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Lead person: **Director of Governance (Clerk)**

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# **INSTRUMENT AND ARTICLES OF GOVERNMENT**

# INSTRUMENT OF GOVERNMENT

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# 1 INTERPRETATION OF THE TERMS USED IN THIS INSTRUMENT AND ARTICLES OF GOVERNMENT

<b>Articles</b>	Means these Articles of Government
<b>Chair and Vice Chair</b>	Means respectively the Chair and Vice Chair of the Corporation
<b>Chief Executive</b>	Means the Principal and Chief Executive of Activate Learning. Any reference to the Chief Executive shall include a person acting as Chief Executive
<b>Clerk</b>	Means the Clerk to the Corporation and any reference to the Clerk includes a person acting as Clerk
<b>Corporation</b>	Means any further education corporation to which this Instrument applies.
<b>External members</b>	Those members who are not the Chief Executive, staff or student members of the Corporation
<b>Instrument</b>	Means this Instrument of Government
<b>Institution</b>	Means the institution which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992
<b>Meeting</b>	Includes a meeting at which the members attending are present in more than one room, provided that by use of visual or tele-conferencing facilities it is possible for every person present at the meeting to communicate with each other
<b>Necessary skills</b>	Means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have
<b>Secretary of State</b>	Means the Secretary of State for Business, Innovation and Skills
<b>Senior post</b>	Means the post of Chief Executive and such other senior posts as the Corporation may decide for the purposes of the Instrument and Articles
<b>Staff matters</b>	Means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff
<b>Staff member and student member</b>	Have the meanings given to them in clause 2
<b>The staff</b>	Means all staff who have a contract of employment with the Corporation
<b>Government funding agency</b>	Means any government agency or department from which the Corporation receives a funding allocation
<b>Variable category</b>	Meaning any category of members where numbers may vary
<b>Written resolution</b>	A resolution in writing agreed by a simple majority of the members who would have been entitled to vote upon it had it been proposed at a meeting shall be effective provided that:

	<p>(a) a copy of the proposed resolution has been sent to every eligible member;</p> <p>(b) a simple majority of the members have signified agreement to the resolution; and</p> <p>(c) it is contained in a document authenticated by the Clerk which has been received at the address specified by the Corporation for the receipt of documents within the period of 28 days beginning with the circulation date.</p> <p>A resolution in writing may comprise several copies to which one or more members have signified their agreement.</p> <p>A written resolution will lapse if it is not passed before the end of the period of 28 days beginning with the circulation date.</p> <p>For the purposes of this clause, “circulation date” is the day on which copies of the written resolution are sent or submitted to members or, if copies are sent or submitted on different days, to the first of those days.</p>
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**2 COMPOSITION OF THE CORPORATION AND DETERMINATION OF MEMBERSHIP NUMBERS**

- 2.1 The Corporation shall consist of:
  - 2.1.1 A minimum of five external members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions and responsibilities;
  - 2.1.2 The Chief Executive of the Corporation;
  - 2.1.3 One staff member who is a member of the Corporation’s staff and has a contract of employment with the Corporation, and who has been nominated and elected by the staff of the Corporation;
  - 2.1.4 At least one student member who is enrolled as a student at the Corporation and has been nominated and elected by their fellow students, or if the Corporation so decides, by the recognised body representing such students;
  - 2.1.5 A person, who is not for the time being enrolled as a student at the institution, shall nevertheless be treated as a student during any period of authorised absence from the institution for study, travel or for carrying out the duties of any office held by that person on behalf of a body representing students.
- 2.2 The number of members of the Corporation, and the number of members of each variable category, shall be decided by the Corporation.
- 2.3 No determination under this clause shall terminate the appointment of any person who is already a member of the Corporation at the time when the determination is made.
- 2.4 The Corporation, as the appointing authority, will decide whether a person is eligible for nomination, election and appointment as a member of the Corporation under clauses 3.3 and 4.

**3 APPOINTMENT OF MEMBERS OF THE CORPORATION**

- 3.1 Subject to paragraph 3.2 the Corporation is the appointing authority in relation to the appointment of its members.
- 3.2 If the number of members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of those members needed for a quorum.

- 3.3 The appointing authority may decline to appoint a person as staff or student member if:
- 3.3.1 it is satisfied that the person has been removed from office as a member of a further education corporation in the previous ten years; or
  - 3.3.2 the appointment of the person would contravene any rule or bye-law made under the Articles of Government concerning the number of terms of office which a person may serve; or
  - 3.3.3 the person is ineligible to be a member of the Corporation because of clause 4.
- 3.4 Where the office of any member becomes vacant the appointing authority shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy.

