

## GOVERNANCE SUMMARY INFORMATION 2008/09

### Expectations that must be met on appointment & Governance Information



**ANNUAL GOVERNANCE REVIEW 2008-9**CONTENTS

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## IN GENERAL:

College Governors are appointed for a period of up to four years, and can serve a maximum 2 terms of office (on reappointment), unless exceptional circumstances apply.

Coleg Llandrillo Corporation Board comprises of 19 members (including 2 staff members and the Principal) and meets 6 times per academic year. A number of specialist sub-committees exist to assist with the work of the Governing Body and report directly to it. The work of sub-committees is divided amongst the 19 members and sub-committees meet between 3-6 times in the academic year.

This booklet and more information regarding the College Board is available at: <http://www.llandrillo.ac.uk/governance/default.htm>

If you have any questions regarding the contents of this document please contact:

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## Governors are expected to complete an annual declaration fulfilling the criteria as set out below:

### 1. DECLARATION OF ELIGIBILITY BY GOVERNORS

- 1.1 Governors are required to declare their continued eligibility to serve as Governors of Coleg Llandrillo on an annual basis.
- 1.2 **Please read the following extract** taken from the Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006, which describes persons ineligible to be Members of the Corporation.

#### ***"Persons Ineligible to be Members***

- (1) *A person who is under the age of 18 years is ineligible for appointment as a member except as a student member.*
- (2) *A person who is a member of staff of the institution is ineligible for appointment as a member except as a staff member or in his or her capacity as Principal.*
- (3) *A student at the institution is ineligible to be appointed as a member except as a student member. A person who is already a member other than a student member is not to be required to resign if during his or her term of office he or she enrolls on a part-time course at the institution but if he or she enrolls on a full-time course at the institution, he or she ceases to be a member of the Corporation and thereupon the office becomes vacant.*
- (4) *The Clerk is ineligible to be a member.*
- (5) *Subject to paragraphs (6) and (7), a person is disqualified from holding, or from continuing to hold, office as a member if that person has been adjudged bankrupt, or if he or she is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Enterprise Act 2002 which amends the Insolvency Act 1986, or if he or she has made a composition or arrangement with his or her creditors, including an individual voluntary arrangement.*
- (6) *Where a person is disqualified by reason of having been adjudged bankrupt, or being the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking, that disqualification ceases:*
- (a) *on his or her discharge from bankruptcy, unless the bankruptcy order made against him or her has before then been annulled; or*
- (b) *if the bankruptcy restrictions order of which he or she is the subject 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*
- (c) *if the interim bankruptcy restrictions order of which he or she is the subject is discharged by the court, on the date of that discharge; or*
- (d) *if the bankruptcy restrictions undertaking of which he or she is the subject is annulled, on the date of that annulment.*
- (7) *Where a person is disqualified by reason of having made a composition or arrangement with his or her creditors, including an individual voluntary arrangement, and he or she then pays his or her debts in full, the disqualification ceases on the date on which the payment is completed and in any other case it ceases 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.*
- (8) (a) *Subject to paragraph (b) a person is disqualified from holding, or from continuing to hold, office as a member if:*
- (i) *within five years before his or her appointment would otherwise have taken effect, or since his or her appointment, he or she has been convicted whether in the United Kingdom or elsewhere of any offence and has had passed on him or her a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;*



## Governors are expected to complete an annual declaration of interests:

### 2. REGISTER OF GOVERNORS' INTERESTS

Any interest, financial or otherwise, which is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Member's independent judgement should be disclosed to the Corporation. The interest will then be recorded in a mandatory register, which will be maintained by the Clerk to the Corporation.

This Register enables Members to disclose relevant business and other interests in a manner that is open and transparent and demonstrates to the public that such interests have not influenced the Corporation's decision-making process. Members are reminded that the Register is open to public inspection. Public access will be facilitated by means of a paper copy held by the Clerk to the Corporation and a facsimile copy of the final Register being made available on the college's Internet site.

