failing to meet criteria to be publicly funded.

iv) SFC and regional strategic body powers to attend and address relevant to committee meetings.

v) extending the powers of the Auditor General for Scotland to conduct economy, efficiency and effectiveness examinations so that all publicly funded colleges can be subject to such examinations.

vi) clarifying that the powers of an appointing body's powers include a power to suspend, in line with other appointments.

Question 7: Should Ministers have powers to suspend any or all board members (except the principal) in circumstances where they consider this appropriate while they carry out further consideration as to whether a removal order is warranted?

4.1 28 respondents answered the closed aspect of this question. A majority of 21 respondents (75%) considered that Ministers should have powers to suspend any or all board members, except the principal, where they consider this appropriate in order to carry out further consideration as to whether a removal order is warranted.

Seven respondents disagreed, five individuals, one college and one college board.

4.2 29 respondents provided commentary on the proposal and their views are summarised below.

4.3 Many of those supporting the proposal did so on the proviso that:

- The powers should apply only in exceptional circumstances, as a last resort. (6 mentions)
- There are very clear criteria setting out when the powers should be used. (5 mentions)
- There is a time limit set in order to ensure consideration is undertaken in a timely manner. (2 mentions)
- Interim arrangements are set up so as to ensure the efficient operation of the college during the investigation. (2 mentions)
- There is a right of appeal against suspension. (2 mentions)
- The process is transparent. (1 mention)
- If the investigation subsequently shows no failings, then this is publicised. (1 mention)
- Suspension should not be portrayed as a punishment or a pre-judgement of outcome. (1 mention)

Views on the benefits of the proposal

4.4 The most frequently identified benefit was that the proposal will make boards more accountable for their actions (7 mentions across three respondent categories). Other potential benefits identified by only a few respondents were: provides Ministers with clout; makes for more effective governance; protects colleges; protects the person involved; and helps maintain high standards.

Views against supporting the proposal as it stands

4.5 A few respondents considered that more clarification is required on the circumstances in which suspension would take place and how the board would operate in the interim. Another view held by a few individuals and a college board was that suspending voluntary, unremunerated, non-executive members is very different from suspension of other board members, with the former unlikely to return to the post whether or not they are found to have warranted their suspension.

4.6 A few individuals questioned the legitimacy of Ministers suspending without robust evidence, in order for further consideration to take place, pointing out the serious impact that a suspension will have on the reputation of the individual involved.

4.7 One individual questioned whether Ministers should have jurisdiction over the two elected staff members.

Question 8: Should Ministers have power, when making a removal order, to include someone who has since left the board but was a member during the period for which Ministers consider there was board failure with the effect that the person is disqualified from any other boards?

4.8 29 respondents answered the closed aspect of this question. A majority of 21 respondents (72%) considered that Ministers should have power, when making a removal order, to include someone who has since left the board but was a member during the period during which board failure was found, with the effect that the person is disqualified from any other boards. Eight respondents disagreed, four colleges, three individuals and one college board.

4.9 29 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

4.10 A recurring view across a range of sectors was that individuals should not be able to abdicate their responsibilities by resigning ahead of the outcome of considerations, and should remain accountable along with the remaining members of the board.

4.11 An individual commented that the proposal will ensure that the principle of the board being collectively responsible and accountable for decisions will be upheld by the proposal; a local authority remarked that the proposal will maintain the integrity of the process.

4.12 A few colleges expressed their support, but emphasised that Ministers will need to be totally satisfied that the person was implicated in the failure of the board, and that failings occurred during their period in office.

4.13 Two respondents supported the proposal so long as a right to appeal is established. One respondent from the “Other” category suggested that just as in criminal cases, the principles of rehabilitation should be considered to counter-balance the powers of Ministers to suspend.

Concerns about the proposal

4.14 A prominent view was that the proposal does not allow for valid reasons for a person to resign from the board, for example, if they are concerned about the board’s decisions and conduct. To be held responsible for board failings, over which a member has resigned on principle, was viewed by a few respondents as overly punitive, particularly given the voluntary nature of some board positions.

4.15 A few colleges suggested that the arrangements for ensuring that a person does not become a member of a board subsequently, could be complex and may require a new, centralised register. The question was posed over whether disqualification would apply to all public body boards or just college boards.

Question 9: Should Ministers have powers to direct (a) incorporated colleges and (b) Regional Boards?

