

## PART 6: SUGGESTIONS FOR ENHANCING GOOD PRACTICE ACROSS THE SECTOR

On the basis of the information gathered and feedback received in respect of the three strands discussed above we have set out the "lessons learnt" for the sector during this process below:

### STRAND 1 - GOVERNANCE ISSUES IN RESPECT OF THE PROVISIONS, PROCEDURES AND ARRANGEMENTS RELEVANT TO THE SUSPENSION OF THE PRINCIPAL

- Legal advice on matters of this materiality and significance should be received in writing (even if after the event) for the audit trail and should include a proper risk assessment of the College's exposure.
- The Council considers that the terms of the Financial Memorandum made clear that the College should have contacted it to advise of the imminent suspension. The College did not consider it was under an obligation to so advise. Accordingly, the Council may wish to consider making the terms of the Financial Memorandum more specific regarding a requirement to alert the Council in advance of taking any action to suspend a Principal in any circumstances to ensure all parties are entirely clear as to what is expected of them.
- Stronger governance support to the College may have helped with certain of the matters that have arisen. When appointing Clerks/Secretaries, Colleges should have a clear understanding of their skills and experience.
- It has been a recurring theme of this and other sector reviews that in instances of conflict or alleged poor behaviour by Chairs of Colleges and to a lesser extent Vice-Chairman and Principals, that individuals lack obvious avenues to take to raise concerns/initiate any internal process. The Council should revisit, perhaps with Colleges Scotland, whether the sector needs a clear, uniform approach to such difficult situations such as a clear, external complaints process that is regarded as robust, independent but confidential for all parties.
- We appreciate the position taken by the Chair, on legal advice, that Board members were to be protected from the reasons for suspension as they may need to play a role in any future investigation/disciplinary process. This is not a point that is particular to college Boards. In other sectors and for other clients we have advised that the Board identify a pool of members that are ring-fenced for such purposes. However, this then leaves at least a small number of other Board members to participate in any first hand decision making. This, in our view, would have been a better governance approach than the Chair making an autonomous decision (with legal advice). It would have helped mitigate any discomfort evidenced by certain, but not all, Board members, that they were entirely in the dark regarding the suspension and process to follow and from a good governance perspective it ensures several minds contribute to a decision to ensure it has, and is perceived to be, balanced, fair and measured and not the decision of one person.
- We recommend the Council considers whether it would be appropriate for guidance to be given on this point to the sector either by the Council or Colleges Scotland.
- Equally, the Council could have subsequently been advised of the reasons for suspension earlier than the 4th March, at which stage the Chair, in response to a request from the Council dated 26th February, provided some high level indications as to what were considered to be issues surrounding the Principal's style of management. The Council was not a party to any appeal. Nor were any staff requested to provide witness statements. Had proper

communications been made to the Council then this may have helped obviate the need for this review.

- A final point to make (though this has already been flagged to the College by the Council and is being addressed out with this Review) is the manner in which legal advisers are appointed and the control of the legal spend. The Financial Memorandum allows for urgent appointments to incur up to £25,000 in legal fees without any form of competition. In this case the legal fees incurred by Simpson & Marwick were significantly in excess of this. This is not a matter to address further in the report other than to suggest that in any emergency situation where colleges may need to seek legal (or other) advice and may not have clear visibility at the outset of spend then it would be prudent for them to have access to a framework where they could quickly and simply call off legal (or other) services that have already been subject to competition. The Scottish Government's new legal framework will offer this possibility as does the current APUC legal framework, for example. It would be helpful for these options to be made well known to colleges in the event that they find themselves in a similar situation.

#### **STRAND 2 - HR PROVISIONS, PROCESSES, ARRANGEMENTS FOLLOWED REGARDING SUSPENSION OF THE PRINCIPAL**

- Whilst the internal processes in place for dealing with routine employee issues are well drafted and robust, consideration should be given to the establishment of a protocol for dealing with issues involving senior personnel and / or Board members which is applicable across the sector. This would give the Council the ability to have awareness of any issues in advance and to provide independent advice and support to avoid some of the issues that have arisen on this occasion.
- Where senior employees are involved, not only are the financial implications greater, but also the media attention which can ensue may exacerbate such financial exposure as it might support submissions by dismissed employees that their ability to secure alternative employment has been prejudiced. A protocol applicable to the sector as a whole could take steps to mitigate this risk / exposure.
- For example, as suspension is not a disciplinary issue, provision could be made for any suspension of a Principal or senior employee to require certain approvals (Board approval and Council notification / approval) which will allow the opportunity to provide independent advice and guidance, and allow appropriate arrangements for press / PR statements to be prepared.
- Likewise, a clear process whereby employees in the sector (and others) are able to raise issues relating to Board members and / or individuals who are not employees could provide the Council with advance notice of any problem areas.

#### **STRAND 3 - EXCLUSION OF STUDENT BOARD MEMBERS FROM COLLEGE BOARD MEETING**

- It is unfortunate that the student members were asked to leave the Board meeting on 23rd February when in fact any sensitive information was being withheld from all Board members in any event. The discussion was at a very high level and thus it seems to DLA Piper that it would not have been to the detriment of the discussion or the process to have student members stay, as was permitted by the Constitution. This option was clearly not communicated to the wider Board in time and so it is unfortunate that neither the lawyer from Simpson & Marwick nor the Board Secretary considered this point. This has led to what

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appears to be a hugely unfortunate adverse spiralling of relations between the Chair / Board and the student executive. Much of this appears to be about perception of the Board's approach to its own powers under the Constitution. It seems to us that the situation could have been handled more sensitively in this instance.

- The Constitution of the college is updated sooner than later to reflect the Code of Good Governance which includes provisions regarding ongoing dialogue and engagement with student members. Whilst we are advised that the College was awaiting publication of guidance from Colleges Scotland in respect of the Code of Good Governance, nonetheless it is clear from other colleges that the content of the Code was well consulted upon and understood by the sector sufficiently to allow amendments to be made.

## ANNEX 1: COUNCIL'S REVIEW REMIT

### Terms of reference for the review of governance and management at Glasgow Clyde College

#### Introduction and objective

The Scottish Funding Council ("the SFC") has advised the Chair of Glasgow Clyde College ("the College") that it intends to initiate a review of specific aspects relating to the governance and management of the College.

The overall output of the review is to provide a report and, where appropriate, recommendations for action to the Scottish Ministers.

#### Procedure

The SFC is using its powers under the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"), as amended, including by the Post 16 Education (Scotland) Act 2013. Section 7C(7) of the 2005 Act provides:

*'The Council may, whenever it considers appropriate, review whether a college which is assigned by order under subsection (1) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).'*

The provisions, procedures and arrangements outlined in section 7(2) include, 'suitable':

- (a) Provision in relation to the governance and management*
- (d) Procedures for considering and resolving any grievances arising from the carrying on of the body's activities'*

Also relevant is section 7C(8) of the 2005 Act, which provides:

*'On completing a review, the Council must provide a report of the review to the Scottish Ministers which—*

- (a) sets out the conclusions which it has reached;*
- (b) explains why it has reached those conclusions; and*
- (c) makes any recommendations for action in consequence of those conclusions as it considers appropriate.'*

In carrying out the review it is appropriate that the SFC take all necessary advice and receive appropriate support as required. The Chair of the Board has indicated that the College will co-operate fully in the review.

On this basis the SFC has instructed DLA Piper Scotland LLP, its principal legal advisors, to provide support and assistance to the SFC in undertaking the investigations set out below. Those investigations will inform the SFC's review and its report.