Members are in the best position to decide what business and other interests are relevant and should be disclosed. However, they may find it helpful to consider whether any particular interest should be disclosed by reference to the following headings, which are set out as general guidelines:-

<b>Category of Interest:</b>	<b>Information to be disclosed:</b>
Paid employment (this should include any declarations regarding family members which may be relevant)	<ul style="list-style-type: none"><li>• Name of employer, and</li><li>• Job title</li></ul>
Self employment	<ul style="list-style-type: none"><li>• Trading name(s); and</li><li>• Names of significant customers/clients accounting for more than 10% of the income of individual or firm.</li></ul>
Directorships or commercial companies	<ul style="list-style-type: none"><li>• Name of companies</li></ul>
Significant shareholdings	<ul style="list-style-type: none"><li>• Name of companies in which the corporation member owns 5% or more of the issued share capital</li></ul>
Elected office	<ul style="list-style-type: none"><li>• Name of authority, and</li><li>• Description of office held</li></ul>
Trusteeships or participation in the management of charities and other voluntary bodies	<ul style="list-style-type: none"><li>• Name of body; and</li><li>• Description of office held</li></ul>
Public appointments (paid or Unpaid)	<ul style="list-style-type: none"><li>• Name of body; and</li><li>• Description of office held</li></ul>
Membership or professional bodies and trade and other associations	<ul style="list-style-type: none"><li>• Name of body, organisation, etc</li></ul>
Membership of closed organisations (for example, freemasonry)	<ul style="list-style-type: none"><li>• Name of organisation</li></ul>
Any other financial interest	<ul style="list-style-type: none"><li>• Name of organisation</li></ul>

Members are invited to contact the Clerk to the Corporation in the event that they may have any questions in respect of the Register of Interests. However, as has already been indicated above, Members are in the best position to decide what business and other interests are relevant and should be disclosed.

Members are invited to provide the same information, if known to him or her, in respect of his or her spouse or partner, children or other close relatives (for example, living in the same household or a dependant). A Member should ask him/herself whether members of the public, knowing such information, would reasonable conclude that the relevant interest might influence his or her judgement.

When completing the form members are requested to indicate where any information relates to any person that comes within the remit of this section of these guidance notes. Where applicable please provide the person's name and relationship to the member.

**Governors are asked to commit to the College's Code of Conduct for Corporation Members on an annual basis as shown below:**

### **3. CODE OF CONDUCT FOR CORPORATION MEMBERS**

#### **Introduction**

1. This code is intended as a guide for Corporation Members, to indicate the standards of conduct which are expected of them reflecting the Principles drawn up by the Committee on Standards in Public Life (Nolan Committee), namely:
  - **selflessness:** decisions to be based on the public interest not on personal interest or gain;
  - **integrity:** avoidance of circumstances giving rise to obligations which might influence or be thought likely to influence decisions;
  - **objectivity:** decisions to be based on the merits of the case;
  - **openness:** decisions to be made in as open a forum as possible and reasons given for the decision;
  - **accountability:** decisions to be open to scrutiny, documentation relating to decision-making to be open to the public;
  - **honesty:** the duty to declare any private interest relating to public duties;
  - **leadership:** people in public life actively promoting these principles.
2. The Code is also intended to enable members to understand their legal duties and to assist them both in carrying out their duties and in their relationship with the Corporation and the Principal. This Code is aimed at promoting effective and well informed College governance, and is not intended to be a definitive or authoritative statement of the law.
3. In addition to the Code, Members are recommended to familiarise themselves with the following documents which should have been supplied to them on appointment:
  - the Instrument and Articles of Government;
  - the College's Strategic Plans;
  - the Financial Memorandum entered into by the College with its funding body; and
  - the document *Guide for College Governors*.
4. Appendices 1 - 3 to this Code relating to:
  - the responsibilities of Corporation Members;
  - the main provisions of the Financial Memorandum;
  - the powers of the Corporation

are provided for ease of reference. They should not be read as an exhaustive statement of duties, power or provisions, and Members should refer to the source documents listed above.