4.16 27 respondents answered this question. A majority of 18 respondents (67%) considered that Ministers should have the powers to direct both incorporated colleges and regional boards; eight respondents considered that Ministers should have neither of these powers; one individual supported Ministers having these powers in relation to regional boards only. The majority of colleges who responded opposed Ministers having powers to direct incorporated colleges and regional boards. Table 4.1 shows views by respondent category.

Table 4.1 Views on whether Ministers should have powers to direct incorporated colleges and regional boards

Category	Powers to direct both	No such powers	Powers to direct regional boards only	Total responding
Colleges	3	5	0	8
College Boards	3	1	0	4
Unions and Student Associations	3	0	0	3
Local Authorities	1	0	0	1
Non-Ministerial Government Departments	0	0	0	0
Representative Body	0	1	0	1
Other	0	0	0	0
Total Organisations	10	7	0	17
Total Individuals	8	1	1	10
Grand total	18	8	1	27

Question 10 (1): If Ministers were to have such powers, should they be limited to circumstances where they consider a board is not governing appropriately?

4.17 23 respondents answered this question. A majority of 18 respondents (78%) considered that if Ministers were to have such powers, they should be limited to circumstances where they consider a board is not governing appropriately. Amongst the organisations, two unions and student associations and Colleges

Scotland (the Representative Body) disagreed. Table 4.2 shows views by respondent category.

Table 4.2 Views on whether such powers should be limited to circumstances where Ministers consider a board is not governing appropriately.

Category	Agree	Disagree	Total responding
Colleges	5	0	5
College Boards	5	0	5
Unions and Student Associations	0	2	2
Local Authorities	1	0	1
Non-Ministerial Government Departments	0	0	0
Representative Body	0	1	1
Other	0	0	0
Total Organisations	11	3	14
Total Individuals	7	2	9
Grand total	18	5	23

Question 10 (2): If Ministers were to have such powers, should these be in addition to, or instead of, the current power of direction that vests with regional strategic bodies?

4.18 19 respondents answered this question. A majority of 16 respondents (84%) considered that if Ministers were to have such powers, these should be in addition to the current power of direction that vests with regional strategic bodies. Two individuals and one college board considered Ministerial powers should be instead of regional strategic body powers.

Question 11: Should assigned colleges be required by legislation to co-operate with a SFC review under section 7C(7) of the 2005 Act?

4.19 27 respondents answered the closed aspect of this question. A majority of 21 respondents (78%) agreed that assigned colleges should be required by legislation to co-operate with a SFC review under section 7C(7) of the 2005 Act. Six respondents disagreed: three individuals, two colleges and one college board.

4.20 27 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

4.21 Six reasons to support the proposal were given, each by only one or two respondents:

- For the removal of all doubt; clear lines of responsibility.
- It is reasonable to expect assigned colleges to co-operate in a bona fide investigation.
- Will promote consistency and standardisation across the sector.
- In-line with other arrangements.
- For the sake of accountability.
- Provides a legislative basis for SFC to take forward appropriate action, as required.

Concerns about the proposal

4.22 A few college boards suggested colleges should not have two “masters”, namely the SFC and regional strategic boards. One college advocated an entirely independent body to conduct any such reviews.

4.23 Four respondents across a range of sectors held the view that as the SFC already has sufficient powers currently, it is unnecessary to formalise these in legislation.

4.24 One individual’s view was that instead of legislation, co-operating in any such review by the SFC should be a condition of grant.

Question 12: Should SFC have powers to attend and address meetings if it has concerns about an assigned college’s ability to meet the criteria set out in section 7(2) of the 2005 Act?

4.25 29 respondents answered the closed aspect of this question. A majority of 23 respondents (79%) agreed that SFC should have powers to attend and address meetings if it has concerns about an assigned college’s ability to meet the criteria set out in section 7(2) of the 2005 Act. Six respondents disagreed: four individuals one college and one college board.

4.26 24 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

4.27 SFC’s attendance at meetings, where it has concerns about the relevant assigned college, was viewed as reasonable and to be expected. Benefits of transparency and openness were identified. A few individuals commented that this

provided an opportunity for the SFC to gain insight and clarification on a situation to help in damage limitation.

4.28 A local authority and two unions and student associations supported the proposal as enabling the SFC to take on a greater monitoring and regulatory role.