## Scope

The review will focus on three key areas:

- (i) review of the provision made in relation to the governance and management of the College. In order to focus and gain an understanding of these matters, the review will consider:
  - the provisions, procedures and arrangements which were followed in respect of the recent decision dated February 2015 to suspend the Principal
- (ii) review of procedures and arrangements for considering and resolving grievances within the College having regard in particular to general human resources (HR) provisions, processes and arrangements at the College and consideration of their fitness for purpose both in terms of complying with employment law and good practice. In order to focus and gain an understanding of these matters, the review will consider:
  - the manner in which such HR provisions, processes and arrangements were followed in relation to suspension of the Principal; and whether from that case any learning points exist to provide additional guidance to the college sector.
- (iii) review of the provision made in relation to the governance and management of the College and, specifically, the provisions, procedures, arrangements and support for the participation of student members within the College Board. In order to focus this aspect of matters, the review will consider:
  - whether the ability to exclude student members from any element of Board meetings (with particular reference to the College Board meeting on 23 February 2015) is appropriate or consistent with the College's 'Constitution'. In this context it will also consider the fitness of purpose of the College's 'Constitution', and the appropriateness of the College's actions in terms of interpreting the 'Constitution' in practice.

Points (i)-(iii) above will be considered and evaluated in terms of relevant legislation and appropriate guidance, and, where appropriate, the Code of Good Governance for Scotland's Colleges.

There are three strands to the investigations to be made for the purposes of the SFC's review. As indicated above, DLA Piper will be appointed to assist with this investigation:

### **Strand 1 – Investigation into the governance and management of the College and provisions, procedures and arrangements relevant to the suspension of the Principal**

This strand will involve a desk based review of any relevant information or documents and speaking to key individuals pertinent to both the existing processes and arrangements within the College which are relevant to any decision to suspend the Principal and the extent to which these were followed in practice. These individuals include: the Chair of the Board, other Board members; the Principal; and possibly the Secretary to the Board and any other individual. This will allow the gathering and collating of information and evidence to inform the review to be undertaken by the SFC.

### **Strand 2 – Investigation into the governance and management of the College and provisions, procedures and arrangements for HR matters**

This part of the investigation will involve a desk based consideration of the College's HR policies, procedures and processes: in general and, more specifically, how they were applied to the suspension

of the Principal. This will also involve speaking to the Head of HR and other appropriate personnel about how the policies are generally applied in practice and will be considered against compliance with employment law and good practice.

**Strand 3 – Investigation of the provision made in relation to the governance and management of the College and, specifically, the provisions, procedures and arrangements regarding the participation of student members within the College Board**

As with Strand 1, this part of the investigation will involve both desk based work and speaking to key individuals who understand the arrangements within the College for the participation of student members at Board meetings with particular reference to the circumstances at the College Board meeting on 23 February 2015. The individuals will include: the student members of the Board; the Chair; other Board members; the Secretary to the Board; others present at the Board meeting on 23 February 2015; and any other individuals considered appropriate.

**Review report**

Following consideration of the investigation including any information and advice provided by DLA Piper Scotland LLP, the SFC will then undertake its review and then provide a report of the review to the Scottish Ministers, which shall:

- (a) set out the conclusions which the Council has reached;
- (b) explain why it has reached those conclusions; and
- (c) make any recommendations for action in consequence of those conclusions as it considers appropriate.

**Timescales<sup>2</sup>**

DLA Piper will present the outcome of its work and relevant legal advice to the SFC by 30 April 2015.

The SFC will complete its review and provide its report to the Scottish Ministers by 15 May 2015. The SFC reserves the right to publish the report in whole or in part.

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<sup>2</sup> These timescales were subsequently extended.

## ANNEX 2 - LIST OF INTERVIEWEES

|                    |  |
|--------------------|--|
| Adam, Carol        | Secretary to the College Board, Glasgow Clyde College  |
| Chalmers, George   | Chair, Glasgow Clyde College   |
| Clocherty, Angela  | Student Board Member, Glasgow Clyde College  |
| Gillies, Pamela    | Principal and Vice-Chancellor of Glasgow Caledonian University<br>(formerly member of Glasgow Regional Colleges Board) |
| [REDACTED]         | [REDACTED]   |
| Hamilton, Jim      | Board Member, Glasgow Clyde College  |
| Harris, Eleanor    | Deputy Principal, Glasgow Clyde College  |
| Hughes, Brian      | Vice Principal, Glasgow Clyde College  |
| Jacobs, Les        | Board Member, Glasgow Clyde College  |
| Laverie, Peter     | Academic Staff Board Member, Glasgow Clyde College   |
| Leggett, Richard   | Board Member, Glasgow Clyde College  |
| Marshall, David    | Director of Student Services, Glasgow Clyde College  |
| McCrinkle, Barclay | Student Board Member, Glasgow Clyde College  |
| McGaw, Lorraine    | Director of Organisational Development, Glasgow Clyde College  |
| McKenna, Maureen   | Education Director, Glasgow City Council   |
| McKie, Ken         | Board Member, Glasgow Clyde College  |
| Pickles, Sally     | Support Staff Board Member, Glasgow Clyde College  |
| Ponton, Aileen     | Board Member, Glasgow Clyde College  |
| Potter, Christina  | Principal & Chief Executive at Dundee & Angus College  |
| Proudfoot, Elaine  | Board Member, Glasgow Clyde College  |
| Reid, Gordon       | Board Member, Glasgow Clyde College  |
| Struthers, Shona   | Chief Executive - Colleges Scotland  |
| Walsh, Susan       | Principal, Glasgow Clyde College   |

**ANNEX 3 - DOCUMENTS PROVIDED DURING THE COURSE OF THE REVIEW**

- 1. College Governance Documents**
  - 1.1 College Code of Conduct for Board Members
  - 1.2 College Constitution and Standing Orders of the Board of Governors
  - 1.3 College Board Handbook for Members
  - 1.4 College Organisational Structure
  - 1.5 College - Board of Governors Skills Matrix
  - 1.6 An example College Board Agenda of Standing Items
  
- 2. College Policies and Procedures**
  - 2.1 College Public Interest Disclosure Procedure
  - 2.2 College Anti-Harassment Policy (Staff)
  - 2.3 College: Anti-Harassment Procedure (Staff)
  - 2.4 College: Grievance Procedure
  - 2.5 College Consensual Relationships Policy
  - 2.6 College Collective Dispute Procedure
  - 2.7 College Dignity at Work Policy



**ANNEX 4 - NOTE SETTING OUT THE COLLEGE AND BOARD'S RESPONSE  
DATED 16 JUNE 2015**

**BRODIES** LLP

www.brodies.com

**Subject:** Glasgow Clyde College ("the College")  
Review by the Scottish Funding Council ("the SFC")

**Date:** 16 June 2015

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**1 Introduction & purpose**

1.1 DLA Piper were instructed to carry out a fact finding investigation as part of a review being conducted by the SFC under section 7C(7) of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"). This note responds to DLA Piper's draft report dated 9 June 2015 ("the Report"). In preparing this note we have received comments from [REDACTED] of Management. This note seeks to reflect those comments and where possible observations are attributed to the party / parties whom have made them. Brodies has also considered the legal issues that arise from the Report. We have used DLA Piper's headings and page numbers throughout.

1.2 We should be grateful if you would consider these comments before submitting your final report to the SFC. We would ask that this note is kept strictly privileged and confidential to be used solely for the purposes of advising your client.

**2 Scope of the SFC review**

2.1 The Board of Management ("the Board") remain concerned about the scope of the SFC review. We have set out more fully the Board's concerns to DLA Piper in our letters dated 16 and 23 April 2015. We do not intend to reiterate our comments here. Whilst it is hopeful that no challenge will be necessary the Board does reserve its right to challenge the SFC review for the reasons set out in our letters. In particular, the Board still has concerns (with which we agree) that the 2005 Act does not give the SFC the power to review live operational decisions taken by an institution when proceedings flowing from those decisions are yet to be determined. We would also draw the SFC to paragraph 12 of part 1 of the Financial Memorandum with Fundable Bodies in the College Sector ("the Financial Memorandum") which provides that:

*"SFC recognises that the institution is an autonomous body. SFC will not substitute its judgements for those which are properly at the discretion of the institution."*

The Board has taken separate legal advice on the ongoing disciplinary procedure. We would suggest that those disciplinary proceedings ought to have been concluded before the SFC conducted this review. For the avoidance of doubt, we make no comment on the appropriateness of the decision to suspend the Principal, or the process that was followed in taking that decision. That is a matter for other legal advisors and outwith the scope of our instruction.