If a Member is in doubt about the provisions of any of these documents, the Clerk should be consulted. However, ultimate responsibility for the appropriateness of conduct as a Member of a corporate body and for any act or omission in that capacity rests with the individual Member.

5. This Code applies to every committee, working party or other subsidiary body of the Corporation to which Members may be appointed.

#### **Interpretation**

6. In this Code "College" means Coleg Llandrillo, and "Member", "Chairman", "Principal" and "Clerk" mean respectively the Member, Chairman, Principal and Clerk for the time being of the Corporation. All other

definitions have the same meanings as given in the College's Instrument and Articles of Government, and words importing one gender will import all genders.

### **Duties**

7. Members owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its interests. Each Member should act honestly, diligently and, subject to the provision appearing in paragraphs 21-22 of the Code relating to collective responsibility, independently.
8. Whatever decisions Members take at meetings of the Corporation and its committees must be for the benefit of the College as a whole and not for any improper purpose or for personal motive. The "benefit of the College" can be taken to mean, first and foremost, the interests of its students and other users of the College's services and the safeguarding of public funds. Members should have regard to those interests, and must not allow any sectional interest to take precedence. In particular, Members are not appointed as 'representatives' or 'delegates' of any outside body, and may not lawfully be bound by mandates given by others.
9. Members must observe the provisions of the College's Instrument and Articles of Government and in particular the responsibilities given to the Corporation by Article 3(1) of the College's Articles of Government. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out at Appendix 1.
10. Members should also have regard to the different, but complementary, responsibilities given to the Principal as the College's Chief Executive. Whereas it is the Corporation's function to decide strategic policy and overall direction and to monitor the performance of the Principal and any other senior post holders, it is the Principal's role to implement the Corporation's decisions and to manage the College's affairs within the budgets and framework fixed by the Corporation. Members should work together so that the Corporation and the Principal perform their respective roles effectively.
11. Members are collectively responsible for observing the duties set out in the Financial Memorandum which the College has entered into with its funding body as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum is set out at Appendix 2.
12. Although the funding body is the main provider of funds to the College, Members should note that they are also responsible for the proper use of income derived from other sources, such as the European Union (EU).

### **Skill, Care and Diligence**

13. Members should, in all their work for the College, exercise such skill as they possess and such care and diligence as could reasonably be expected. This will be particularly relevant when Members act as agents of the College, for example, when functions are delegated to a committee of the Corporation or the Chairman. Members should be careful to act within the terms of reference of any committees on which they serve.

### **Powers**

14. Members are responsible for taking decisions which are within the powers given to the Corporation by Sections 18 and 19 of the Further and Higher Education Act 1992. A summary of those powers is set out at Appendix 3. If a Member thinks that the Corporation is likely to exceed its powers by taking a particular decision, he should immediately refer the matter to the Clerk for advice.

### **Conflicts of Interest**

15. Like other persons who owe a fiduciary duty, Members should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgment.
16. Members are reminded that under clause 10(1) of the College's Instrument of Government they must not take or hold any interest in any of the College's properties or receive any remuneration for their services (save as a Member of the College's staff) without the written approval of the National Assembly for Wales.

17. Members are also reminded that under clause 10(2) of the College's Instrument of Government they must disclose to the Corporation any financial interest which they have, or may have, in:
- the supply of work or goods to or for the purposes of the College;
  - any contract or proposed contract concerning the College; or
  - any other matter relating to the College.
18. However, an interest does not have to be financial for the purposes of disclosure. If it is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Member's independent judgment, then the interest, financial or otherwise, should:
- be reported to the Clerk; and
  - be fully disclosed to the Corporation before the matter giving rise to the interest is considered.
19. Members should withdraw from that part of the meeting at which the matter giving rise to the interest is considered, and on no account may they vote in relation to the matter.
20. Members must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgment or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.
21. The Clerk will maintain a Register of Members' Interests which will be open for public inspection. Members are invited to disclose routinely to the Corporation all business interests, financial or otherwise, which they or (so far as they are aware) their spouses or partners, children or other close relatives may have, and the Clerk will enter such interests on the Register. Members should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Members should have regard to the meaning given to "interest" in paragraph 18 of this Code.

