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Our ref:

To: Chairs of FE and Sixth Form Colleges

8 November 2013

In my letter of 12 July 2013 I said I'd write on a regular basis with an update on policy developments. As we move into autumn it is timely to reflect on a busy summer and to share with you my thoughts on current issues.

The recent OECD report 'Education at a glance 2013' gives impetus to the importance of continuing our strong focus on raising the aspirations of young people and adults to raise their skills levels, especially in English and maths. The OECD compared adult skill levels in England to 24 other developed countries. Uniquely among developed nations, our youth performed worse than the older generation. England is among the top performers for the population aged 55+, but is bottom of the table for 16-18 year olds in literacy and above only Spain in numeracy.

This has motivated me yet more in the drive for rigour and responsiveness, and gives emphasis to the essential job governors have to do to raise standards across the sector.

Since I last wrote to you, some significant reforms have come into place. We have:

- Raised the Participation Age;
- Introduced Study Programmes;
- Brought in new requirements on English and maths;
- Consulted on a more robust accountability framework for 16-19 year olds;
- Published an Apprenticeships Implementation Plan;
- Introduced Traineeships;
- An Inspiration Vision for Careers Guidance and Advice;
- Proposals for new legislation aimed at improving the services to young people with learning difficulties and disabilities;
- The newly established Education and Training Foundation;
- A continued focus on the critical role of Governors with a clear plan of action for improving the support available to you; and
- Appointed the Principal Regulator for FE Colleges.

These are major developments in securing the change in standards required across the sector. I attach a detailed brief which I hope you find helpful and will share widely within your colleges. I expect you to play a significant role in embedding the reforms in your institutions building on the progress already identified in our recent Evaluation of the FE Reform Programme.

Finally, I would like to thank you for your continuing hard work to lead your colleges. I recognise the invaluable role that Chairs, Governors and Clerks all perform and would like to highlight the role of the Honours system in recognising and rewarding excellent governance. For further information on how to nominate an individual, FE colleges can contact the Department for Business Honours team at Alison.MARSH@bis.gsi.gov.uk and Sixth Form colleges can contact the Department for Education team at honours.team@education.gsi.gov.uk

A handwritten signature in dark ink, appearing to read 'Matthew Hancock', with a long, sweeping horizontal flourish extending to the right.

MATTHEW HANCOCK MP

BIS/DFE BRIEF ON PROGRESS WITH IMPLEMENTING RIGOUR AND RESPONSIVENESS – A brief for FE Governors

16-19 – Raising Participation Age, Study Programmes, English and maths requirements

From this September, the age of compulsory participation has been raised; meaning young people now stay in some form of education or training until the end of the academic year in which they turn 17. From the start of the 2015/16 academic year this requirement will be extended so that it applies until a young person's 18th birthday.

We have also seen the introduction of 16-19 study programmes, where every student receives a programme tailored to their prior attainment and career aspirations and which ensures they spend most of their time taking one or more substantial qualifications, or a traineeship, or doing substantial work experience. Very importantly, students will continue to study English and maths if they did not achieve a GCSE grade C in these subjects by the age of 16 and in 14/15 we will make it a condition of funding that all 16-19 year olds receive teaching at level 2 if they have not achieved the requisite GCSE grade C or above. This change will enable all students to progress to a higher level of study than their prior attainment and take a programme that suits their career goal and helps them to progress to their next stage of employment, training or further study.

To help the sector develop further its capacity to raise skills levels in English and maths at level 2, we have announced bursaries worth £15m over 2 years to attract high quality graduates into FE to train as specialist teachers of English, maths and special educational needs. In addition, we will make £1m of grants available to fund in-service specialist training focused on teaching students with LDD, and a maths enhancement programme for existing teachers of numeracy and vocational subjects, with the training costs subsidised by the Education and Training Foundation.

To increase further the rigour and responsiveness of vocational qualifications, we announced in July 2013 the introduction of Tech Levels and the Technical Baccalaureate measure for 16-19 year olds to be taught from September 2014. In November DfE will publish a list of vocational qualifications that are recognised by employers, trade bodies and higher education institutions and will help students, parents and schools to identify qualifications that offer the best chance of employment or further study. These will also be the only vocational qualifications taught at level 3 which will be reported in the college performance tables. In September 2013 DfE published a consultation to seek views on how these should be reported and used to set minimum standards, which will apply to colleges in the same way as they will to school sixth forms and sixth form colleges.

