

Processes and Practices of Governing in Colleges of Further Education in the UK

Project Briefing 4: February 2021

Legal and Regulatory Framework for Colleges in the U.K.

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From Government to Governance

From the late 1980s, as Dorey¹ (2005; 218) states, ‘the character, role and structure of government in Britain have changed considerably’. This change has seen the devolving of authority to networks of agencies, regulatory bodies, sub-contractors, commissioned services, and ... the governing boards of colleges. Thus, as Dorey explains, ‘governance refers to the fact that ‘the Government’ now has to operate in a diverse, fragmented, complex and decentralised environment in which there are more actors involved, the boundaries between the public and the private sphere are less precise, and the Government’s command over the policy process is seen to have receded’.

It is in this context that the governance of colleges is considered below. This paper looks at the similarities and differences in the operating context for colleges in each of the four nations of the U.K.

The Fundamentals of Governing Colleges

The purpose of colleges² across the U.K. is, in essence, to provide vocational education and training programmes to equip students for employment or higher vocational study.

College governing boards are established by national statute to govern colleges for compliance with relevant legislation and regulations. As well as compliance, the governing board (typically between 12 – 20 governors) is expected to achieve good institutional financial health and successful learner achievement. To reach these twin goals of compliance and institutional performance a college governing board must devise processes and practices for governing. Central to the agenda for governing is the approval of the governing board’s strategic plan and monitoring its subsequent implementation by college management.

Given this overview, it is interesting for the purposes of our ESRC study of processes and practice of governing colleges in the U.K. to compare and contrast the national frameworks under which the governing of colleges must operate. The variability in national frameworks derives from ‘education’ being a devolved responsibility for each of the four nations of the U.K. – England, Northern Ireland, Scotland, and Wales.

A table summarising the key features of the respective legal and regulatory frameworks for colleges in the four nations of the U.K. is presented as an [annex](#) to this project briefing paper.

¹ Dorey, P. (2005) *Policy Making in Britain: An Introduction*. Sage, London

² Colleges are typically ‘colleges of further education’ in England, Northern Ireland and Wales. In Scotland, the broader title of ‘colleges’ is used. For inclusivity, this paper refers to ‘colleges’ throughout.



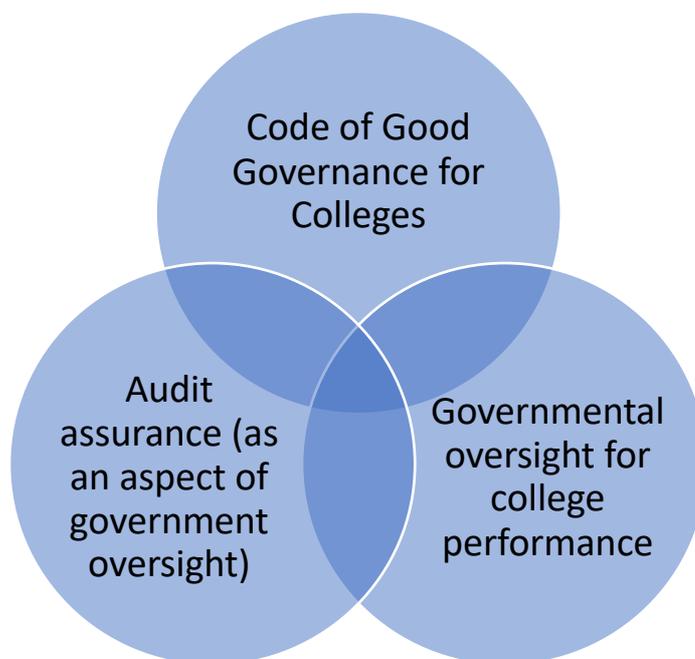
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Similarities in the Contextual Operating Arrangements for Colleges in the U.K.

The similarities for the governing of colleges across the U.K. are broadly as follows in Diagram 1.

Diagram 1 *Similarities for the Governing of Colleges in the U.K.*



The selection of the term ‘similarities’ is deliberate. The identified features above are similar, but not identical. However, there is usefulness in recognising the influence of these three features across colleges in the U.K. as there is a clear model, albeit with specific national characteristics.