### **Collective Responsibility**

22. The Corporation operates by Members taking majority decisions at quorate meetings. Therefore, a decision of the Corporation, even when it is not unanimous, is a decision taken by the Members collectively and each individual Member has a duty to stand by it, whether or not he was present at the meeting of the Corporation when the decision was taken.
23. If a Member disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Member strongly disagrees, he should consult the Chairman and, if necessary, take matters forward in the context of clause 11(3) of the College's Instrument of Government relating to the power to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the Member's views in advance to the other Members. Alternatively, the Member may take action in accord with Standing Order No. 9 or may decide to offer his resignation from office, after consulting the Chairman.

### **Confidentiality**

24. Because of the Corporation's public accountability, Members should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved for publication by the Chairman.
25. There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be kept in confidence by the Clerk and will be circulated in confidence to Members. However, Staff and Student Members may not have access to minutes dealing with matters in respect of which they are required to withdraw from meetings under clauses 13(4), (7) or (8) of the College's Instrument of Government.
26. It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust between Members with a shared corporate responsibility for decisions. Members should keep confidential any matter which, by reason of its nature, the Chairman or the Members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.

27. Members should not make statements to the press or the media or at any public meeting relating to the proceedings of the Corporation or its committees without first having obtained the approval of the Chairman or, in his absence, the Vice Chairman. It is unethical for Members publicly to criticise, canvass or reveal views of other Members which have been expressed at meetings of the Corporation or its committees.

#### Attendance at Meetings

28. A high level of attendance at meetings of the Corporation is expected so that Members can perform their functions properly.

#### Governance Development

29. Members are encouraged to obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including regular refresher workshops.
30. In order to promote more effective governance, Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing process of self-evaluation.

## **Governors are asked to commit to the College's Code of Ethics on an annual basis.**

### **4. CODE OF ETHICS**

#### **Introduction**

1. This Code takes as its starting point the distribution of powers and responsibilities set out in legislation. It sets out general principles which can be used to determine action which will conform to the high standards and values expected within the public sector.

#### **General Principles**

2. In all College activities it is important to develop and promote a set of core values relevant to the mission to provide high quality learning opportunities for students. As an institution within the public sector, the College accepts that those values must be in conformity with the principles laid down by the Nolan Committee for those holding public office, namely:
  - Selflessness
  - Integrity
  - Objectivity
  - Openness
  - Accountability
  - Honesty
  - Leadership
3. The College recognises its obligations to all with whom it has dealings – students, employees, employers, suppliers, other educational institutions and the wider community – and also to the public generally, and more particularly, the taxpayer. The reputation of the College, including the trust and confidence of those with whom it deals, is one of its most vital assets, the protection of which is of fundamental importance. The College demands and maintains the highest ethical standards in carrying out its activities.
4. The College is committed to securing equality of opportunity for staff and students alike and to discharging its legal duties under relevant discrimination legislation. In its dealings with individuals, the College will adhere to the principles of natural justice and individuals' human and civil rights
5. The College will seek to encourage a culture of openness aimed at ensuring that matters connected with the operation of the College can be discussed frankly with staff and students. It will adopt and maintain procedures on whistleblowing which will enable concerns to be raised on a confidential basis, where that is appropriate, both inside and, if necessary, outside the organisation.

#### **Students**

6. The College believes that integrity in dealing with its students or prospective students is a prerequisite for success and an important statement of the values it offers.
7. The College will not deliberately give inadequate or misleading information on its learning programmes or other services.
8. In all advertising and public communications, the College will avoid untruth, concealment and overstatement about its programmes and achievements.
9. The College will avoid recruitment practices that involve the offer of improper financial or other inducements to students.
10. The College will make all reasonable attempts to deliver learning programmes and support services to meet the individual needs of students, efficiently and effectively to accepted quality standards, and will take reasonable steps to rectify any shortcomings in the service delivered.
11. Learning support, information, advice and guidance offered to students will be impartial and guided by the best interests of the student.
12. The College will publish a statement setting out what students and others can expect of the College and details of its complaints and appeals procedures. It will deal with all students with equal care and respect.