Apprenticeships

Following the government's endorsement of the employer-focused vision in Doug Richard's independent Review of Apprenticeships, and our subsequent consultation on his recommendations, on Monday 28 October we published an Implementation Plan which sets out policy, process and timescale for reforming Apprenticeships in England.

Apprenticeships are at the heart of the Government's drive to give people of all ages the skills employers need to grow and compete and already deliver strong returns for the economy, employers and apprentices. However, our reforms will ensure that Apprenticeships become more rigorous and more responsive to the needs of employers. We are putting employers in the driving seat, by giving

them the responsibility of developing the short standards and high level approach to assessment that will replace the long and complex frameworks.

We will also improve the quality of Apprenticeships by introducing higher expectations on English and maths, grading to incentivise apprentices to strive to be the best and an increased focus on assessment at the end of an Apprenticeship to ensure full competence. Trailblazers will lead the way in implementing these new Apprenticeships, ensuring that employers are involved in their design and that we deliver them in a way that works. First teaching based on the standards developed by Trailblazers will take place next year with all apprentices working towards the new standards in all sectors by 2017/18.

Traineeships

Following the positive response we received to our discussion paper and a number of roundtables with providers, employers and other stakeholders, we introduced traineeships from August 2013. Traineeships are designed to support young people aged 16-23 to get the skills and experience they need to be able to compete in the labour market, helping them to gain apprenticeships or other jobs. At the core of traineeships are work preparation training, English and maths and a high quality work experience placement. We have given providers and employers the freedom to bring these elements together in the best way to engage and support individual trainees.

Traineeships have begun strongly, backed by employers and with over 500 training organisations signalling that they will deliver them in 2013/14. In addition, we announced on 3 October an additional £20 million to support the expansion of traineeships in 2013/14 for 19-23 year olds. To ensure traineeships are a high quality programme from the outset, their delivery is limited to those providers that have achieved an Ofsted inspection grade of 'good' or 'outstanding'. Where a provider is not eligible to deliver traineeships, they are not permitted to use the logo or branding. We also request that they do not use the name 'traineeships' to describe their programme.

We recognise that traineeships, as a new programme, will need to continue to develop and improve over the coming years. To help with that process we have commissioned an external evaluation and will be working with the Education and Training Foundation and other organisations to ensure that good practice is captured and disseminated. We encourage providers to work with employers to advertise traineeships opportunities, which can be done through our National Apprenticeship Service:

<https://apprenticeshipvacancymatchingservice.lsc.gov.uk/navms/Forms/Candidate/VisitorLanding.aspx>

Careers Advice and Guidance

In September we published the Minister's Inspiration Vision Statement, setting out his thoughts on what we need to do to bring careers advice and guidance to life for young people. Governors have a key role to play in that. This is a "call to action" for schools, colleges and local authorities to ensure that all young people can benefit from direct, motivating and exciting experience of the world of work and to place employers and inspirational people from the world of work at the heart of your careers offer.

Where you are finding it difficult to make connections with employers, the National Careers Service can be asked to draw upon their existing local networks to help facilitate links with employers. We

would also like to encourage colleges that have established employer networks to support schools in this respect too. Key sources of further information are:

Inspiration Vision Statement and Careers Guidance Action Plan - these documents are available online at:

<https://www.gov.uk/government/publications/careers-inspiration-vision-statement>
<https://www.gov.uk/government/publications/careers-guidance-action-plan>

Details on how "inspiration" fits within the context of your new careers guidance responsibilities are also available at:

<https://www.gov.uk/government/publications/securing-independent-careers-guidance>

There are lots of examples of innovative offerings in the inspiration area, for example:
<http://www.inspiringthefuture.org/>

The Children and Families Bill

This Bill, which is currently before Parliament, will introduce a new system to support young people with learning difficulties and disabilities (LDD) from September 2014. The current system of statements and Learning Difficulty Assessments (LDAs) will be replaced by a single 0-25 system of Education, Health and Care (EHC) plans. The reforms will introduce important new responsibilities on FE colleges and approved independent specialist providers (ISPs) that will help provide young people with LDD the support they need to realise their aspirations. All FE and sixth form colleges should be preparing now for the changes. Further information about these reforms can be found on the Department for Education's (DfE) [website](#), alongside a draft of the revised 0-25 SEN Code of Practice (which colleges will need to use from next September), draft regulations and proposed arrangements for replacing statements and LDAs with EHC plans. A consultation is running on all of these between now and December. You can access the consultation [here](#). We'd encourage all colleges and ISPs to read these important documents and feed their views into the consultation.

