



## Proposed amendments to the Model Code of Conduct for Members of Devolved Public Bodies

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

## **Consultation Response to the Proposed Amendments to the Model Code of Conduct for Members of Devolved Public Bodies**

### **Introduction**

The Good Governance Steering Group (GGSG) is the college sector's advisory body on all matters relating to college governance in Scotland. The GGSG prepares and publishes the sector's Code of Good Governance as well as advising and recommending any areas for improvement. Its membership (outlined in Annex 1) includes key college sector representatives (chairs, principals, board secretaries, finance directors), Scottish Government, Scottish Funding Council, National Union of Students Scotland (NUS), Colleges Scotland, College Development Network, Scottish Trades Union Congress (UNISON/EIS) and the Office of the Scottish Charity Regulator (OSCR).

The GGSG welcomes the opportunity to comment on the proposed amendments to the Model Code of Conduct for Members of Devolved Public Bodies. Whilst the GGSG has chosen not to respond to each individual question set out in the consultation paper within the response, the following comments are offered as possible areas for improvement to the Model Code.

### **Response**

As with any Code of Conduct, when setting out the rules, responsibilities and practices required, these should be as clear and concise as possible, to enable members to fully comprehend their duties and obligations. While the proposed amendments are an improvement, these revisions need to also reflect the diverse public bodies which each board member is required to carry out their duties on behalf of. As well as some proposed further considerations for amendments or consolidation to the content, we would also seek further clarity or guidance on specific areas to ensure they are presented clearly.

In relation to the change in tense, to first person throughout the Model Code, we are not convinced that this is the most effective way of getting Board Members to take ownership of their behaviour. The Model Code would read better if it was written as a 'second-person' point of view, as it is there to primarily stipulate a collection of rules and regulations to abide by.

### **Section 3: General Conduct**

We support the requirement to protect others from any form of discrimination and while it is necessary to reference anti-discrimination in the Model Code, due to the seriousness of discriminatory behaviour, it would be useful to reference specific Scottish Government legislation and guidance on this area i.e., Equality Act 2010.

Specific sections of the Model Code which expand on behaviours by board members which are unacceptable, might be more effective if these were highlighted in a positive way, in terms of setting out the expectation for those serving on the boards of public bodies. Lists of negative behaviours and actions are not exhaustive and therefore, a clearer steer towards positive governance duties and behaviours might be more constructive.

The Code should reflect that not all board members are 'appointed' externally to a public body by Ministers i.e., 'elected' board members or 'nominated' board members (Trade Union nominees). As the expectations for all board members remains the same, it would be useful to include the requirement of collective responsibility and accountability for decisions and corporate

responsibilities whereby, board members must make decisions in the best interest of the board as a whole, rather than selectively or in the interests of a particular group. This includes decisions made by board committees which have delegated authority by the board.

Additional guidance might be beneficial for board members requiring to raise concerns in terms of performance, conduct or capability of other board members or individual employees.

It would be useful if the content under Gifts and Hospitality is reflected across both the Model Code and Guide for Members of Statutory Boards, to ensure a consistent approach.

The need to handle confidential and sensitive information is a key requirement when undertaking public duties as a board member. Further guidance might be beneficial for board members in terms of GDPR compliance to holding such information and how any requirement would work in practice, in terms of whistleblowing. A possible requirement might be for all public bodies to ensure they have a whistleblowing policy in place and published.

#### **Section 4: Registration of Interests**

It would be useful if the content under Registration of Interest - Annex B (key definitions and explanatory notes) is reflected across both the Model Code and Guide for Members of Statutory Boards, to ensure a consistent approach.

It would also be prudent to extend registerable interests to include “*Related Party*”, which relates to a person or entity which comprises of ‘a person or a close member of that person’s family is related to a reporting entity’ if that person:

- a) has control or joint control over the reporting entity.
- b) has significant influence over the reporting entity; or
- c) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

This was a recommendation from external auditors to a member college for their own Register of Interest returns, in line with the charities' statement of recommended practice (SORP).

Further consideration is required in relation to sections 5.4 and 5.5. Depending on the issue, it is not always essential for a board member to leave the meeting in a situation where they have declared an interest. The fundamental point is that the interest is identified, and that the individual agrees with the Chair and the Board Secretary on how that will be handled in the meeting.

In addition, clarity on the following points would be useful, whether this is included in the Model Code or additional guidance:

- the period for declaring any remuneration received for work e.g., 1 year.
- whether contracts relate to board members which are also employed by the contractor.
- if there should be a provision to declare if a board member has ‘family members’ employed/contracted by the institution. If so:
  - what information should be declared.
  - would this preclude them from being part of board discussions/decisions where there might be a conflict e.g., discussing say HR matters - issues/policies/procedures etc.
  - would there be a requirement for board members to include this as part of the Register of Interests.

#### **Section 6: Lobbying and Access**

To ensure equity and fairness across the Model Code, it would be useful for the revisions in this section to include Trade Union nominees on boards and staff governance matters. In addition, further clarity as to whether there is a requirement to register an interest by others seeking to engage or do business with the public body.

## **Annex A - Breaches of the Code**

Consideration should be given as to whether there is a need for a more graded approach to any breaches of the Model Code, where there is greater emphasis on resolution at a local/organisational/institutional level before escalation to Ethical Standards Board.

It would be also useful to have guidance around dealing with a breach of the Model Code by a board member, at a local level before it is escalated to the Ethical Standards Board. This would need to include any appeals process.

### **Additional Comments**

It would be useful if the Model Code emphasised the positive need for Continued Professional Development (CPD) for those who serve on the boards of public bodies and provide links to where training and development is available.

It is fundamental that once the Model Code is amended and published, all guidance relating to it e.g., Guide for Members of Statutory Boards, Guidance on The Model Code of Conduct for Members of Devolved Public Bodies are also promptly reviewed and published to ensure members are acting on up-to-date guidance.

## Membership of the Good Governance Steering Group

1. Ken Milroy MBE, Regional Chair, North East Scotland College (Chair)
2. David Newall, Chair, Glasgow Clyde College
3. Janie McCusker, Chair, Glasgow Colleges' Regional Board
4. Michael Foxley, Chair, Highlands and Islands Further Education Regional Board
5. Joanna Campbell, Principal and Chief Executive, Dumfries & Galloway College
6. Margaret Cook, Principal and Chief Executive, Perth College UHI
7. Douglas Wilson, Clerk to the Board, Glasgow Kelvin College
8. Marianne Philp, Director: Governance and Compliance, Fife College
9. Penny Davis, Consultant/Secretary, Glasgow Colleges' Regional Board
10. Hazel Robertson, Vice Principal – Finance and Corporate Services, Borders College
11. Claire Jamieson, Head of Governance, The Scottish Government
12. Martin Fairbairn, Chief Operating Officer and Deputy Chief Executive, Scottish Funding Council
13. NUS Scotland
14. Shona Struthers, Chief Executive, Colleges Scotland
15. Gordon Hunt, Head of Leadership, Governance & Research, College Development Network
16. Stuart Brown, National Officer – Further and Higher Education, EIS
17. John Gallacher, Scottish Organisation (Further Education Lead), UNISON Scotland
18. Martin Tyson, Head of Casework, OSCR.