13. The College will ensure that complaints are dealt with fairly, openly and efficiently.
14. Within the requirements of the law and in accordance with the Data Protection Act 1998, the College will maintain the confidentiality of information on individual students.

### **Education Partners**

15. The College is committed to collaborative arrangements that will benefit the institution and its students. Where the College is competing with others, the College will compete vigorously, but honestly, with other educational institutions offering similar learning opportunities.
16. The College will not seek to damage the reputation of competitors or other third parties either directly or by innuendo.
17. The College will provide information on individual students to the Careers Service and other institutions engaged in providing for the learning needs of the student in accordance with agreed procedures, within the requirements of the Data Protection Act 1998 and any other legal requirements.
18. The College will not seek to acquire information regarding competitors by unfair or disreputable means.
19. The College will not engage in unfair or restrictive practices in regard to the recruitment or retention of students.
20. The College will consult with service providers who might be affected on any significant proposals for change in the learning programmes or services it offers.

### **The Corporation**

21. The Corporation will adopt a Code of Conduct for itself consistent with the principles laid down by the Nolan Committee and the requirements of its Instrument and Articles of Government.
22. The College will maintain a register of Corporation members' interests, which will be open to inspection by the public. Members of the Corporation will be required to register those interests which are of relevance to the work of the College, in sufficient detail to allow the nature of those interests to be understood by enquirers.
23. The Corporation will seek to ensure that its members are drawn widely from the community it serves having regard to the need for continuity and freshness and for a range of skills and interests.
24. The Corporation is responsible for determining the educational character and mission of the College and for oversight of its activities; for the effective and efficient use of resources, the solvency of the Corporation and the safeguarding of its assets; for the approving of annual estimates of income and expenditure; and for the appointment, discipline, pay and conditions of service of staff, in accordance with the Articles of Government.
25. The Corporation will adopt procedures which ensure sound financial decision-making, control and monitoring to meet the requirements of the funding body and public audit.
26. The Corporation will ensure that information on its decisions and the work of the College is made widely available having regard to proper confidentiality as determined by the Corporation and any legal requirements.

### **Management and Staff**

27. The College will adopt a Code of Conduct for its employees, based on similar principles to that for members of the Corporation.
28. The staff Code of Conduct will forbid employees from soliciting or accepting inducements in respect of any matter connected with the operation of the College.
29. The staff Code of Conduct will be consistent with the College Code of Practice on Freedom of Speech in respecting the freedom within the law of academic staff to question and test received wisdom and to put forward new ideas or controversial or unpopular opinions without placing their employment in jeopardy. This includes the right of staff to speak freely and without being subject to disciplinary sanctions or victimisation about academic standards or related matters, provided that they do so lawfully, without malice and in the public interest.
30. Where the College includes confidentiality clauses in severance contracts this will not prevent staff who have legitimate concerns about malpractice raising those concerns with the appropriate authority. Confidentiality clauses are considered generally to be contrary to the public interest.

31. As Accounting Officer for the College under the Financial Memorandum the Principal will be responsible for the propriety of financial decision making, and will advise the Corporation of any requirements in respect of matters before it.

### **External Relationships**

32. The College recognises that it is responsible to the community it serves and will take steps to ensure that information on its external activities is made widely available, noting any requirements for confidentiality that may be applicable and which shall be explained as necessary.
33. The College will be responsive to its community and within the framework of its own Mission Statement will seek to provide programmes and services relevant to the needs of individuals and employers.
34. The College will provide timely and accurate information to the best of its abilities on individual students to employers or others providing sponsorship, within the confines of the Data Protection Act 1998 and any other relevant legal requirements.
35. The College will use its reasonable endeavours to ensure that its contracts with organisations comply with acceptable ethical standards and any legal duties, for example, the general duty under the Race Relations Amendment Act 2000 to eliminate race discrimination, to promote equality of opportunity and to promote good race relations.