Professionalism and governance in FE

As you will be aware, the new sector-led Education and Training Foundation started work on 1 August. The Foundation has the essential remit to raise and support professionalism in the FE sector. The immediate priorities for the Foundation are to support system leadership in raising standards; focusing on leadership and governance; supporting improved teaching, learning and assessment of English, maths and of students with learning difficulties and disabilities; ensuring better engagement with business in the delivery of vocational education in line with Frank McLoughlin's report; and supporting the sector to improve delivery in apprenticeships and traineeships.

In July, BIS published its review into FE Governance and will be evaluating take up of the recommendations later in the year. Since then, the AoC Governors' Council has been undertaking work to consider existing information, advice and development mechanisms for governing bodies and determine how they can be improved. It is clear that there is a lot to do to raise the level of governance in the sector to the level of the best and we urge all of you to read the AoC Governors Council report and take forward its recommendations.

Evaluation of the FE Reform Programme

Governors will be interested to see a report on the Evaluation of the FE Reform Programme. The report found that there was strong support in the sector for the reforms with evidence that the new flexibilities have enabled providers to respond more quickly to community needs, leading to a more responsive relationship with partners. <https://www.gov.uk/government/publications/further-education-and-skills-reform-plan-new-challenges-new-chances-evaluation>.

Principal Regulator

An important development over the summer was the appointment of the Secretary of State for Business, Innovation and Skills as the Principal Regulator for all FE corporations in England on 1 September 2013. This confers on the Secretary of State a duty to do all he reasonably can to promote compliance by charity trustees with their legal obligations. An information note providing further details of the Principal Regulator role and the requirements on college governors in their role as charity trustees is attached at Annex 1. Information on the role of the Secretary of State for Education as Principal Regulator for Sixth Form Colleges can be found on the Department for Education website.

October 2013

Annex 1

PRINCIPAL REGULATOR FOR FE COLLEGE CORPORATIONS IN ENGLAND

Introduction

1. This information note covers:
 - the background to the appointment of the Principal Regulator for FE College Corporations in England;
 - the duties of the Regulator and of FE corporations as exempt charities;
 - the arrangements through which the Principal Regulator's role will be discharged and the implications for FE corporations;
2. As exempt charities, FE corporations should ensure that they are fully cognisant of their statutory obligations as a charity, including understanding what actions, or inaction, would call into question whether the corporation is complying with charity law.
3. Corporations are expected to secure appropriate information and advice on these matters. This note is not intended to act as a comprehensive guide, but provides an overview and identifies relevant sources of information.

FE Corporations as exempt charities

4. FE corporations are charities and the governors of FE corporations are the charity trustees, responsible for the control and management of the administration of their charity.
5. Exempt charities are institutions that are established as charities but which are exempt from registration with, and oversight by, the Charity Commission. The trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities and, as such, are expected to comply with charity law. Most types of exempt charity (including FE corporations) are listed in Schedule 3 to the Charities Act 2011 (which replaced Schedule 2 to the Charities Act 2006). Other designated FE providers and colleges can be charities but must register with the Charity Commission.
6. Amendments to The Charities Act 2006 Schedule 2 removed the exempt status of certain charities or classes of charity. The charities which remained exempt - including FE colleges in England – were required to have a Principal Regulator or lose their exempt status and register with the Charity Commission

7. Since then, the Cabinet Office has been working through an extensive programme to ensure that all exempt charities have a Principal Regulator; FE colleges were in the third tranche of this work.
8. The Secretary of State for Business, Innovation and Skills has been appointed as the Principal Regulator for all FE Corporations in England and charitable companies wholly owned by FE Corporations. This appointment came into force on 1 September 2013. The Principal Regulator for Sixth Form College Corporations is the Secretary of State for Education.