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### 3 Wider context

- 3.1 At page 4 of the Report DLA Piper comment on the wider context in which the SFC review was conducted. We would agree with DLA Piper that it is important to understand the wider context in which the SFC review is being undertaken. We would also agree that the recent significant change in the sector is an important factor.
- 3.2 However, on behalf of the Board, we consider that there are three further issues which ought to be addressed in the section on wider context:
- 3.2.1 Firstly, it is important that DLA Piper acknowledge that they cannot resolve factual disputes, nor are they in a position to resolve the factual disputes identified in the Report. DLA Piper do appear to accept this in the Report but in our view it ought to be made clear at the outset of the Report. This feeds into a general concern the Board have about a lack of balance in the Report. Without making it clear that resolving factual disputes is not the purpose of the Report there is a risk that DLA Piper could be seen to prefer one account over another.
- 3.2.2 Secondly, and linked to the above, it is clear that relations have become strained between the Chair of the Board ("the Chair") and the Principal, and between the Chair and the student members of the Board. Clearly it has been a difficult time for all involved. We do think it is important to understand the unique constitutional position at the College that meant the authority to take the decision to suspend the Principal lay with the Chair and the Chair alone. That is not disputed by DLA Piper. The Chair has taken a decision to suspend the Principal and as a consequence he has had to respond to criticism about that decision and the process followed in taking the decision. We think in the interests of balance that the Report ought to acknowledge having taken that decision the Chair could be criticised by those who disagreed or were affected by it. We offer no comment on whether those views are rightly or wrongly held but it is a relevant factor when considering the weight to be attached to the comments of the Chair, Principal and student members at their interviews.
- 3.2.3 Thirdly, and on behalf of the Chair, it is important that DLA Piper acknowledge that in his interview the Chair declined to comment on the evidence that led him to suspend the Principal. He did comment on the process that was followed. The Chair did not comment on the evidence he held under legal advice because of his involvement as a witness in the ongoing disciplinary proceedings. The Chair considered it would not be fair to the Principal if he were to comment on allegations that have yet to be substantiated. We consider that was the right approach to take in the circumstances. However, it does appear from our review of the Report that the Principal has spoken to DLA Piper about the Chair and the disciplinary proceedings in more detail. We appreciate that the Report reflects what DLA Piper have been told in the course of an interview. However, some of the specific comments by the Principal (see for example at paragraph 6, page 9) were not put to the Chair in his interview. We consider that as a matter of balance and fairness those comments by the Principal ought to be removed from the Report or qualified on the basis the Chair was not asked about them.
- 3.3 We will now turn to the detail of the Report using DLA Piper's headings.

4 **Part 3 – strand 1 – governance issues in respect of the provisions, procedures and arrangements relevant to the suspension of the Principal** 3

4.1 Both the Board and the College have noted the generalisation of some of the comments in the Report, for example, the use of "Most board members", "members of staff more generally", "employees have indicated" and "senior management". We appreciate that this has been done to protect the identity of individuals. However, there is a risk in taking that approach that an individual who does not share the view being expressed can end up having it attributed to them. There is also a risk in terms of balance that generalising comments in this way can give the impression of one view being more prevalent than another with the nuance of what was actually said by individuals being lost. We acknowledge that this is a difficult balance to strike so our more detailed comments below identify the areas which we have been told the Board or College have specific concerns about.

4.2 We have been asked to make the following observations on Part 3 of the Report:

4.2.1 Paragraph 6, page 9 – on behalf of the Chair our comments at 3.2.3 apply here.

4.2.2 Paragraph 2, page 10 – our understanding is that three law firms were shortlisted to provide legal advice. Simpson & Marwick were the first firm that were available to attend at the College. As DLA Piper do not know the detail of the issues relating to the Principal (and nor do we) we do not think it is appropriate for the Report to comment on the amount of time that Simpson & Marwick may have had to advise the College.

4.2.3 Paragraphs 2 – 4, page 11 – there is discussion in the Report about the emails sent to the Principal following the decision to suspend her. DLA Piper accept that this point may be raised by other parties in a separate context. We have been instructed to ask that these comments are removed from the Report and not considered by the SFC as they could affect future proceedings that the College has to defend. We would also note that this is an example of the Board's wider concern about the scope of the SFC review described in section 2 above.

4.2.4 Paragraph 7, page 11 – DLA Piper say that "... the College Chair considered that he owed a reporting duty on governance issues to the Regional Board ...". We have seen a copy of the Chair's letter of appointment which was shown to DLA Piper at interview. We can provide a copy if that would assist. We consider it is clear from the letter of appointment that the Chair's reporting duty was to the Regional Board and not to the SFC. The Chair's position is that the Regional Board would then report on governance issues to the SFC. We consider how the Chair reported matters to the SFC in further detail below.

4.2.5 Paragraph 2, page 12 – DLA Piper refer to paragraph 19 of part 1 of the Financial Memorandum. We have been asked on behalf of the Board to make two comments about this passage of the Report. Firstly, the requirement in paragraph 19 is for the Chief Executive Officer to inform the SFC. As the concern was about the Principal (who is the Chief Executive Officer) there was a lacuna in terms of the reporting requirement, and from the Board's perspective it is perhaps understandable that no report was made. We note the recommendation for the sector at paragraph 3 of page 20 to address this issue which we consider would be welcome. Secondly, we would also note that paragraph 19 requires an exercise of judgement about whether the

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suspension would have a "significant adverse effect". We understand that the Board take the view that were sufficient measures in place to prevent any significant adverse effect on the College following the suspension of the Principal.

4.2.6 Paragraph 5, page 12 – this paragraph deals with the Chair's style and in particular in relation to the student members on the board. Our comments about the wider context at 3.2 apply equally here. We do also have concerns about the lack of balance in this section of the report given the views we heard expressed by Board members. DLA Piper say that "many board members" did not agree with the points being made by others about the Chair's style. We sat in on nine interviews with Board members all of whom said that there was no substance to this complaint. This represents a clear majority of the Board. We consider that in the interests of balance the positive statements made by the Board about the Chair's style in Board meetings and in respect of his relationship with the student members ought to be included in this section of the Report.

4.2.7 Paragraph 1, page 13 – our comments about the impact on any future proceedings at 4.2.3 apply equally here. We have been instructed to ask that these comments are removed from the Report and not considered by the SFC as they could affect future proceedings that the College has to defend. We offer no comment on the appropriateness of the investigation undertaken and any explanation as to whether it was fair or not is a matter for another forum.

5 Part 4 – strand 2 – HR provisions, processes, arrangements followed regarding suspension of the Principal

5.1 Both the Board and the College have a general concern about the Report (and ultimately the SFC) commenting on live disciplinary proceedings where those comments could affect the College's ability to defend any subsequent proceedings. We can appreciate that it would be appropriate for DLA Piper to comment on the HR provisions, processes and arrangements in a wider sense. However, both the Board and College consider that this section of the Report includes comment and observations from DLA Piper on factual matters which are yet to be determined.

