

**RESPONSE FROM THE CABINET SECRETARY FOR EDUCATION AND
LIFELONG LEARNING TO THE PUBLIC AUDIT COMMITTEE, DATED 8 JUNE
2015**

Dear Convener

Thank you for your letter of 30 April setting out questions and recommendations for the Scottish Government which arose from your scrutiny of the Auditor General for Scotland report entitled 'The 2012/13 audit of North Glasgow College: Governance and financial stewardship'.

Responsibility for decisions about the use of public funds by colleges rests primarily with the boards of management of colleges under the oversight of the Scottish Further and Higher Education Funding Council (SFC), whose Chief Executive is the Accountable Officer to the Scottish Parliament for public funds the SFC grants to colleges and regional strategic bodies.

Before I respond to your specific points, I would like to address your general concerns about some past severance processes that have arisen from this inquiry. While Audit Scotland has stated with reference to recent college mergers that 'most severance was managed in accordance with good practice', there are lessons to be learned from the particular situation at North Glasgow along with other cases where Audit Scotland highlighted shortcomings in its Scotland's Colleges 2015 report. As I detail below, action is already being taken to address this.

Since April 2014, changes to the framework within which colleges operate have made the scrutiny of settlement agreements in the college sector more robust and timely. SG issued new guidance on settlement agreements in 2014 and has kept the process under review with plans to update guidance to incorporate further improvements. The SFC is developing new, strengthened guidance and taking forward actions to increase awareness of good practice and build capability around severance and settlement agreements in colleges.

As the Committee has acknowledged, incorporated colleges are now subject to the Scottish Public Finance Manual (SPFM), which considerably strengthens the oversight of settlement agreements. This was a consequence of the Office of National Statistics reclassifying these colleges as central government bodies; the corresponding changes took effect on 1 April 2014, after the early departures at North Glasgow College.

In detail this means that colleges must now seek prior approval for any such agreement from the SFC; this is a condition of grant under the Financial Memorandum that the SFC put in place for colleges last year. Scottish Government officials and Ministers, where appropriate, will be consulted where a case is either novel or potentially contentious before SFC approves such an agreement. This situation differs from that in place previously when college boards were solely responsible for taking these decisions. I trust that my general comments illustrate the improvement that has taken place and our determination that progress should continue.

Regarding your questions and recommendations, I will take these in turn.

1. What action the Scottish Government might take in relation to any college which does not meet the requirements of the SPFM in relation to approval of severance arrangements or exceptional payments?

The SFC's Financial Memorandum (FM) with the fundable bodies in the college sector requires incorporated colleges to comply with the SPFM and this, therefore, is a condition of SFC grant funding. That FM also requires regional strategic bodies to ensure through their financial memoranda with their incorporated colleges that these colleges are similarly required to comply with the SPFM.

The SFC has outlined to you in its letter of 16th February 2015 the options available to it where a breach occurs. Scottish Government would expect, in the first instance, that the SFC would use its powers to address a situation where there is a breach of the terms and conditions of funding, including considering the potential claw-back of grant, always taking into account the likely effectiveness and proportionality, including weighing the effect of any such action on students.

In the case of North Glasgow College, any actions or sanctions available to the SFC and/or the SG could be applied to Glasgow Kelvin College. In November 2013, the entire assets and liabilities of Stow College and John Wheatley College were transferred to North Glasgow College, which then changed its name to Glasgow Kelvin College. Only Stow College and John Wheatley College ceased to exist, but North Glasgow College continued to exist under the new name. As a result of these transfers, any sanctions in relation to either closed college could also be applied to Glasgow Kelvin College.

For their part, the Scottish Ministers have powers by order under section 24 of the Further and Higher Education (Scotland) Act 1992 to remove all or any of the board members (excluding the principal) in specified circumstances of board failure. The powers were amended by the Post-16 Education (Scotland) Act 2013. The new provisions came into force when the college was assigned to its regional strategic body on 1 August 2014. Grounds for removal now include, among other things, a serious breach or repeated breaches of grant SFC grant under 12 of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") or regional strategic body grant under section 12B of the 2005 Act. As complying with the SPFM is a term and condition of grant, imposed via the relevant FM, such powers would in principle be available to the Scottish Ministers, following consultation with the SFC.

2. To what extent should the SFC Code of good governance and the SPFM explicitly set out the frequency with which College Remuneration Committees should meet as well as their role in considering severance arrangements (and the evidence base required to support such consideration)?

The matter of identifying good practice principles is one for the SFC. The Code of Good Governance for Scotland's Colleges, endorsed by the SFC for the purposes of section 9B(1) of the 2005 Act, states that colleges must have a Remuneration Committee. However, the Code does not cover detailed guidance on the operation of Remuneration Committees. We will ask the college sector good governance group to consider the recommendation.