4.29 One individual considered the proposal acceptable only where the SFC had legitimate and proven concerns. Others suggested that boards would need to be informed in advance of the SFC attendance (college board view); and this should occur only with the agreement of the regional strategic board (college view).

Concerns about the proposal

4.30 The most common view was that attendance at and addressing meetings where there are concerns over assigned colleges should be a responsibility of the regional strategic boards and not the SFC. One college considered that attendance at meetings by the SFC was not required, as they would already be in dialogue with the chair and board if there were any concerning issues, and if colleges wished, they could invite the board to a meeting, rather than boards deciding themselves whether to attend.

Question 13: Should the existing powers of the SFC and regional strategic bodies to attend and address meetings of a governing body be extended to include relevant committee meetings?

4.31 33 respondents answered the closed aspect of this question. A majority of 17 respondents (52%) did not agree that the existing powers of the SFC and regional strategic bodies to attend and address meetings of a governing body should be extended to include relevant committee meetings. Table 4.3 overleaf shows views by respondent category, with most sectors divided in view, a notable exception being unions and staff associations who supported the proposal.

4.32 22 respondents provided commentary on the proposal and their views are summarised overleaf.

Table 4.3 Views on whether existing powers of the SFC and regional strategic bodies should be extended to include relevant committee meetings

Category	Agree	Disagree	Total responding
Colleges	5	5	10
College Boards	2	4	6
Unions and Student Associations	3	0	3
Local Authorities	1	1	2
Non-Ministerial Government Departments	0	0	0
Representative Body	0	1	1
Other	0	0	0
Total Organisations	11	11	22
Total Individuals	5	6	11
Grand total	16	17	33

Views in support of the proposal

4.33 A few respondents supported the proposal as they could not identify any reason to disagree with what appeared to them to be reasonable, albeit in exceptional circumstances and with advanced notice to college boards.

4.34 There were two substantive reasons provided by others in support:

- A union and staff association respondent and a local authority considered the proposal to be in keeping with a greater, and what they perceived as welcome, regulatory/monitoring role for the SFC. The local authority also envisaged this as an opportunity for common challenges to be identified and good practice shared across the sector.
- A college suggested that as all committee meetings are open to the public anyway, funders should be able to attend too, so long as advanced warning is given.

Concerns about the proposal

4.35 Two main concerns were raised:

- Any matter warranting the intervention of the funding body should be dealt with at full board level. It was considered that boards may invite funders to

attend committee meetings, but funders should not have the powers to attend uninvited. (5 mentions)

- Committees have operational functions, whereas boards have powers over strategy. The proposal was perceived as risking the SFC straying into operational rather than strategic matters. (5 mentions)

4.36 Other concerns were raised. Two respondents, one college and one respondent from the “Other” category, considered that the proposal could undermine the role and responsibilities of boards. An individual suggested that the result could be too much external influence over college affairs; another individual commented that funding bodies have contractual arrangements with boards and not with their committees.

Role of Auditor General for Scotland: economy, efficiency and effectiveness examinations

Background

The Auditor General for Scotland (AGS) is responsible for auditing the accounts of incorporated colleges and regional boards. It also has powers to conduct economy, efficiency and effectiveness examinations of incorporated colleges, higher education institutions and the three regional strategic bodies. However, it has no such power in relation to three non-incorporated colleges, Newbattle Abbey College, Sabhal Mòr Ostaig and West Highland College UHI, which all receive public funds direction from either the Scottish Funding Council or a regional strategic body.

Question 14: Should the powers of the Auditor General for Scotland to conduct economy, efficiency and effectiveness examinations be extended to include all relevant non-incorporated colleges?

4.37 33 respondents answered the closed aspect of this question. A majority of 31 respondents (94%) considered that the powers of the AGS to conduct economy, efficiency and effectiveness examinations should be extended to include all relevant non-incorporated colleges. Two colleges disagreed.

4.38 24 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

4.39 Two reasons to support the proposal dominated responses:

- Where public funds are used, the AGS should oversee how this is spent. (13 mentions)
- All colleges should be treated the same; incongruous that the AGS has powers over some and not others. (8 mentions)

4.40 One respondent commented that two of the three non-incorporated colleges mentioned in the consultation are now funded by UHI, rather than the SFC. As a university, UHI is responsible for appointing its own external auditor, and as a charity, is also accountable to OSCR. Because the AGS does not conduct the annual audit of UHI, the new regional arrangements could make access to colleges in the UHI region more difficult. This, they suggested, provided a case for statutory powers to be formally extended as proposed.

