

INSTRUMENT & ARTICLES OF GOVERNMENT

APPROVED BY THE CORPORATION 13 OCTOBER 2016

INSTRUMENT OF GOVERNMENT

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Interpretation of the terms used

1. In this Instrument of Government—
 - (a) any reference to “the Chief Executive” shall include a person acting as the Chief Executive Officer;
 - (b) any reference to “the Principal” shall include a person acting as Principal;
 - (c) “the Clerk” means the Clerk to the Corporation. Any reference to the Clerk shall include a temporary Clerk;
 - (d) “the Corporation” means the Corporation of Bromley College;
 - (e) “external members” means those members who are not the Chief Executive, Principal, staff or student members;
 - (f) “the institution” 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 as amended from time to time;
 - (g) “this Instrument” means this Instrument of Government;
 - (h) “the CE of Skills Funding” means the Chief Executive of Skills Funding or any successor body;
 - (i) “meeting” includes a meeting at which the members attending are present in more than one room, provided that by the use of

- visual or tele-conferencing facilities it is possible for every person present at the meeting to communicate with each other;
- (j) “necessary skills” means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have;
 - (k) “staff member” and “student member” have the meanings given to them in clause 2;
 - (l) “the Secretary of State” means the Secretary of State for Education or the successor Department determined by Government from time to time;
 - (m) “staff matters” means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
 - (n) “the students’ union” means any association of students formed to further the educational purposes of the institution and the interests of students, as students;
 - (o) “variable category” means any category of members whose numbers may vary according to clauses 2 and 3.

Composition of the Corporation

2. The Corporation shall consist of:

- (a) up to nineteen members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions and responsibilities (“external members”);
- (b) the Chief Executive of the institution, unless the Chief Executive chooses not to be a member;
- (c) at least one member who is a member of the institution’s staff and has a contract of employment with the institution (“staff member(s)”); and who has been nominated and elected by staff; and
- (d) at least one member who is a student at the institution and has been nominated and elected by their fellow students, or if the Corporation so decides, by a recognised association representing such students (“student member(s)”).

Determination of membership numbers

- 3. (1)** Subject to paragraph (2), the number of members of the Corporation and the number of members of each variable category shall be decided by the Corporation.
- (2)** The Corporation may at any time vary the determination provided that the number of members of each variable category shall be subject to the limit which applies to that category as set out in the revised Schedule 4 to the Further and Higher Education Act 1992 or subsequent legislation.
 - (a) the number of members of the Corporation shall not be less than twelve or more than twenty; and
 - (b) there shall be a majority of external members on the Corporation; and

- (c) the numbers of members of each variable category shall be subject to the limit which applies to that category set out in Clause 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.

Appointment of the members of the Corporation

- 4. (1) Subject to paragraph (2) the Corporation is the appointing authority in relation to the appointment of its members.
- (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.

Appointment of the Chair and Vice-Chair

- 5. (1) The members of the Corporation shall appoint a Chair and at least one Vice-Chair from among themselves.
- (2) Neither the Chief Executive, Principal nor any staff or student member shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair in their absence.

Appointment of the Clerk to the Corporation

- 6. (1) The Corporation shall appoint a person to serve as its Clerk, but the Chief Executive or Principal may not be appointed as Clerk or temporary Clerk.
- (2) The Clerk shall be entitled to attend all meetings of the Corporation and any of its committees, except where required to withdraw.
- (3) The Clerk may also be a member of staff at the institution.

Persons who are ineligible to be members

- 7. (1) No one under the age of 18 years may be a member, except as a student member.
- (2) The Clerk may not be a member.
- (3) A person who is a member of staff of the institution may not be, or continue as, a member, except as a staff member or in the capacity of Chief Executive.
- (4) Subject to paragraphs (5) and (6), 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(3), or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement.
- (5) 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:

- (a) on that person's discharge from bankruptcy, unless the bankruptcy order has before then been annulled; or
 - (b) if the bankruptcy order is annulled, at the date of that annulment; or
 - (c) 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
 - (d) if the interim bankruptcy restrictions order is discharged by the court, on the date of that discharge; or
 - (e) if the bankruptcy restrictions undertaking is annulled, at the date of that annulment.
- (6)** 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.
- (7)** Subject to paragraph (8), a person shall be disqualified from holding, or from continuing to hold, office as a member if:
- (a) 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
 - (b) within the previous twenty years that person has been convicted as set out in sub-paragraph (a) and has received a sentence of imprisonment, whether suspended or not, for a period of more than two and a half years; or
 - (c) that person has at any time been convicted as set out in sub-paragraph (a) and has received a sentence of imprisonment, whether suspended or not, of more than five years.
- (8)** 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.
- (9)** The appointing authority may decline to appoint a person as a staff or student member if:
- (a) it is satisfied that the person has previously been removed from office as a member of a further education corporation; or
 - (b) the appointment of the person would contravene any rule or bye-law made under article 17 of the Articles of Government concerning the number of terms of office which a person may serve, provided that such rules or bye-laws make the same provision for each category of members appointed by the appointing authority; or

- (c) the person is ineligible to be a member of the corporation because of clause 7.
- (10) Upon a member of the Corporation becoming disqualified from continuing to hold office under paragraph (4) or (7), the member shall immediately give notice of that fact to the Clerk.