#### **4 PERSONS WHO ARE INELIGIBLE TO BE MEMBERS**

- 4.1 The Corporation will decide whether a person is eligible for nomination, election and appointment as a member of the Corporation.
- 4.2 No-one under the age of 18 years may be a member, except as a student member.
- 4.3 The Clerk may not be a member.
- 4.4 A person who is a member of staff of the Corporation may not be, or continue as, a member, except as a staff member or in the capacity of Chief Executive of the Corporation.
- 4.5 Subject to paragraphs 4.6 and 4.7, a person shall be disqualified from holding, or from continuing to hold, office as a member, if that person has been adjudged bankrupt or is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Insolvency Act 1986, or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement.
- 4.6 Where a person is disqualified by reason of having been adjudged bankrupt or by reason of being the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking, that disqualification shall cease:
- 4.6.1 on that person's discharge from bankruptcy, unless the bankruptcy order has before then been annulled; or
  - 4.6.2 if the bankruptcy order is annulled, at the date of that annulment; or
  - 4.6.3 if the bankruptcy restrictions order is rescinded as a result of an application under section 375 of the Insolvency Act 1986, on the date so ordered by the court; or
  - 4.6.4 if the interim bankruptcy restrictions order is discharged by the court, on the date of that discharge; or
  - 4.6.5 if the bankruptcy restrictions undertaking is annulled, at the date of that annulment.
- 4.7 Where a person is disqualified by reason of having made a composition or arrangement with creditors, including an individual voluntary arrangement, and then pays the debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of three years from the date on which the terms of the deed of composition, arrangement or individual voluntary arrangement are fulfilled.
- 4.8 Subject to paragraph 4.9, a person shall be disqualified from holding, or from continuing to hold, office as a member if:
- 4.8.1 within the previous five years that person has been convicted, whether in the United Kingdom or elsewhere, of any offence and has received a sentence of imprisonment, whether suspended or not, for a period of three months or more, without the option of a fine; or
  - 4.8.2 within the previous twenty years that person has been convicted as set out in subparagraph 4.8.1 and has received a sentence of imprisonment, whether

suspended or not, for a period of more than two and a half years; or

4.8.3 that person has at any time been convicted as set out in sub-paragraph 4.8.1 and has received a sentence of imprisonment, whether suspended or not, of more than five years.

4.9 Subject to paragraph 4.10, a person shall be disqualified from holding, or from continuing to hold, office as a member if that person is disqualified from holding the office of trustee of a charity under the Charities (Protection and Social Investment) Act 2016.

4.10 For the purpose of this regulation there shall be disregarded any conviction by or before a court outside the United Kingdom for an offence in respect of conduct which, if it had taken place in the United Kingdom, would not have constituted an offence under the law then in force anywhere in the United Kingdom.

4.11 Upon a member of the Corporation becoming disqualified from continuing to hold office under paragraphs 4.5 or 4.8, the member shall immediately give notice of that fact to the Clerk.

## **5 TERMINATION OF MEMBERSHIP**

5.1 A member may resign from office at any time by giving notice in writing to the Clerk.

5.2 If at any time the Corporation is satisfied that it would be in the best interest of the Corporation for a member's appointment to the Corporation to be terminated or that any member:

5.2.1 is unfit or unable to discharge the functions of a member; or

5.2.2 has been absent from meetings of the Corporation for a period longer than six consecutive months without the permission of the Corporation,

the Corporation may, by notice in writing to that member, remove the member from office and the office shall then be vacant.

5.3 Any person who is a member of the Corporation by virtue of being a member of the staff at the institution, including the Chief Executive, shall cease to hold office upon ceasing to be a member of the staff and the office shall then be vacant.

5.4 A student member shall cease to hold office:

5.4.1 at the end of the student's final academic year, or at such other time in the year after ceasing to be a student as the Corporation may decide; or

5.4.2 if expelled from the institution.

The office shall then be vacant.

## **6 PROCEDURES AND CONDUCT OF THE CORPORATION**

6.1 Every member shall act in the best interests of the Corporation and shall not be bound to speak or vote by mandates given by any other body or person.

6.2 A member shall disclose to the Corporation the nature and extent of any interest: and

6.2.1 if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter relating to the Corporation is to be considered shall not take part in the consideration or vote on any question with respect to that item and not be counted in the quorum present at the meeting in relation to a resolution on which that member is not entitled to vote and;

6.2.2 withdraw, if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter relating to the Corporation is to be considered, where required to do so by a majority of the members of the Corporation or committee present at the meeting.