5.2 With that in mind, we have been asked to make the following observations on Part 4 of the Report:

5.2.1 Paragraph 2 - 4, page 16 – In this section of the Report DLA Piper comment on the actions that have been taken by the College that could be the subject of challenge. DLA Piper say that they have done this having "reviewed the procedure and applied this to the facts". We do not see how DLA Piper could have taken this approach given that the facts are not fully known to them (or to us) and where there are factual disputes that have yet to be resolved. We have been instructed to ask that these paragraphs are removed from the Report and not considered by the SFC as they could affect future proceedings that the College has to defend. If DLA Piper is not prepared to remove the entire paragraphs from the Report then the Board and College's secondary position is that the following comments by DLA Piper ought to be removed: "there are a number of areas where the actions taken could be subject to challenge"; "the suspension appears to have been invoked in a manner which has not properly taken into account the requirements of the procedure"; and "which might entitle her to make a claim for personal injury over and above the impact on the fairness of any resulting action".

6.2.2 Paragraph 5 - 6, page 17 - Our comments at 5.2.1 apply equally here. We have also been instructed to ask that these paragraphs are removed from the Report and not considered by the SFC as they could affect future proceedings that the College has to defend. If DLA Piper is not prepared to remove the entire paragraphs from the Report then the Board and College's secondary position is that the following comments by DLA Piper ought to be removed: *"that the College will face a serious challenge to defend its action in the event of any claim."*; and *"will have a serious impact upon the ability to demonstrate that any resulting procedure is reasonable, in the absence of an explanation as to the reasons for the manner of and length of suspension"*.

**6 Part 5 - strand 3 - exclusion of student board members from college board meeting**

6.1 On behalf of the Board we note that the Report does not refer to the concession made by the Board that it requires to review its constitutional documents to ensure they are consistent with the Code of Good Governance. We are instructed to carry out that review and it will be completed in due course. We consider that the Report ought to acknowledge that this concession has been made by the Board because it addresses one of the key clear governance issues that fall within the scope of the SFC review.

6.2 We have been asked to make the following observations on Part 5 of the Report:

6.2.1 Paragraph 5, page 19 - on behalf of the Board we think it is important that the Report makes clear that the Board considered that no decision was taken at the board meeting of 23 February 2015. This means that even if the student members considered that they were deprived of the right to take part in the meeting that would not have deprived them of right to participate in a decision of the Board. We also think in the interests of balance that it ought be said that the majority of the Board members interviewed felt it was unfortunate the student members had been excluded but their exclusion was due to the advice they received at the meeting.

6.2.2 Paragraph 6, page 19 - on behalf of the Board we note that an explanation has been given by the Board as to why relations may have continued to be strained after the meeting of 23 February. Our understanding from the Board is that this was partly due to a failure of the student members to understand why the Board required greater detail in respect of the student association proposal. It has been explained to us in interviews, and to DLA Piper, that the Board were not being intentionally obstructive but were simply performing their governance role. Again in the interests of balance we consider the comments made by individual Board members about the appropriateness of the student protest and the conduct of the student board members ought to be included here.

**7 Part 6 - suggestions for enhancing good practice across the sector**

7.1 Subject to the comments below we can confirm on behalf of the Board and College that they are content with the "lessons learnt" for the sector which they consider are fair and appropriate conclusions to draw from the circumstances. However, we have been asked by the Board to make the following two comments:

7.1.1 Paragraph 6, page 20 - we can understand the basis for the suggestion that the Board ought to identify a pool of members that are ring-fenced to participate in first hand decision making. However, there are two practical difficulties with that approach which the Board have asked are

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acknowledged in the Report. Firstly, in respect of suspension, the College does not have a committee with delegated authority under its standing orders to suspend the Principal. This meant, as set out above, that only the Chair had the power to suspend the Principal if it was felt that step needed to be taken urgently. The College's constitutional documents would have needed amending before DLA Piper's suggestion could have been taken forward. Secondly, the Board is not fully constituted and only has 13 rather than 18 members. The Principal, the student members, the Chair and the Vice Chair were all unable or unwilling to take part in the disciplinary process. One board member also asked not to be involved after details of her involvement were leaked. This left only 7 members to be able to deal with the disciplinary process which presented practical difficulties for the Board.

7.1.2 Paragraph 8, page 20 – we understand that there was some discussion between the Chief Executive of the SFC and the Chair prior to 4 March 2015 about the Principal but that there is a factual dispute about the terms of that discussion. We consider in the interests of balance that ought to be acknowledged in the Report. We also understand from the Chair's interview that a meeting with the SFC did take place between 19 and 23 February but that has not been recorded in the Report. We are told by the Chair that the purpose of that meeting was to brief Professor Brown, the Chair of the SFC on the issues because the Chair of the SFC had had no prior involvement in discussions about the Principal, and therefore would be well placed to support the Chair on next steps. We understand that the Chair did not get an opportunity to brief the Chair of the SFC and instead the matter was handled by the Chief Executive of the SFC whom then subsequently attended the meeting on 23 February.

**8 Annex 2 – list of interviewees**

- 8.1 We have also considered the list of interviewees. We note the omission of individuals from the SFC who attended the board meeting on 23 February 2015. It would be helpful to the Board if an explanation could be given for this omission.
- 8.2 We consider it would also be helpful for the Board to understand why [REDACTED] were interviewed as part of the SFC review. We do not immediately see the relevance of speaking to these individuals in a review about the College, when it appears they had no direct involvement in the governance arrangements of the College or the other issues that feature in the Report.

**Brodies LLP**

**16 June 2015**

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Edinburgh  
EH12 5HD



05 October 2015

**PRIVATE AND CONFIDENTIAL**

Dear Laurence

**SECTION 24 OF FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992  
BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE**

1. I refer to the Cabinet Secretary's letter of 9 September to the Board of Management of Glasgow Clyde College; your Chair, Professor Brown, was a copy recipient. The Scottish Ministers have now received a response to that letter from the Board. Having considered that response, the Scottish Ministers are minded to make an order under section 24 of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act") to remove specified members from the Board of Management of Glasgow Clyde College ("the Board"). The content of the Order and the reasons for it are set out in the Annex which contains the draft Order, related draft Policy Note and related draft statement of concern.

**Background**

2. The Scottish Ministers have power under section 24(1)(a) of the 1992 Act to remove, by Order, any or all board members of an incorporated college (except the principal) where it appears to them that a board -

(i) have committed or are committing a serious breach of any term or condition of a grant made to them under section 12 or 12B of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act");

(ii) have committed or are committing repeated breaches of such terms or conditions;

(iii) have failed, or are failing, to provide or secure the provision of education of such standard as the Scottish Ministers consider appropriate;

(iv) have failed, or are failing, to discharge any of their duties properly; or

(v) have mismanaged, or are mismanaging, their financial or other affairs.

3. As you are aware, the SFC sent the Scottish Ministers a report of its review of the Board under section 7C(7) of the 2005 Act. Given the concerns raised by the Board about that report, the Scottish Ministers have placed no reliance on it.

4. The Board is required to comply with the SFC's Financial Memorandum with Fundable Bodies in the College Sector ("the FM") as a condition of SFC's grant to the Board under section 12 of the 2005 Act. A failure to comply with the FM constitutes a breach of a condition of the SFC's grant to the Board under section 12 of the 2005 Act.

5. Among other things, the FM requires the Board to comply with the principles of good governance set out in the Code of Good Governance for Scotland's Colleges ("the Code"). As such, a failure to comply with the the Code, also constitutes a failure to comply with the FM, and so also constitutes a breach of a condition of the SFC's grant to the Board under section 12 of the 2005 Act.

#### Conclusion

6. Section 24(3) of the 1992 Act requires the Scottish Ministers to consult the Scottish Further and Higher Education Funding Council ("the SFC") before making an Order under section 24 of the 1992 Act.

7. I should be grateful if you would provide me with your views on the proposal to make an Order in the terms set out in the draft Order enclosed, ideally by no later than 12 noon on Wednesday 07 October 2015.