### **Compliance and Verification**

36. The College will require all its employees to adhere to its Code of Conduct for staff.
37. The College will create mechanisms by which employees and students can express genuinely held concerns about behaviour or decisions they perceive to involve serious impropriety and have them investigated, with every reasonable assurance of confidentiality as appropriate.
38. The Clerk to the Corporation will be responsible for monitoring adherence to this Code by members of the Corporation, investigating alleged breaches and reporting to the Corporation. The Corporation will decide on any action to be taken to ensure compliance with the Code.
39. The Principal will be responsible for initiating and supervising investigations into alleged breaches of the Code of Conduct by members of staff, and for ensuring that appropriate action is taken.
40. The College auditors may be asked to report on any practice that appears to breach the Code.

## **5. SUMMARY OF RESPONSIBILITIES OF CORPORATION MEMBERS**

### **Responsibilities**

1. Under Article 3(1) of the College's Articles of Government the Corporation shall be responsible:
  - for the determination of the educational character and mission of the institution and for oversight of its activities;
  - for the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
  - for approving annual estimates of income and expenditure;
  - for the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts; and
  - for setting a framework for the pay and conditions of service of all other staff.
2. "Senior Post" means the post of Principal and such other senior posts as the Members may determine for the purposes of the Articles.

### **Responsibilities which must not be delegated**

3. Article 5(6) of the Articles of Government prohibits the Corporation from delegating the following:
  - the determination of the educational character and mission of the institution;
  - the approval of the annual estimates of income and expenditure;
  - ensuring the solvency of the institution and the Corporation and safeguarding of their assets;
  - the appointment or dismissal of the Principal;
  - the appointment of the Clerk to the Corporation; and
  - the modification or revocation of the Articles of Government.
4. The Corporation may, from time to time, resolve to add other matters which must not be delegated to this list of "reserved" responsibilities. The College will ensure that its Codes are published and made widely available.

## **6. SUMMARY OF THE POWERS OF THE CORPORATION**

### **Principal Powers**

1. Under Section 18 of the Further and Higher Education Act 1992, as amended, a further education corporation may:
  - provide further and higher education; and
  - supply goods or service in connection with their provision of education.
2. These powers are known as the Corporation's "principal powers".

### **Supplementary Powers**

3. Under Section 19 of the 1992 Act a further education corporation may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers conferred by Section 18 of the Act, including in particular the following:
  - the power to acquire and dispose of land and other property;
  - the power to enter into contracts, including in particular:
    - \* contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers; and
    - \* contracts with respect of carrying on by the Corporation of any such activities;
  - the power to borrow such sums as the Corporation think fit for the purposes of carrying on any activities they have power to carry on or to meet any liability transferred to them under Section 23 to 27 of the 1993 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage charge or other security in respect of any land or other property of the Corporation. This power may not be exercised without the consent of the National Council for Education and Training for Wales, which may give its consent for a particular borrowing or for borrowing of a particular class;
  - power to invest any sums not immediately required for the purposes of carrying on any activities they have power to carry on;
  - power to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
  - power to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.
4. The Corporation may also provide facilities of any description (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties) which appear to be necessary or desirable for the purposes of or in connection with the carrying on of the principal powers.
5. The powers conferred by Section 19 of the Act are known as "supplementary powers".