The overall approach to the role of the Principal Regulator

9. As the Principal Regulator, the Secretary of State has a duty to do all he/she reasonably can to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity. In doing this the Principal Regulator will aim to increase public trust and confidence in those charities, promote awareness and understanding of the “public benefit” requirements of those charities, promote effective use of the charities resources and enhance the accountability of those charities to donors, beneficiaries and the general public.
10. In fulfilling his/her role as Principal Regulator, the Secretary of State will follow the five principles of good regulation¹: proportionality, accountability, consistency, transparency and targeting. Wherever possible, established regulatory/monitoring systems will be employed and additional requirements will only be introduced where considered essential.
11. It is anticipated that, on a day to day basis, corporations will not notice any difference in the way they are regulated

The general duties and responsibilities of FE corporations, as charity trustees

12. Charity Commission guidance states that trustees of an exempt charity:
 - must act reasonably and responsibly in all matters relating to the charity;
 - must always act in the best interests of the charity and manage any conflicts of interest;
 - must apply the income and property of the charity only for the purposes set out in the governing document;
 - must protect all the property of the charity;
 - must invest the funds of the charity only in accordance with their powers of investment;
 - should regularly review the effectiveness of the charity.
13. The Charity Commission guidance [The Essential Trustee: What you need to know \(CC3\)](#) provides more information on this subject

What does this mean for FE college corporations?

14. In accordance with existing legislation, and in line with many of the duties that already exist for FE corporations, corporations will be expected to :

¹ [Legislation and Regulatory Reform Act 2006](#)

- Adhere to their Instrument and Articles of Government, which must comply with the requirements of Part 2 of Schedule 4, as set out in the Education Act 2011 – see [Education Act 2011](#)
 - Have regard to the Charity Commission's guidance on public benefit² and ensure that the corporation is only involved in activities that will further its charitable objects and do not put their charitable status at risk. A statement to this effect should be included in the corporate governance section of the Corporation's Annual Report. The Annual Report should also set out how the Corporation's activities during the year have delivered public benefit.
 - Ensure funds and assets of the corporation are only used for the purposes set out in FHEA 1992 and the governing documents of the college.
 - Be well informed of the overall condition of the charity's estate, ensuring that it is being properly used and adequately insured.
 - Prepare timely accounts and annual reports and make them available to the public. The accounting requirements are as specified by the Skills Funding Agency (see para 23). In accordance with Charity Commission guidance, colleges are expected to make their Annual Reports and Accounts promptly available on their websites
 - Not gain direct or indirect financial benefit from their role - except as permitted by charity law or their governing document. Corporations must adhere to Charity Commission guidance on remuneration for governors, which states that colleges who wish to pay governors will need to apply to the Charity Commission for express permission³ Further guidance on remuneration can also be found in Annex B of the Review of Further Education and Sixth Form College Governance⁴
 - Actively prevent the misuse of the governor's position and college funds or assets, making sure they do not allow any personal views or prejudices to affect their conduct as trustees.
15. Corporations are further required to notify the Principal Regulator immediately if any serious breach of charity law is identified – see further details in paragraphs 17 - 19.

Promoting Compliance

16. To raise awareness of his/her role, and help promote compliance with charity law, the Principal Regulator, through the Department of Business and Innovation, is taking the following actions:
- Issuing this guidance note to chairs and clerks of all colleges and including it in the AOC Governance Library
 - Setting up a web page on the BIS website which sets out the duties of the Secretary of State as Principal Regulator, explains who is being regulated, outlines the requirements of trustees, and explains the process for raising concerns or complaints about non-compliance ie. whom to contact and what will happen next.

² <http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/charities-and-public-benefit/#g>

³ <http://www.charitycommission.gov.uk/detailed-guidance/money-and-accounts/trustee-expenses-and-payments-cc11/>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211285/bis-13-970-review-of-further-education-and-sixth-form-college-governance.pdf

- Including a cross-reference to this note, and to Charity Commission guidance, in the next iteration of the AoC Foundation Code for Governance
- Hosting a workshop for clerks in late 2013 to explain the Principal Regulator / trustee roles and responsibilities
- Maintaining close liaison with the Charity Commission to ensure that colleges are alerted to the Commission's updates and guidance as it is issued
- Setting up a register of FE colleges, listing contact details for the Chair and Clerk using information already provided to the Skills Funding Agency.