The SPFM already sets out in detail the process for severance and settlement arrangements, including the need for a business case. SG guidance on settlement arrangements was strengthened in June 2014 following consultation with chief executives of public bodies in Scotland.

3. Whether such a proposal should extend to all public sector Remuneration Committees?

Guidance on the role of Board Committees is provided in 'On Board – A Guide for Board Members of Public Bodies in Scotland'. This guidance is not prescriptive and it is for each body to decide on the use of committees, considering what is proportionate and appropriate depending on the body's remit. There is currently no plan to update this regarding Remuneration Committees.

4. To what extent should senior post holders at Colleges (and those in Regional College Boards or Bodies) be personally responsible for ensuring that the Board's governance arrangements are sound and robust. In responding it would be helpful if you could confirm whether this approach is used by any other areas of the public sector.

Under the SFC's FM with fundable bodies in the college sector, college and regional strategic body chief executives are accountable directly to the chief executive of the SFC, the Accountable Officer to the Scottish Parliament for public funds the SFC grants to colleges. Where FMs are in place between a regional strategic body and college assigned to it, an assigned college chief executive is accountable directly to the chief executive of the regional strategic body (who in turn is accountable directly to the chief executive of the SFC.)

Since all incorporated colleges are charities, college board members are also charity trustees and therefore are subject to the requirements imposed upon them by the Charities and Trustee Investment (Scotland) Act 2005. Section 66 of the 2005 Act sets out charity trustees' general duties. The Office of the Scottish Charity Regulator has powers to investigate where a trustee may have failed in their duty. The charity trustees must act in the interests of the charity. In particular, they must:

- seek to ensure that the charity acts consistently with its purposes;
- act with care and diligence; charity trustees must manage the affairs of their charity with the same care and diligence that it is reasonable to expect of someone managing the affairs of another person.

5. We also seek further information on the range of actions (and sanctions) that the Scottish Government could apply to any college, Regional College Board or Regional Body which does not adhere to the terms of the SPFM.

As above in point 1, Ministers may apply a sanction to remove incorporated college board members on the basis of specified board failure, including that there was a serious or repeated breach of a term and condition of relevant grant. Ministers have similar powers in section 23Q of the 2005 Act in relation to members of Regional Boards. Compliance with the SPFM is a term and condition of grant.

6. In light of the issues at North Glasgow College and in the Scotland's colleges 2015, will the Scottish Government review the support it and other agencies proactively provide to affected institutions on severance arrangements in relation to any future significant public sector mergers.

We keep our processes and procedures under review so that we can respond to changes in the environment, service delivery or the outcome of independent review. Following Parliamentary scrutiny, processes for settlement agreements were updated in June 2014 and, particularly as this is the first year of the enhanced procedures, we will ensure the effectiveness of the controls and the support available to public bodies in Scotland is kept under review.

SG has recently published internal guidance on establishing new public bodies that includes guidance on transitional costs including statutory redundancy or voluntary severance. The SPFM already includes strengthened guidance on settlement agreements.

Recommendations:

1. We recommend that it should be a SFC condition of funding that all College Committees have designated management and secretariat support. The responsibilities and professionalism expected of that support should also be set out clearly (along with access to appropriate training).

2. We recommend that this restriction [that a Chair should not also be Chair of a Remuneration Board] should apply and we would seek your views on the extent to which it should be reflected in the SPFM and SFC guidance.

Both of the recommendations above would be for the SFC to implement with regards to the college sector. We agree that it is a generally accepted principle of good practice that the Chair of a Remuneration Committee should not also be Chair of the College Board. We will ask the college sector Good Governance Group to consider this recommendation.

As described above, for the wider public sector, SG's 'On Board' guidance sets out good practice principles for governance but is not prescriptive in order to allow each body to decide on the use of committees, considering what is proportionate and appropriate depending on the body's remit.

3. We therefore recommend that the sanctions available to the SFC and the SG for non-compliance with the SPFM and the FM/Code of good governance should be reviewed. Alternative sanctions should be considered such as the temporary and mandatory involvement of SFC staff or SG officials to support any failing College to comply with requirements.

It is for the SFC to take forward this recommendation. However, we understand that the SFC will be reviewing the scope, impact and effectiveness of available sanctions and actions and their likely effect in improving governance while ensuring these do

not penalise students as a result of the actions of board members. We support such a review and would consider the SFC's advice in due course.

I hope my comments address your questions on these matters.

Yours sincerely

ANGELA CONSTANCE MSP
CABINET SECRETARY FOR EDUCATION AND LIFELONG LEARNING