## **7. SUMMARY OF THE MAIN PROVISION OF THE FINANCIAL MEMORANDUM OF THE FURTHER EDUCATION FUNDING BODY FOR WALES**

1. The National Assembly for Wales requires the National Council for Education and Training for Wales to enter into an agreement set out in a financial memorandum with the College for the purpose of regulating its relationship in financial and related matters and setting out the terms and conditions on which public funds will be paid to the College.
2. The Memorandum is divided into two parts. Part 1 contains those arrangements and conditions which might be expected to apply generally to the new further education sector for a number of years. A summary of the main provisions of Part 1 appears below. Part 2 consists of any specific conditions which might apply to the College.
3. The main points to note in relation to Part 1 are as follows:

### **Duties and Responsibilities**

- 3.1 The Corporation is responsible for:
  - ensuring that public funds are used only in support of activities permitted by the Further And Higher Education Act 1992 as amended, the financial memorandum and any other conditions which the funding body may from time to time prescribe;
  - ensuring that the financial, planning and other management controls, including controls against fraud and theft, applied by the College are appropriate and sufficient to safeguard public funds;
  - securing the efficient, economical and effective management of all the College's resources and expenditure, capital assets and equipment, and staff, so that the investment of public funds in the College is not put at risk; and
  - ensuring that financial considerations are taken into account at all stages in reaching decisions in their execution.

### **Recurrent and Capital Funding**

- 3.2 Recurrent funds are intended to meet the recurrent cost of the College which include the routine maintenance of buildings and other assets. The College may transfer recurrent funds to capital funds but not vice versa.

### **Acquisition and Disposal of Land or Buildings**

- 3.3 In general, the Corporation must consult the funding body on all transactions affecting land or buildings involving capital sums of more than £100,000, if its maintenance is, or may be expected to become, a charge on public funds.
- 3.4 The financial memorandum sets out in an appendix the circumstances under which the College may retain proceeds of sale or rental income. The College may retain up to £200,000 of the proceeds of sale, provided that the funding body is told how the College proposes to use such proceeds and that the proceeds are spent on suitable projects within three years. The College may, with the approval of the funding body, retain up to 100% of such sale proceeds where they are to be used for:
  - replacements of existing facilities; or
  - restructuring capital projects which meet the Treasury requirements on investment appraisal.

### **Borrowing and Leasing**

- 3.5 Under section 19 of the Further and Higher Education Act 1992 (see Appendix 3) the College must obtain the consent of the funding body to any secured or unsecured borrowing proposal. The funding body has given a general consent to certain categories of borrowing.
- 3.6 Therefore, the College may enter into unsecured borrowing at any time without reference to the funding body provided that such borrowing does not exceed 5% of the College's annual revenue as estimated in a manner prescribed by the funding body. However, the College must inform the funding body if the total of unsecured borrowing at any time exceeds 3% and it must obtain prior written consent of the funding body if it proposes that the level of unsecured borrowing shall exceed 5%.
- 3.7 The College's total annual level of repayment and servicing costs for secured and unsecured borrowing must not exceed 7% of its annual revenue as estimated in a manner prescribed by the funding body. Leases, other than

operating leases and those reimbursed by the funding body, will be assumed to be secured loans for the purposes of the 7% calculation.

### **Accounts and Financial Management**

- 3.8 There are limits set on the extent to which the Corporation can incur deficits. The Corporation will be expected to conduct its financial and academic affairs so that it achieves at least financial break-even. The Corporation may incur a deficit if it has reserves to cover that deficit. However, where reserves are insufficient to cover the deficit, a deficit shall not be incurred in more than two consecutive years. Any accumulated deficit must be cleared by the end of the third financial year in which the deficit began to accumulate.

### **Audit**

- 3.9 The Corporation is responsible for ensuring that the College has a sound system for internal control, has appointed an audit committee and has arranged for the provision of external and internal audit.

### **Major changes**

- 3.10 In order to meet the requirements of parliamentary accountability for public funds the Corporation is required formally to notify the funding body of major changes taking place which may impact on the College's control systems on which the funding body places reliance. Examples of what amounts to a "major change" are given in the financial memorandum, e.g. the intention to carry forward a major change in the nature, structure, organisation or location of the College, and changes in the position of:

- Chairman
- Finance Committee Chairman
- Audit Committee Chairman
- Principal
- Director of Finance