Yours sincerely,



**AILEEN McKECHNIE**  
Director of Advanced Learning and Science



## POLICY NOTE

### THE GLASGOW CLYDE COLLEGE (REMOVAL AND APPOINTMENT OF BOARD MEMBERS) (SCOTLAND) ORDER 2015

SSI 2015/

1. The above instrument is made in exercise of the powers conferred by section 24(2) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act").

#### Policy objectives

2. Colleges are vital to the success of Scotland and its people and college boards are vital to the success of colleges. Good governance is at the heart of the Government's college reforms because students rely on college boards of management for the proper stewardship of their institution. Boards are responsible for ensuring good governance.

3. Ministers have since 1993 had powers to remove any or all board members (except the principal) of an incorporated college by Order. Section 24(1) of the 1992 Act sets out the circumstances in which the Scottish Ministers may remove board members

#### Board of Management of Glasgow Clyde College

4. The governing body of Glasgow Clyde College is its board of management. The Board of Management of Glasgow Clyde College ("the Board") has a duty under section 12(1) of the 1992 Act of managing and conducting their college.

5. As Glasgow Clyde College is assigned to the Regional Board for Glasgow Colleges, and as the Regional Board is yet to satisfy the SFC that it has all the arrangements and processes in place to fund its colleges, Glasgow Clyde College continues to receive grants from the SFC under section 12 of the Further and Higher Education (Scotland) Act 2005.

6. Among other things, the Board is required to comply with the terms and conditions of its grant from the SFC, including complying with its Financial Memorandum and the Code of Good Governance for Scotland's Colleges.

#### Removal of Board members

7. Using powers under Section 24(2)(a) of the 1992 Act, the following have been removed from office because it appears to the Scottish Ministers that the Board have committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 and have mismanaged the affairs of that Board:

[insert names].

8. The reasons for this are set out in the Annex.

### **Appointment of new Board members**

9. By virtue of section 24(2)(b) of the 1992 Act, where a removed member was appointed under paragraph 3A(2)(a) or (f) of Schedule 2 to the 1992 Act, Ministers may appoint another person in place of the removed member.

10. Ministers have appointed people with a proven track record to the Board. They will support Glasgow Clyde College through this difficult period. In recognition that these are emergency appointments; they are to hold office until 31 August 2016 (see para 11). At the end of their period of office, Ministers expect the posts to be filled following an open recruitment process as set out in College Sector Board Appointments: 2014 Ministerial Guidance<sup>1</sup>.

### **Effect of Order**

11. Article 2 of the Order removes from the Board the Chair and other named members. These are all the members of the Board when the Order came into force (except the principal), except the non-teaching staff member. This individual was not a member of the board when the matters outlined in the Annex occurred.

12. Article 3 of the Order appoints a person to be the Chair and other persons to be members of the Board in place of persons removed from the office of Chair or Board Member.

13. Article 4 provides that the appointed persons are to hold office until 31 August 2016 or until such earlier date as the Scottish Ministers may determine, having given four weeks' notice in writing. This should provide sufficient time for the matters which gave rise to the making of this Order to be addressed before the Glasgow Colleges' Regional Board recruit on a longer term basis.

### **Consultation**

14. The Cabinet Secretary for Education and Lifelong Learning wrote to the Chair and other members of the Board on 9 September 2015 seeking their comments on her concerns. The Cabinet Secretary subsequently met the Chair and two Board members on 14 September 2015. Board members replied on 18 September outlining why they did not consider their removal was an appropriate action. However, the Cabinet Secretary was not persuaded by their reply, and was then minded to make an Order for the removal of the Board members specified in the Order.

15. As required by section 24(3) of the 1992 Act, the SFC was consulted in relation to the removal of board members in this Order.

### **Impact assessments**

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<sup>1</sup> <http://www.gov.scot/Resource/0045/00458051.pdf>

16. There are no significant equality impact issues arising from this Order. The Order removed x women and y men and appointed x women and y men.

**Financial effects**

17. The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on local government or on business.

**Scottish Government  
Colleges, Young Workforce and SFC Sponsorship Division  
September 2015**

**STATEMENT OF REASONS FOR MINISTERS CONCLUDING THAT THE BOARD OF MANAGEMENT OF GLASGOW CLYDE COLLEGE IS FAILING**

This note sets out Ministers' reasons for concluding that the Board of Management of Glasgow Clyde College ("the Board") has committed repeated breaches of terms and conditions of a grant made to it under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act"); and has mismanaged its affairs

1. The Scottish Ministers consider that the Board is failing in relation to the following grounds of section 24(1)(a) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"):

- a) having committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") (section 24(1)(a)(ii) of the 1992 Act);
- b) mismanaging their affairs (section 24(1)(a)(v) of the 1992 Act).

**Repeated Breaches of Terms and Conditions of SFC Grant (section 24(1)(a)(ii) of the 1992 Act)**

2. Compliance with the *Financial Memorandum with Fundable Bodies in the College Sector*<sup>1</sup> ("the Financial Memorandum") and the *Code of Good Governance for Scotland's Colleges*<sup>2</sup> ("the Code") are terms and conditions of the grant made by the Scottish Funding Council ("the SFC") to the Board under section 12 of the 2005 Act.

3. It appears to the Scottish Ministers that there have been breach of such terms and conditions because of the following:

(i) *Governance:*

(a) Paragraph C.3 of the Code provides that the Board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely. However, it appeared that:

**Lack of preparation and due consideration of matters**

4. Meetings of the Board took place without agendas on 14 April 2015 and 19 May 2015. It was therefore unclear to Board members what would be discussed at the meetings, and so board members had little or no opportunity to prepare for these meetings. In particular, it appeared that on 19 May 2015 at a meeting that members had been informed was for the purpose of discussing issues with senior representatives of the Scottish Government, the SFC and the Glasgow Colleges' Regional Board, the Board decided to make detailed changes - with no advance notice - to the College constitutional

<sup>1</sup>[http://www.sfc.ac.uk/web/FILES/Guidance\\_Governance/Financial\\_Memorandum\\_with\\_the\\_College\\_Sector\\_-\\_1\\_December\\_2014.pdf](http://www.sfc.ac.uk/web/FILES/Guidance_Governance/Financial_Memorandum_with_the_College_Sector_-_1_December_2014.pdf)

<sup>2</sup>[http://www.sfc.ac.uk/web/FILES/GUI\\_SFCGD182014\\_Goodpracticeincollegegovernance/Code\\_of\\_Good\\_Governance\\_for\\_Scotlands\\_Colleges.pdf](http://www.sfc.ac.uk/web/FILES/GUI_SFCGD182014_Goodpracticeincollegegovernance/Code_of_Good_Governance_for_Scotlands_Colleges.pdf)

document<sup>3</sup> in relation to the making of arrangements for a disciplinary committee and an appeal committee.

*Board explanation*

5. The Board explain that extraordinary meetings were convened to update the Board on the disciplinary position and developments with SFC. It advises that Board members were clear about the subject matter for discussion at meetings. It states that it frequently had to meet at short notice due to the SFC's actions. It also explains that information about the purpose of a meeting on 19 May 2015 was not shared with Board members in advance due to concerns about confidentiality. The Board also explains that constitutional changes were not circulated in advance because of time constraints and the need for solicitors to first discuss them with the Board. Finally, the Board stresses that it always acted in accordance with legal advice.

*Ministers' consideration and conclusions*

6. It is clear that the meetings in question went beyond providing updates, and that in particular the Board made detailed and complex decisions on important matters. Without an agenda, advance papers, or other notice of the subject of a meeting, I do not accept that all board members would know what matters were to be discussed in sufficient detail as to be able to prepare. In order to be effective, particularly in relation to decisions on complex matters such as that dealt with on 19 May 2015, board members need to know in advance what is to be discussed. I do not accept that robust decisions of such detail and complexity could be taken with confidence in the absence of appropriate papers, considered in advance. The Board advise that members ruled out from participating in any disciplinary panel included "student representatives", yet the board minutes of 19 May 2015 (6pm start version) record that the Board had identified one of the student members among the six board members "who could take part in the disciplinary committee or the appeal committee". Moreover, the student member in question had not attended any Board meetings since 26 March 2015.