The term of office of a member and termination of membership

- 8. The term of office of a member and termination of membership is outlined within the Corporation's bye-laws.

Members not to hold interests in matters relating to the institution

- 9. (1) A member to whom paragraph (2) applies shall:
 - (a) disclose to the Corporation the nature and extent of the interest; and
 - (b) if present at a meeting of the Corporation, or of any of its committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, not take part in the consideration or vote on any question with respect to it 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
 - (c) withdraw if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, where required to do so by a majority of the members of the Corporation or committee present at the meeting.
- (2) This paragraph applies to a member who:
 - (a) has any financial interest in:
 - (i) the supply of work to the institution, or the supply of goods for the purposes of the institution;
 - (ii) any contract or proposed contract concerning the institution; or
 - (iii) any other matter relating to the institution; or
 - (b) has any other interest of a type specified by the Corporation in any matter relating to the institution.
- (3) This clause shall 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.
- (4) Where the matter under consideration by the Corporation or any of its committees relates to the pay and conditions of all staff, or all staff in a particular class, a staff member:
 - (a) need not disclose a financial interest; and
 - (b) 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

- (c) 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.
- (5) The Clerk shall maintain 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 institution to any person wishing to inspect it.

Copies of the Instrument of Government

- 10. A copy of this Instrument 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 institution upon request, during normal office hours, to every member of staff and every student.

Change of name of the Corporation

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

Application of the seal

- 12. The application of the seal of the Corporation shall be authenticated by the signature of any two members with the exception of student members

**ARTICLES OF GOVERNMENT
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Interpretation of the terms used

1. In these Articles of Government:
 - (a) any reference to "the Chief Executive" shall include a person acting as the Chief Executive Officer;
 - (b) any reference to "the Principal" shall include a person acting as Principal;
 - (c) "the Articles" means these Articles of Government;
 - (d) "Chair" and "Vice-Chair" mean respectively the Chair and Vice-Chair of the Corporation appointed under clause 6 of the Instrument of Government;
 - (e) "the Clerk" has the same meaning as in the Instrument of Government;
 - (f) "the Corporation" has the same meaning as in the Instrument of Government;
 - (g) "the CE of Skills Funding" means the Chief Executive of Skills

- Funding or any successor body;
- (h) “staff member” and “student member” have the same meanings as in the Instrument of Government;
 - (i) “the Secretary of State” means the Secretary of State for Education or the successor Department as determined by Government from time to time;
 - (j) “senior post” means the post of Chief Executive, Principal and such other senior posts as the Corporation may decide for the purposes of these Articles;
 - (k) “the staff” means all the staff who have a contract of employment with the institution;
 - (l) “the students’ union” has the same meaning as in the Instrument of Government.

Conduct of the institution

- 2. The institution shall be conducted in accordance with the provisions of the Instrument of Government, these Articles, any rules or bye-laws made under these Articles and any trust deed regulating the institution.

The responsibilities of the Corporation

- 3. The Corporation shall be responsible for the following functions:
 - (a) the determination, development and periodic review of the educational character and mission of the institution and the oversight of its activities and the determination and approval of the strategic direction of the institution;
 - (b) publishing arrangements for obtaining the views of staff and students on the determination, development and periodic review of the educational character and mission of the institution and the oversight of its activities;
 - (c) approving the quality strategy of the institution;
 - (d) the effective and efficient use of resources, the solvency of the institution and the Corporation and safeguarding their assets;
 - (e) approving annual estimates of income and expenditure;
 - (f) 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; and
 - (g) setting a framework for the pay and conditions of service of all other staff.

The Corporation’s delegable and non-delegable functions

- 4. (1) The Corporation shall not delegate the following functions:
 - (a) the determination and development of the educational character and mission of the institution;

- (b) the approval of the annual estimates of income and expenditure;
 - (c) the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets;
 - (d) the appointment of the Chief Executive, Principal or holder of a senior post;
 - (e) the appointment of the Clerk, (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity of a member of staff); and
 - (f) the modification or revocation of these Articles.
- (2) The Corporation may not delegate -
- (a) the consideration of the case for dismissal, and
 - (b) the power to determine an appeal in connection with the dismissal
- of the Chief Executive, Principal, the Clerk or the holder of a senior post, other than to a committee of "external" members of the Corporation.
- (3) The Corporation shall make rules specifying the way in which a committee having functions under paragraph (2) shall be established and conducted.