Reporting Serious Incidents

17. Corporations must notify the Principal Regulator immediately if they identify any serious breaches of charity law. The Charity Commission's ⁵ list of serious incidents includes:

- fraud, theft or the charity losing a significant amount of money another way
- a large donation from an unknown source
- links with terrorism
- the charity having no policy to safeguard its vulnerable beneficiaries
- suspicions, allegations and incidents of abuse or mistreatment of vulnerable beneficiaries

18. If corporations are unsure whether an incident is serious or significant, we recommend that it should be reported anyway.

Concerns and complaints

19. Concerns or complaints about possible non-compliance with charity law may also be raised by a student, staff member or a member of the public. These cases should be sent by email to the Principal Regulator at fegovernance@bis.gsi.gov.uk.

20. Further information about reporting serious incidents and complaints, and how these will be investigated, can be found in the attached Annex (i).

How the Principal Regulator will monitor compliance

21. BIS, acting on behalf of the Principal Regulator and with the support of the Skills Funding Agency, will continue to apply its usual processes for monitoring FE corporations.

22. The Chief Executive of Skills Funding is accountable to Parliament (and subject to legislation, in future will be accountable to the Secretary of State) for the funds granted to her and must ensure that there are effective systems in place to monitor and be satisfied that those organisations the Agency funds operate in an appropriately controlled environment. In order to discharge these duties the Agency has an audit and assurance regime which for Colleges is based on the conditions of funding in the Financial Memorandum ([Parts 1](#) and [2](#)) including the requirements of the Joint Audit Code of Practice ([Part 2](#)) and the [Accounts Direction](#). These documents are regularly reviewed and will be updated as necessary

⁵ <http://www.charitycommission.gov.uk/running-a-charity/your-charitys-work/protecting-your-charity/reporting-serious-incidents/>

23. Where there are concerns about the arrangements a corporation has in place to manage the funding the Agency may undertake an [Accountability Review](#). These existing mechanisms for monitoring Colleges' internal controls, regularity and propriety, accounting reporting, and use of funds will be used as far as possible to support the responsibilities of the Principal Regulator.

Further Information

24. The guidance in this note will be reviewed regularly and updated as required to reflect developments in the sector. If you have any questions about the content of this paper please email the BIS Governance Team at fegovernance@bis.gsi.gov.uk
25. The Charity Commission website (www.charitycommission.gov.uk) offers a wide range of easily accessible online services, tools, information and guidance, including an online database of frequently asked questions⁶. Links to useful Charity Commission publications can be found at Annex (ii) to this paper.

⁶ <http://www.charitycommission.gov.uk/frequently-asked-questions/>

Annex (i) – Serious Incidents and Complaints

Process for Reporting Serious Incidents

1. When a corporation identifies a serious incident it should notify the Principal Regulator promptly – see contact details in paragraph 14 below. Emails should be headed up “Principal Regulator – Incident Report” and provide full details of the issue, together with any investigative action already taken by the corporation.
2. Where the incident relates to fraud over the value of £10,000, or £5,000 for 16-19 Bursary Funding, corporations must also notify the Skills Funding Agency, following the guidance in the Joint Audit Code of Practice.
3. When the Principal Regulator receives a serious incident report, his/her main interest is to understand how the corporation has managed the incident, including how it has reviewed systems and controls to minimise the risk of recurrence. In most cases, if the initial report is comprehensive, the expectation is that there will be no requirement to seek more information or take further action.
4. If further action is deemed necessary the Principal Regulator will work with the Skills Funding Agency to open an investigation – see paragraphs 10-12 below