7. It is not clear that the Board was forced to meet at short notice. However, even accepting that this was the case on some occasions, the period of notice was not so short as to prevent an agenda being prepared and circulated in advance. Further, concerns around confidentiality should not lead to a situation where board members do not know in advance what is to be discussed.

8. It is of concern that the Board did not object to meetings being held without an agenda, or ask for consideration of complex matters to be continued to a later meeting so that they could fully consider matters, given the lack of opportunity to prepare in advance. In particular, the Board should

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<sup>3</sup> "the College constitutional document" means the document entitled **Constitution and Articles of Governance of The Board of Management of Glasgow Clyde College**, 1 August 2013.

have recognised that without advance notice of the proposed arrangements, they could not properly develop arrangements at the meeting itself of such detail and complexity as those set out in the minutes of the meeting dated 19 May 2015 (6pm start version).

### Board minutes

9. Throughout the period from 12 February 2015 to 25 June 2015, there were deficiencies in the recording of discussions, decisions, actions and in the minutes of Board meetings. In consequence, in important respects there was an incomplete or inaccurate record of the business transacted by the Board. For example there was no record of the discussion and any conclusions on *Curriculum and Estates Review - EIS questions and letter* at the Board meeting on 12 February 2015 (because the minute-taker left the meeting for this item); the minutes of the Board meeting on 23 February 2015 do not record that it was discussed that the depute principal would assume the responsibilities of the Principal following her suspension; the minutes of the Board meeting on 26 March 2015 record more members voting confidence in the chair than were present; it is not clear from the Board minutes of 28 April 2015 what decisions, if any, the Board took; the minutes of 19 May 2015 (6pm start version) - while recording decisions - contain little information of the discussion that led to those decisions; and the minutes of 25 June 2014 record the involvement of the Board Secretary in a discussion, but does not record that she was present in the list of attendees.

10. Throughout the period from 12 February 2015 to 25 June 2015, minutes of meetings were not routinely approved at the next available meeting, and appear often to have been held over to the next quarterly ordinary meeting. At some meetings therefore, the Board had no agreed record, and therefore no common understanding, of the discussion and agreement at its previous meeting. This impaired the Board's ability to keep track of what decisions it had already taken, when considering matters before it. Of particular concern is that the minutes of the Board meetings of 23 February, 26 March and 14 April 2015 each give a different account of what the Board was asked to agree at the 23 February 2015 meeting. The minutes of the Board meeting on 14 April 2015 were taken by one of its members, potentially impairing him from fully participating at that board meeting.

### *Board's explanation*

11. The Board explains that lack of a Secretary and pressure of business led to a delay in some Board minutes being made available and advises that when there was a Secretary, the minutes were her responsibility, not the Board's and that when there was no Secretary, a lawyer was often present and took notes or minutes. The Board state that all Board minutes have now been made available and approved. Two now former Board members did not agree with certain draft minutes, but their proposed changes were disputed by the remainder of the Board. Although those two former Board members disputed certain minutes, all other Board members had a clear and shared understanding of what decisions had been taken.

12. The Board accepts that there was a delay in some minutes being made available, and that there was in some cases a dispute as to what had been agreed. However, it points out that this was primarily the responsibility of the Secretary when still in office, and that notes or minutes were prepared by a lawyer in the absence of the Secretary.

*Ministers' consideration and conclusions*

13. It is important that college boards, which are public bodies spending public money, keep a record of their business both for their own purposes and so that their operation and decisions and the basis on which they are made are clear and transparent to interested parties including the public.

14. I accept that primary responsibility lay with the Secretary. However, it is ultimately for the Board to ensure that its decisions are properly recorded, and the Board failed to ensure that the Secretary was putting draft minutes before it for agreement timeously.

15. Whilst the Board contends that most Board members had a clear and shared understanding of what decisions had been taken, that understanding was disputed by other Board members, indicating that there was no shared understanding across the Board. Had steps been taken to ensure minutes were agreed at the next meeting (other than in exceptional circumstances) differences of opinion would more quickly have come to light, and transparency would have been improved.

**Board Secretary**

16. The Board Secretary's role is to advise and support the Board, Chair and executive team in relation to governance matters, as set out in paragraphs D.14 and D.15 of the Code. Prior to her departure, the previous Board Secretary was not present at certain meetings that considered governance matters, and inadequate arrangements were made to cover her important functions at the Board meetings on 14 April 2015 and 19 May 2015.

*Board's explanation*

17. The Board states that it is now seeking to recruit a new Secretary, and to put in place suitable interim arrangements for cover.

*Ministers' consideration and conclusions*

18. As noted above, whilst the Secretary has primary responsibility for preparing and agreeing the minutes, it is ultimately for the Board to ensure that its decisions are properly recorded in a timely manner. It is of concern that the Board has failed to acknowledge the problems inherent in a board member taking minutes of a board meeting (at the meeting on 14 April 2015), or in the inefficient use of resource in relying on a lawyer to take minutes (at the meeting on 19 May 2015).

19. The Board advise that the number of meetings and the short period between some has contributed to the delay in producing minutes. However, none of the gaps between meetings is so short that it would have been unreasonable to expect minutes to have been produced. My concern here is therefore not solely the lack of minutes available at the next meeting, but the lack of apparent concern by the Board of the impact this would have on its ability to discharge its functions effectively.

In light of the foregoing, I conclude that Board decision-making processes were not transparent, properly informed or rigorous.

*(ii) Relationship with students:*

(b) The relationship between the Board and students is one of the key relationships for any college. Paragraph B.1 of the Code provides the following in relation to student engagement: "*The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions*". Paragraph B.2 provides that "*the board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience.*" (See also paragraph 18(d) below.) However, it appeared that:

20. There had been a breakdown in the relationship between the Board, on the one hand, and its student members and the College's Students' Association, on the other. This was prompted in part by the exclusion of the student members from a Board meeting on 23 February 2015 which in turn appears to have resulted from a misreading of a provision of the College's constitutional document (the provision reflected a statutory provision which was repealed in 2003 and was not in compliance with the Code).

21. In the 2014/15 academic year, no student was willing to put themselves forward for election as a students' association officer to replace the outgoing student members, and the planned election was postponed.

*Board's explanation*

22. The Board advises that, aside from the events of the February 2015 meeting, there have been no issues between the students as a body or their representatives on the one hand and the Board on the other, but accept there was a breakdown in the relationship between the Chair and certain student representatives. The Board suggest that this arose in the case of the past Student President, attributing it to his loyalty to the Principal. The Board further note that the past Student President sought to influence the Board in its discussions on the SFC review, and that he (along with SFC) were at pains to suggest a breakdown in the relationship. The Board notes that the "casualties" of this situation have been the students themselves.

23. In relation to the other former student board member, the Board states that she stopped attending Board meetings shortly after the Principal was



OFFICIAL SENSITIVE – DRAFT ADVICE

suspended. The Board refute any suggestion that it was the result of the way in which she had been treated at Board meetings, advising that it would be reasonable for her to have addressed the Board had that been the case.

24. The Board advises that now that students are standing for election as student officers, the situation will normalise.

*Ministers' consideration and conclusions*

6. It appears to me that the relationship between the Board, particularly the Chair, and the Student's Association did break down, evidence for which include:

a) the Board discussed the Students' Association's vote of no confidence in the Chair at its meeting on 26 March 2015. While I accept this was prompted by the exclusion of two students from the Board meeting on 23 February 2015, it does demonstrate that the issue went beyond a breakdown in the relationship between individual student representatives and the chair, as the Board suggests.

b) the 2014/15 Glasgow Clyde College Students' Association executive team wrote expressing concern about the treatment of the two student Board members, advising that the executive team had taken a collective decision not to stand for a sabbatical post. Student concerns was mentioned by the Scottish Government Director of Advanced Learning and Science when she attended the board meeting on 19 May 2015 and in a subsequent letter dated 4 June 2015. The executive team's letter was subsequently sent to the Board Chair with most of the student names redacted at their request.