6.3 This clause should not prevent the members considering and voting upon proposals for

the Corporation to insure them against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

6.4 Where the matter under consideration by the Corporation or any of its committees relates to the pay and conditions of all staff in a particular class, a staff member:

6.4.1 need not disclose a financial interest; and

6.4.2 may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that meeting, provided that in so doing, the staff member acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body, but

6.4.3 shall withdraw from the meeting if the matter is under negotiation with staff and the staff member is representing any of the staff concerned in those negotiations.

6.5 The Clerk shall retain a register of the interests of the members which have been disclosed and the register shall be made available during normal office hours at the Corporation to any person wishing to inspect it.

6.6 Notice of meetings, agendas, written resolutions and other communications to members can be sent in writing or by electronic means.

6.7 The Corporation will approve Codes of Conduct for the Corporation.

## **7 APPOINTMENT OF THE CHIEF EXECUTIVE**

7.1 The Corporation shall appoint a person to serve as the Chief Executive of the Corporation.

## **8 APPOINTMENT OF THE CLERK TO THE CORPORATION**

8.1 The Corporation shall appoint a person to serve as its Clerk.

8.2 In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk.

8.3 The Chief Executive may not be appointed as Clerk or temporary Clerk.

8.4 Subject to Corporation rules relating to proceedings of meetings, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.

8.5 The Clerk may also be a member of staff of the Corporation.

## **9 COPIES OF THE INSTRUMENT AND ARTICLES OF GOVERNMENT**

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

## **10 CHANGE OF NAME OF THE CORPORATION**

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

## **11 APPLICATION OF THE CORPORATION SEAL**

11.1 The application of the seal of the Corporation shall be authenticated by:

11.1.1 the signature of the Chair (or another member of the Corporation with the exception of the staff and student governors); and

11.1.2 the signature of any other member (with the exception of the staff and student governors).

# ARTICLES OF GOVERNMENT

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## **1 THE RESPONSIBILITIES OF THE CORPORATION**

The Corporation shall be responsible for the following functions:

- 1.1 the determination and periodic review of the educational character and mission of the Corporation and the oversight of its activities;
- 1.2 publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the Corporation and the oversight of its activities;
- 1.3 approval of the Corporation's overarching Quality Strategy and Strategic Plan;
- 1.4 the effective and efficient use of resources, the solvency of the Corporation and safeguarding its assets;
- 1.5 approving annual estimates of income and expenditure; and
- 1.6 the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk, including, where the Clerk is, or is to be appointed as, a member of staff, the Clerk's appointment, grading, suspension, dismissal and determination of pay in the capacity of a member of staff.

## **2 THE RESPONSIBILITIES OF THE CHIEF EXECUTIVE**

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

- 2.1 making proposals to the Corporation about the educational character and mission of the Corporation and implementing the decisions of the Corporation;
- 2.2 the determination of the Corporation's academic and other activities;
- 2.3 preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;
- 2.4 the organisation, direction and management of the Corporation and leadership of the staff;
- 2.5 maintaining student discipline, making and applying rules concerning the conduct of students including suspending or expelling students on disciplinary grounds or expelling students for academic reasons.
- 2.6 setting a framework for the pay and conditions of service, and the appointment, assignment, grading, appraisal, suspension, dismissal and determination of the pay and conditions of service, of staff other than the holders of senior posts or the Clerk, where the Clerk is also a member of the staff.

## **3 THE RESPONSIBILITIES OF THE CLERK**

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

## **4 CORPORATION'S DELEGABLE AND NON-DELEGABLE FUNCTIONS**

- 4.1 The Corporation shall not delegate the following functions:
  - 4.1.1 the determination of the educational character and mission of the Corporation;
  - 4.1.2 the approval of the Corporation's overarching Quality Strategy and Strategic Plan;
  - 4.1.3 the approval of the annual estimates of income and expenditure;
  - 4.1.4 the responsibility for ensuring the solvency of the Corporation and for safeguarding their assets;
  - 4.1.5 the appointment of the Chief Executive or holder of a senior post;
  - 4.1.6 the appointment of the Clerk;
  - 4.1.7 the modification or revocation of the Instrument and Articles of Government.
- 4.2 The Corporation may not delegate:

- 4.2.1 the consideration of the case for dismissal; and
- 4.2.2 the power to determine an appeal in connection with the dismissal, of the Principal, the Clerk or the holder of a senior post, other than to a committee of external members of the Corporation.