Concerns about the proposal

4.41 Two colleges raised the following concerns about the proposal:

- These colleges will already be covered by internal and external audit and reporting to the SFC.
- It is not reasonable to attempt to remove all inconsistencies between colleges.
- These colleges are governed differently to others. To be accountable to the AGS could blur lines of accountability.
- Could lead to a change in governance and an undermining of the unincorporated status of these colleges.

Question 15: Should legislation be clear that the power of a person or body to appoint college board members includes a power to suspend any board member that they have appointed?

4.42 28 respondents answered the closed aspect of this question. A majority of 23 respondents (82%) considered that legislation should make clear that the power of a person or body to appoint college board members includes a power to suspend any board member that they have appointed. Three individuals, one college and one college board disagreed.

4.43 24 respondents provided commentary on the proposal and their views are summarised below.

Views in support of the proposal

4.44 The proposal attracted very little substantive comment. Two key reasons to support it emerged:

- To be consistent with other public sector appointments made under Scottish legislation. (8 mentions)
- Logical/reasonable. (5 mentions)

4.45 A few respondents qualified their support, stating that this was subject to a right of reply and appeal being in place.

Concerns about the proposal

4.46 The key concern was that the case for change was not clear, and further assurances and clarifications are required before accepting the proposal.

4.47 One respondent from the “other” category perceived it to be beneficial for the independence of boards if they are able to decide whether to suspend an individual, in accordance with their college’s constitution and internal regulations and policies. The proposal was seen as a back-up if balanced with a right of reply and appeal system.

SECTION 5: EQUALITY IMPACT

Question 16: We should welcome comments on whether the matters covered in the consultation paper raise any equalities issues that require to be addressed with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex or sexual orientation.

5.1 17 respondents answered this question. The overarching message to emerge from the majority of these was that there is room for improvement in terms of addressing equalities issues, and frameworks should be put in place to ensure sustained effort to promote diversity and equality in appointments.

5.2 Suggestions for future promotion of equalities included:

- Regular review of processes and procedures to assess their inclusiveness.
- Mainstreaming equalities duties into everyday practices, not perceiving them to be an “add on”.
- Focusing on diversity planning.
- Underpinning current legal requirements of colleges with equality impact assessments.
- Assessing the appointments systems, including where posts are advertised, diversity balance of appointment boards.
- Ensuring women, in particular, have access to training and mentoring, on taking up posts.
- Ensuring the new Code of Good Governance for Scotland’s colleges contains targets for improving the diversity of board membership, and it is clear who is responsible for equalities monitoring.

5.3 One college cautioned against focusing on gender over other characteristics. A college board expressed concern that one-third of their board comprises elected members and ex officio and appointed individuals, which makes it challenging to ensure equality issues are taken into account in all appointments.

5.4 One individual argued against “positive discrimination”, emphasising their view that boards need to recruit the best person for the job, irrespective of any protected characteristic. A respondent from the “other” category provided their view that the best person for the job cannot be recruited if they are not given the opportunity to apply, and the entire application process should be assessed for its equality impact.

5.5 An individual and a college considered that the consultation raised no equalities issues. A few respondents referred broadly to previous comments, particularly those provided in response to question 4.

Annex 1: Respondents

Total Respondents = 39

Individuals = 11

Local Authorities = 2

Aberdeenshire Council
East Ayrshire Council

Colleges = 10

Ayrshire College
Dundee and Angus College
Edinburgh College
Fife College
Forth Valley College
Glasgow Kelvin College
Orkney College UHI
West College Scotland
West Highland Colleges UHI
West Lothian College

College Boards = 6

Board of Management of North East Scotland College
City of Glasgow College Board of Management
Dumfries and Galloway College Board
Glasgow Colleges Regional Board
Lanarkshire Board
Regional Board of Borders College

Unions and Student Associations= 4

EIS Further Education Lecturers' Association
Scottish Trades Union Congress
UNITE
UNISON

Non Ministerial Government Departments = 2

Auditor General for Scotland and Audit Scotland
Scottish Charity Regulator

Representative Bodies = 1

Colleges Scotland

Others = 3

Equality Challenge Unit
Institute of Chartered Secretaries and Administrators: The Governance Institute
Scottish Women's Convention



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