The responsibilities of the Chief Executive and the Principal

5. (1) Subject to the responsibilities of the Corporation, the Chief Executive shall be the Chief Executive and Accounting Officer of the institution, and shall be responsible for the following functions:
- (a) making proposals to the Corporation about the educational character, mission and strategic direction of the institution and implementing the decisions of the Corporation;
 - (b) reviewing and approving annual estimates of income and expenditure prepared by the Principal and taking such annual estimates to the Corporation for consideration and approval;
 - (c) overall management of budget and resources within the estimates approved by the Corporation;
 - (d) the organisation, direction and management of the institution and leadership of the staff;
- (2) Subject to the responsibilities of the Corporation, the Principal shall be the Principal of the Institution and shall be responsible for the following functions:
- (a) implementing the decisions of the Corporation;
 - (b) the determination of the institution's academic and other activities;
 - (c) preparing annual estimates of income and expenditure for consideration and approval first by the Chief Executive and subsequently the Corporation;
 - (d) day-to-day management of budget and resources within the estimates approved by the Corporation;
 - (e) leadership of the staff;
 - (f) the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other

- than the Chief Executive, holders of senior posts or the Clerk, where the Clerk is also a member of the staff; and
- (g) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.

The Chief Executive and Principal's delegable and non-delegable functions

- 6. The Chief Executive and the Principal may delegate functions other than:
 - (g) overall responsibility for the management of budget and resources; and
 - (h) any functions that have been delegated specifically to the Chief Executive or the Principal by the Corporation.

Senior Posts

- 7. (1) The Corporation shall be responsible for determining senior posts and where a vacancy occurs the Corporation shall be responsible for making arrangements for recruitment, selection and appointment to those positions.
- (2) Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff-
 - (a) may be required to act as Chief Executive, Principal or in the place of any other senior post holder; and
 - (b) if so required, shall have all the duties and responsibilities of the Chief Executive, Principal or such other senior post holder during the period of the vacancy or temporary absence.

The responsibilities of the Clerk

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

The establishment of committees and delegation of functions generally

- 9. (1) The Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the Chief Executive, Principal or Clerk, and may delegate powers to:
 - (a) such committees;
 - (b) the Chair, or in the Chair's absence, the Vice-Chair; or
 - (i) the Chief Executive or the Principal.
- (2) The number of members of a committee and the terms on which they are to hold and to vacate office, shall be decided by the Corporation.

- (3) Any committee established by the Corporation, other than the committee referred to in article 4(2), may include persons who are not members of the Corporation.
- (4) The Corporation may also establish committees under collaboration arrangements made with other education institutions or maintained schools (or with both), and such joint committees shall be subject to any statutory or regulatory requirements.

The audit committee

- 10. The Corporation shall establish a committee, to be known as the “audit committee”, to advise on matters relating to the Corporation’s audit arrangements and systems of internal control.

Academic freedom

- 11. In making rules under article 12, the Corporation shall have regard to the need to ensure that academic 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.

Rules relating to the conduct of staff

- 12. (1) After consultation with staff, the Corporation shall make rules setting out:
 - (a) the conduct of staff;
 - (b) grievance procedures for all staff;
 - (c) procedures for the suspension of all staff; and
 - (d) disciplinary and dismissal procedures for
 - (i) senior post-holders, and
 - (ii) staff other than senior post-holdersand such procedures shall be subject to the provisions of articles 3f, 4(1)(d), 4(1)(e), 4(2), 5(2)(f) and 13.
- (2) Any rules made under paragraph (1c) shall include provision that where a person has been suspended without pay, any appeal against such suspension shall be heard and action taken in a timely manner.
- (3) Any rules made under paragraph (1)(d)(i) shall include provision that where the Corporation considers that it may be appropriate to dismiss a person, a preliminary investigation shall be conducted to examine and determine the case for dismissal.

Suspension and dismissal of the Clerk

- 13. (1) Where the Clerk is also a member of staff at the institution, the Clerk is to be treated as a senior post holder for the purposes of article 12(1)(d).

- (2) Where the Clerk is suspended or dismissed under article 12, that suspension or dismissal shall not affect the position of the Clerk in the separate role of Clerk to the Corporation.

Students

14. (1) Any students' union shall conduct and manage its own affairs and funds in accordance with a constitution approved by the Corporation.
- (2) After consultation with representatives of the students, the Corporation shall make 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).

Internal audit

15. (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.
- (2) The Corporation may arrange for the examination and evaluation mentioned in paragraph (1) to be carried out on its behalf by internal auditors.

Accounts and audit of accounts

16. (1) The Corporation shall:
- (a) keep proper accounts and proper records in relation to the accounts; and
 - (b) prepare a statement of accounts for each financial year of the Corporation.
- (2) The statement shall:
- (a) 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
 - (b) comply with any directions given by the CE of Skills Funding 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.
- (3) The accounts and the statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.
- (4) Auditors shall be appointed and audit work conducted in accordance with any requirements of the CE of Skills Funding.

Rules and bye-laws

17. The Corporation shall have the power to make rules and bye-laws relating to the government and conduct of the institution and these

rules and bye-laws shall be subject to the provisions of the Instrument of Government and these Articles.

Copies of Articles of Government and rules and bye-laws

- 18.** 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.

Modification or replacement of the Instrument and Articles of Government

- 19. (1)** Subject to paragraph (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.
- (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.

Dissolution of the Corporation

- 20. (1)** The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.
- (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.