4.3 The Corporation shall make rules specifying the way in which a committee having functions under clause 4.2 shall be established and conducted.

## **5 CHIEF EXECUTIVE'S DELEGABLE AND NON-DELEGABLE FUNCTIONS**

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

## **6 COMMITTEES**

- 6.1 The Corporation may establish committees for any purpose or function, other than those assigned in these Articles. Any committee established by the Corporation, other than the committee referred to in Article 4.3 may include persons who are not members of the Corporation.
- 6.2 The Corporation shall establish an "Audit and Risk Committee", to advise on matters relating to the Corporation's audit arrangements and systems of internal control.
- 6.3 The Audit and Risk Committee shall consist of at least three persons and may include members of staff at the institution with the exception of those in senior posts, and shall operate in accordance with any requirements of the Chief Executive of Skills Funding.

## **7 APPOINTMENT, PROMOTION AND CONDUCT OF STAFF AND STUDENTS**

- 7.1 The Corporation will appoint the Chief Executive and senior post holders, including the Clerk, and shall determine the arrangements for the advertisement, selection and appointment of a successor.
- 7.2 The Chief Executive shall have responsibility for selecting for appointment all members of staff other than:
  - 7.2.1 senior post holders; and
  - 7.2.2 where the Clerk is also to be appointed as a member of staff, the Clerk in the role of a member of staff.
- 7.3 The Corporation shall review and approve rules relating to staff conduct, which shall have been developed in consultation with staff.
- 7.4 In approving such rules the Corporation shall have regard to the need to ensure that all staff at the institution have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the institution.
- 7.5 The Corporation shall review and approve rules concerning the conduct of students, including procedures for their suspension and expulsion (including expulsion for an unsatisfactory standard of work or other academic reason), which shall have been developed in consultation with representatives of the students.

## **8 CO-OPERATION WITH GOVERNMENT FUNDING AGENCIES**

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

## **9 INTERNAL AUDIT**

- 9.1 The Corporation shall, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other control to ensure that they contribute to the proper,

economic, efficient and effective use of the Corporation's resources.

## **10 ACCOUNTS AND AUDIT OF ACCOUNTS**

10.1 The Corporation shall:

10.1.1 keep proper accounts and proper records in relation to the accounts; and

10.1.2 prepare a statement of accounts for each financial year of the Corporation.

10.2 The statement shall:

10.2.1 give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year; and

10.2.2 comply with any directions given by government funding agencies as to the information to be contained in it, the manner in which the information is to be presented, the methods and principles according to which it is to be prepared and the time and manner of publication.

10.3 The accounts and the statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.

10.4 Auditors shall be appointed and audit work conducted in accordance with any requirements of government funding agencies.

10.5 The "financial year" means the first financial year and, except as provided for in paragraph 10.7, each successive period of twelve months.

10.6 The "first financial year" means the period from the date the Corporation was established up to the second 31st July following that date, or up to some other date which has been chosen by the Corporation with the government funding agency's approval.

10.7 If the Corporation is dissolved:

10.7.1 the last financial year shall end on the date of dissolution; and

10.7.2 the Corporation may decide, with the government funding agency's approval, that what would otherwise be the last two financial years, shall be a single financial year for the purpose of this article.

## **11 COPIES OF ARTICLES OF GOVERNMENT, RULES AND BYE-LAWS**

11.1 The Corporation shall have the power to make rules and bye-laws relating to the government and conduct of the Corporation and these rules and bye-laws shall be subject to the provisions of the Instrument and Articles of Government.

11.2 A copy of these Articles, and of any rules and bye-laws, shall be given free of charge to every member of the Corporation and at a charge not exceeding the cost of copying or free of charge, to any other person who requests a copy and shall be available for inspection at the institution upon request, during normal office hours, to every member of staff and every student.

## **12 MODIFICATION OR REPLACEMENT OF THE INSTRUMENT AND ARTICLES OF GOVERNMENT**

12.1 Subject to paragraph 12.2 the Corporation may, by resolution of the members, modify or replace its Instrument and Articles of Government, after consultation with any other persons who, in the Corporation's view, are likely to be affected by the proposed changes.

12.2 The Corporation shall not make changes to the Instrument or Articles of Government that would result in the body ceasing to be a charity.

## **13 DISSOLUTION OF THE CORPORATION**

13.1 The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.

13.2 The Corporation shall ensure that a copy of the draft resolution to dissolve the Corporation on a specified date shall be published at least one month before the proposed date of such resolution.