25. Student board membership is integral to the proper functioning of a college board of management. Paragraph 3A(2)(e) of Schedule 2 to the 1992 Act requires the board to include two student members nominated by the students' association. It is therefore clearly important to college governance that there is a functioning students' association able to make these appointments. Students' associations cannot function without the active participation of students. The fact that no student stood for election in academic year 2014/15 has made it more difficult to ensure the continued operation of the College's Students' Association from the start of academic year 2015/16.

26. It is of concern that the Board made no attempt to find out why a student member stopped attending meetings and, apparently without any evidence base, refute any suggestion that it was the result of how she had been treated by the Board. Board members have a general duty of care to each other, but in relation to its student members I would have expected it to have been especially vigilant.

27. Whilst I note the Board's belief that with new student Board members matters will now "normalise", and I accept that a change in student leadership

may provide an opportunity for a fresh start with the student body, I am concerned that the Board has demonstrated insignificant awareness that there has been a fractured relationship in the past. While I could understand the Board considering that it was not responsible for the breakdown in the relationship, I am concerned that the Board has not even acknowledged there was a problem. I therefore have no confidence that similar problems would not present themselves in the future.

Based on the foregoing, it appears to me that, contrary to the Code, the Board have failed to lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, [and] the students' association ... in relation to the quality of the student experience.

### Procurement

(iii) *Financial requirements in relation to delegated financial limits to expenditure:*

(c) Appendix A to Part 3 of the Financial Memorandum sets a limit of £25,000 on expenditure for procurement of services through non-competitive action. Any such expenditure incurred beyond that requires the prior written approval of the SFC. However, it appeared that:

28. The College procured legal services in relation to the disciplinary process relating to the Principal from Simpson & Marwick. The total incurred cost of those services was over [REDACTED]. The College sought retrospective approval from SFC on 22 April 2015 at which point the liability incurred by the College was already over [REDACTED].

### *Board's explanation*

29. The Board does not accept responsibility for this matter, advising that it did not approve any spend, and that it perceived the matter to be under the control of the Depute Principal. In support of its position, the Board refer me to a draft internal audit report prepared by BDO. That report states that Simpson & Marwick were appointed by Board members without a competitive process; that college procedures were compatible with all procurement and SFC requirements but were not followed; that the Board Secretary did not initially share the engagement letters, and there is no evidence of them being considered; that Simpson & Marwick state that they did not receive requests for fee estimates and that there was no dialogue on expected fee levels until after the £25,000 limit had been exceeded; and that there was no monitoring of costs for the first month.

*Ministers' consideration and conclusions*

30. The draft internal audit report suggests that, by incurring liabilities, the College could not be said to be 'incurring expenditure'. In my view, on such an interpretation the limit would fail to serve any useful purpose as huge liabilities could be incurred without breaching the limit as long as the money was not paid before approval was obtained. I do not accept that interpretation. I conclude that the delegated limit of £25,000 was exceeded without SFC approval, and that SFC approval was not sought until more than 3 weeks after it was apparent the limit had been exceeded.

31. The Board states that it does not accept that it has failed in any way in this matter. But given the weaknesses identified by BDO, I cannot accept that view. The Board has overall responsibility for the operation of the College. Paragraph 2 of Part 2 of the FM provides: "The responsibility for ensuring that the institution complies with this FM rests with the governing body of the institution". It therefore appears to me that the Board does not understand or accept its role as a governing body.

32. The Board has drawn my attention to the "action plan" which it intends to undertake to address this issue. This includes being clear about who is responsible for monitoring costs, using capped fees, sharing relevant documentation, training for Board members on procurement requirements and recruiting a suitably qualified Board Secretary.

33. Some of these measures will clearly help to improve governance (for example, having a suitably qualified and experienced Board Secretary) and control (eg capped fees). Others appear to be tackling the matter from the wrong end (eg it appears to me that a clear lesson the Board should have drawn is to better engage with the senior management team, rather than improving the knowledge of individual board members about the detail of procurement rules).

34. However, I note that (a) despite the terms of the draft internal audit report and the FM, the Board do not accept that they have failed in any way in this matter, (b) existing College procedures (which were compliant with FM and the College's procurement rules) simply were not followed, and (c) even once it was known that the delegated limit had been breached, approval was not sought from SFC for over 3 weeks.

35. I conclude that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. The total cost of the action incurred by the Board was significantly more than three times this limit.

36. In addition, the College failed to follow its existing procedures (which were compliant with SFC and procurement rules) and the Board do not accept responsibility for this failure notwithstanding their close involvement in this matter and overall responsibility for the governance of the College.

37. The Scottish Ministers have concluded that, in light of the above, the Board has committed repeated breaches of the terms and conditions of the grant made to the Board under section 12 of the 2005 Act, in terms of section 24(1)(a)(ii) of the 1992 Act.

**Mismanagement of Affairs (section 24(1)(a)(v) of the 1992 act)**

**Failure to discuss governance concerns of its Principal**

38. It appeared that governance concerns raised by the Principal by email dated 18 February 2015 immediately prior to her suspension have not been considered by the Board, despite the Chair advising the Principal in his reply dated 19 February 2015 that he asked the Board Secretary to convene a board meeting "as soon as possible". The Principal's email advised the Board that she intended to seek advice from the College's solicitors on "*governance issues in relation to propriety, processes, procedure, conflicts of interest and behaviours*". The Board minutes record no Board discussion of the concerns raised by the Principal in her email. In particular, there is no record of any discussion about seeking further details of the Principal's concerns, those of its most senior officer with specific responsibility under the FM for ensuring the Board's propriety.

*Board's explanation*

39. The Board advises that it did not discuss or seek further detail of the Principal's concerns because the disciplinary process was underway, which in its view prevented the Board seeking details from the Principal. However, the Board advises that it is a reasonable assumption that the Principal will elaborate on her concerns as part of the disciplinary process.

*Ministers' consideration and conclusions*

40. I note that (prior to her suspension) the Principal raised serious concerns about governance which the Chair undertook to convene a meeting of the Board "as soon as possible" to discuss. The Principal was then suspended by the Chair later that day for reasons I understand to be unconnected with her email.

41. I do not accept that the Principal's suspension would prevent the Board from investigating or considering her concerns. I do not think it is reasonable for the Board to assume that the Principal will raise these concerns during the disciplinary process, and even if it were, it is now more than 7 months since the concerns were raised. The very fact that the Principal was suspended almost immediately after she raised these concerns should, in my view, have led the Board to identify this as a matter requiring prompt and careful consideration.

42. There is a serious failure of governance in that concerns raised by the Principal by email dated 18 February 2015, immediately prior to her suspension, have still not been clarified and considered by the Board some 7 months later.

### **Failure to obtain prior approval before exceeding delegated limit**

43. As noted at paragraph [ ] above, I conclude that the Board failed to obtain prior approval from the SFC before exceeding the delegated limit for procurement of services through non-competitive action. The total cost of the action incurred by the Board was significantly more than three times this limit.

### **Improper delegation of function**

44. There appeared to have been an improper delegation of functions to an individual Board member (who is not the Chair) in relation to the disciplinary process following the suspension of the Principal.

#### *Board's explanation*

45. The Board states that they took legal advice on this matter and that there was no delegation to a single board member (who is not the chair) to decide whether to proceed to formal disciplinary action in relation to the Principal. Rather, the relevant Board member was "standing in" for the human resources manager.