Process for handling Concerns and Complaints

5. Students, corporation staff members and members of the public should raise concerns or complaints about non-compliance with charity law with the Principal Regulator at the email address below. Emails should be headed up “Principal Regulator” and provide full details of the issue. The Principal Regulator will then work with the Skills Funding Agency as appropriate to investigate the incident.
6. Any complaints about a corporation that are raised directly with the Charity Commission will generally be considered by the Commission to be a matter for the Principal Regulator in the first instance, and will therefore be referred to them. The Commission will usually only become involved at the Principal Regulator’s invitation.
7. When the Principal Regulator receives a complaint, the first step in most cases will be to advise the complainant to raise their concern with the trustees of the FE corporation, if they have not already done so. The corporation should then investigate the complaint and report to the Principal Regulator. He/she will then decide whether the issue is resolved or if further action is needed.
8. FE corporations are required to have published procedures for complaints handling. These procedures should contain a process by which someone can make a complaint, have it investigated, reviewed and resolved. The procedure should also outline the process, timescales and named individuals.
9. Further sources of information on reporting concerns and complaints can be found at:
 - Charity Commission guidance on how to complain about a charity - [How to complain - Charity Commission](#)
 - Guidance for employees who want to blow the whistle on wrongdoing in a charity eg. concerns about the proper administration of charities or of funds given or held for charitable purposes can also be found at [Guidance for employees - Charity Commission](#),

Investigating concerns about FE colleges' compliance with charity law

10. Most problems in charities can be resolved by the charity trustees themselves. Others will be examined and resolved by the Principal Regulator and the Skills Funding Agency, using the Agency's standard complaints investigation procedures⁷ without the need to open an investigation. However, in the most serious cases, the Principal Regulator may need to work with the Charity Commission to formally investigate matters further.
11. In these cases BIS, acting on behalf of the Secretary of State, will write to the Chair of the governing body setting out the concern and inviting a response. Further actions will depend both on the nature of that response and on the seriousness of the issue. We would hope to be able to resolve incidents through correspondence but if this is not possible, or in case of a particularly serious incident, we may ask the Charity Commission to assist us in the investigation.
12. Where there are serious concerns of abuse in a charity, the Charity Commission may investigate and open a statutory inquiry under section 46 of the Charities Act 2011. The Commission have a range of statutory powers that they can use to stop abuse and protect charitable assets and beneficiaries, including:
- information gathering powers which require the Commission to obtain information or documents or require named individuals to meet them to answer questions
 - temporary protective powers which allow the Commission to protect charity property for a temporary period while they continue investigating
 - remedial powers which allow the Commission to implement long term solutions to problems often identified by an inquiry
13. The Commission has published guidance on its regulatory approach at:
<http://www.charitycommission.gov.uk/our-regulatory-work/how-we-regulate-charities/how-we-ensure-charities-comply-with-their-legal-requirements/charity-commission-risk-framework>

Contact Details

14. The Principal Regular can be contacted by emailing at fegovernance@bis.gsi.gov.uk

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<http://www.myerscough.ac.uk/downloads/pdfs/Governance/compliance/Skills%20Funding%20Agency,%20Complaints%20about%20providers%20of%20Education%20and%20Training%20Leaflet.pdf>

Annex (ii)

Charity Commission Guidance

The [Charity Commission](#) has a number of documents on general guidance and reporting that trustees will find helpful. Trustees may wish to familiarise themselves with the [Commission's website](#).

The Charities Act also allows the Charity Commission to give general and specific formal advice to charities. The trustees of a charity, including an exempt charity, can write to the Commission for formal advice about whether they would, by taking a particular course of action, be acting properly as trustees.

Guidance on Exempt Charities

- [Guidance on the responsibilities of charity trustees](#)
- [Guidance on making decisions](#)
- [Guidance on conflicts of interest](#)
- [Payments and expenses for trustees](#)
- [Guidance on Exempt Charities](#)
- [Guidance on internal financial controls for charities](#)
- [Code of governance for the voluntary and community sector](#)
- [Guidance on codes of conduct produced by Charity Trustees Network](#)

Legislation

Principal Regulator appointments are made under the Charities Act 2006 now consolidated into the Charities Act 2011.

- [The Charities Act 2006](#)
- [The Charities Act 2006 \(Changes in Exempt Charities\) Order 2011](#)
- [The Charities Act 2006 \(Principal Regulators of Exempt Charities\) Regulations 2011](#)
- [The Charities Act 2011](#)
- [The Companies Act 2006](#)