#### *Ministers' consideration and conclusions*

46. I conclude that this was an improper delegation to a single member of the Board. As such, it was contrary to section 12(4) of the 1992 Act. The Board has powers to delegate functions to a member of staff or a committee, but it does not have powers to delegate functions to a single Board member who is not the Chair.

47. There was an improper delegation of functions to an individual Board member in relation to the disciplinary process. While, I accept that this was done on the basis of legal advice, my primary concern is that having raised this matter with the Board, the Board appear unable to recognise that anything improper has occurred. That the Board has powers to delegate to a member of staff does not vest it with powers to delegate a function to an individual member of the Board (who is not the chair) by virtue that they are carrying out a function the Board's procedure envisaged would be carried out by a member of staff.

48. While at first sight an improper delegation of this type may appear a minor failure in governance, it has potentially serious ramifications for the disciplinary process.

### **Relationship with students**

49. As noted above, I conclude that the relationship between the Board, particularly the chair, and the student Board members did break down. This appears to have been triggered by the Secretary's incorrect statement that student Board members could not take part in discussion of the Principal's suspension, and by the Chair's treatment of the student Board members at that meeting (and in the case of the past Student President, at subsequent meetings) and the lack of any challenge by other Board members to that treatment.

50. The Scottish Ministers consider that in light of the above (paragraphs 7 to 18), the Board has mismanaged its affairs in terms of section 24(1)(a)(v) of the 1992 Act.

#### **Board's request for further detail of my concerns**

51. In relation to a number of issues which I have raised with them, the Board has provided its response and then requested that, if I do not accept its response, I provide further detail of the issue raised (in others, they have simply provided their response and asked for more detail.) I consider that I have provided sufficient detail to allow the Board to respond fully to the issues I have raised with them. It does not appear to me that there is any confusion or lack of agreement as to the matters at issue. As such, I do not consider it necessary to provide further detail to the Board in order to obtain their fully considered response.

#### **Removal of Board Members**

52. The nine key principles of public life are set out in paragraph A.2 of the Code and include "accountability and stewardship, openness and leadership".

53. Paragraph D.1 of the Code provides that the chair of the board is responsible for the leadership of the board and ensuring its effectiveness in all aspects of its role. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members and fostering constructive relationships between board members. Paragraph D.12 provides that the chair and the principal have a shared responsibility to provide leadership for the college.

54. Paragraph D.3 of the Code provides that the whole board is collectively responsible and accountable for all board decisions. Paragraph A.3 of the Code provides that board members have a collective leadership role in fostering an environment that enables the college to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves. Paragraph A.5 provides that the board provides overall strategic leadership of the college.

55. I have identified both repeated breaches of terms and conditions of grant and instances of mismanagement by the Board. The nature of these matters themselves and the Board's explanations of these matters (and in particular, the Board's view that almost none of these matters were its responsibility) leads me to the conclusion that the Board is unlikely to perform its role adequately even with additional support from SFC or others.

56. Given this, and the board failings I have identified, I consider it necessary to remove from office all Board members who were members of the Board during the relevant period (February – June 2015), except the Principal.

**Scottish Government  
October 2015**

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SCOTTISH STATUTORY INSTRUMENTS

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2015 No.

EDUCATION

The Glasgow Clyde College (Removal and Appointment of  
Board Members) (Scotland) Order 2015

*Made* - - - - - [ 2015 ]  
*Laid before the Scottish Parliament* [ 2015 ]  
*Coming into force* - - [ 2015 ]

The Scottish Ministers make the following Order in exercise of the powers conferred by section 24 (2) of the Further and Higher Education (Scotland) Act 1992(a) and all other powers enabling them to do so.

In accordance with section 24(1)(a)(ii) and (v) of the Further and Higher Education (Scotland) Act 1992, it appears to them that the Board of Management of Glasgow Clyde College have committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005(b), and have mismanaged the affairs of that Board.

In accordance with section 24(3) of the Further and Higher Education (Scotland) Act 1992, they have consulted the Scottish Further and Higher Education Funding Council.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Glasgow Clyde College (Removal and Appointment of Board Members) (Scotland) Order 2015 and comes into force at [TIME] on [DATE].

(2) In this Order, “the Glasgow Clyde Board” means the Board of Management of Glasgow Clyde College(c) established as a body corporate by section 11(2) of the Further and Higher Education (Scotland) Act 1992.

**Removal of members from the Glasgow Clyde Board**

2. The following members are removed from the Glasgow Clyde Board—
- George Chalmers
  - Jim Hamilton
  - Les Jacobs

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(a) 1992 c.37. Section 24 was substituted by section 7 of the Post-16 Education (Scotland) Act 2013 (asp 12).  
(b) 2005 asp 6.  
(c) Glasgow Clyde College is prescribed by S.I. 1992/1597. The name of Glasgow Clyde College was changed from “Cardonald College” in accordance with section 3(4) of the Further and Higher Education (Scotland) Act 1992. Section 3(4) of that Act was amended by section 30 of the Further and Higher Education (Scotland) Act 2005.

Peter Laverie  
Richard Leggett  
Aileen Ponton  
Elaine Proudfoot  
Gordon Reid.

**Appointment of members to the Glasgow Clyde Board**

3.—(1) [Alex Linkston] is appointed as the chairing member of the Glasgow Clyde Board.

(2) The following persons are appointed as members of the Glasgow Clyde Board—

[NAMES]

**Period of office of members**

4. The members appointed under article 3 of this Order are to hold office until 31st August 2016 or until such earlier date as the Scottish Ministers may determine, having given four weeks' notice in writing.

St Andrew's House,  
Edinburgh

2015

A member of the Scottish Government



## EXPLANATORY NOTE

*(This note is not part of the Order)*

Article 2 of this Order removes George Chalmers from the Board of Management of Glasgow Clyde College ("the Glasgow Clyde Board"). He was, until the coming into force of this Order, the chairing member of the Glasgow Clyde Board, having been appointed under paragraph 3A(2)(a) of Schedule 2 to the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"), which was inserted by section 6(1) of the Post-16 Education (Scotland) Act 2013 ("the 2013 Act").

Article 2 of this Order also removes Jim Hamilton, Les Jacobs, Richard Leggett, Aileen Ponton, Elaine Proudfoot and Gordon Reid as members of the Glasgow Clyde Board. These members were appointed prior to the amendments made by the 2013 Act to the 1992 Act coming into force in relation to the Glasgow Clyde Board but, under transitional arrangements made under section 6(2) of the 2013 Act, they are treated as having been appointed under paragraph 3A(2)(f) of Schedule 2 to the 1992 Act. Article 2 also removes Peter Laverie as a member of the Glasgow Clyde Board, who was appointed member by virtue of paragraph 3A(2)(c) of Schedule 2 to the 1992 Act.

Article 3 of this Order appoints Alex Linkston as the chairing member of the Glasgow Clyde Board. Article 3 also appoints [NAMES] as members of the Glasgow Clyde Board in place of those members who were treated as having been appointed under paragraph 3A(2)(f) of Schedule 2 to the 1992 Act and who are removed by Article 2 to this Order.

Article 4 provides that the members appointed under this Order hold office until 31st August 2016 or until such earlier date as Ministers may determine having given four weeks' notice in writing.

The Scottish Ministers have exercised this power of removal and appointment because it appears to them that the Glasgow Clyde Board have committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") and have mismanaged the affairs of the Glasgow Clyde Board. By virtue of section 24(5) of the 1992 Act, the appointments of the chairing member and other members under article 3 of this Order have effect as if they had been appointed to the Glasgow Clyde Board under paragraph 3A(2)(a) and (f) respectively of Schedule 2 to the 1992 Act. This means that, under paragraph 5 of that Schedule (and subject to article 4 of this Order), these members hold and vacate office on such terms and conditions as the Regional Board for Glasgow Colleges (which is the regional strategic body to which Glasgow Clyde College is assigned under section 7C(1) of the 2005 Act) determines.