Code of Good Governance for Colleges

In all four national jurisdictions, to establish a standard for college governing practice, a tailored code of ‘good’ governance has been developed from within each respective national college sector. Typically, college governing boards are expected to formally adopt the Code of Good Governance applying within their nation and, on an annual basis, provide a comply or explain statement in relation to the code’s expectations.

The Code has formed the basis for the periodic self-review of governing performance by governing boards and external reviewers, e.g., external auditors. Scotland is the only nation which undertakes a systematic external review of college governance based on the Code of Good Governance. Based on this evidence for 2020/21, the College Development Network is considering the preparation of an overview of the application of the Code. There is no published material on the application of the Code (and therefore the usefulness of the Code) for any nation at present.



It is interesting to speculate on the origins of the four separate national Codes. Is the more prescriptive Code for England linked to the marketplace conditions for college governing in England? Is responsiveness emphasised where there is more flexibility in funding regimes, i.e., in England and Wales? Is the basic code framework in Northern Ireland associated with the close working relationship between N.I. colleges and the N.I. Department for the Economy? There is scope for further study of the origins, purpose, usefulness and impact of codes of 'good' governance for colleges.

The table below identifies the key principles in each Code. Themes have been broadly matched up where possible. Absence of a match does not imply absence from the Code, 'effectiveness' is a catch-all heading.

England	Northern Ireland	Scotland	Wales
Strategy and leadership	Leadership	Leadership and strategy	Strategy and leadership
Collectively accountable	Accountability	Accountability	Collectively accountable
Policies, systems and the student voice			
Teaching and learning		Quality of the student experience	Teaching and learning
Responsiveness			Responsiveness
Financial strategy and audit			Financial strategy and audit
Partnership	Relations with stakeholders	Relationships and collaboration	
Equality and diversity			Equality and diversity
Effective governance structures			Effective governance
	Performance and effectiveness	Effectiveness	

Government Departmental Oversight

Given the significance of colleges to communities, economic development and the distribution of public funds to colleges, it is to be expected that relevant departments of government would develop methods of accountability for colleges. There are differences in the processes used to achieve upwards accountability to government departments (and, thus, to ministers), although the broad intention is in place in all four nations. Refer to the [annex](#) for details.



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Audit Assurance

As a shared aspect of vertical accountability to government departments and ministers, audit regimes have been devised in each nation to ensure regularity (achieved through financial and compliance auditing) given the degree of public funding provided to colleges.

In some nations, e.g., England, auditing is provided by the same body which is responsible for public funding allocation (the Education and Skills Funding Agency on behalf of the Department for Education). In other nations, the audit service is provided by a separate governmental department from the accountable department for colleges, e.g., Northern Ireland Audit Office.

Differences in the Contextual Operating Arrangements for Colleges in the U.K.

Having summarised the broad similarities for the governing of colleges, this paper now looks at the features which define the national character for the operation of colleges.

Diagram 2 *Differences in the Contextual Operating Arrangements for Colleges in the U.K.*



A summary of national differences is provided in the annex to this briefing paper. To consider the differences in more detail each heading is explained as follows:

Accountability regime

Accountability to ministers for the educational performance of colleges varies between nations from, at one extreme, an external inspection and intervention regime, i.e., England, to a closely monitored funding outcome agreement requiring monthly returns, i.e., Scotland.



Legal Personality of Boards and Members

In most cases, board members are technically ‘trustees’ of a charity and, therefore, in addition to the requirements of the relevant good governance code, such board members must also act in accordance with charity legislation applicable to the nation. The exception is Northern Ireland, where college boards are technically ‘non-departmental public bodies’ and its members are termed college ‘governors’.

Remuneration of Board Members

Northern Ireland has established a policy of remuneration for its college governors; chairs are paid a standard rate on a per annum basis, external governors are paid according to time contribution. In Scotland, chairs of regional colleges are remunerated and, at present, chairs of assigned colleges are not remunerated. The position of assigned chairs is under consideration by the Scottish Government following a recommendation to remunerate. The members of college boards in Scotland are not remunerated.

The governors of colleges in England and Wales are not remunerated.

‘Accounting’ for colleges

The technicality of ‘public’ or ‘private’ designation affects the way in which the income and expenditure relating to colleges appears in national accounts. In addition, with the designation ‘public’ comes financial rules on how to account for income and expenditure at college institution level. Generating an on-going financial surplus for an institution is not possible and the use of trusts is required. Designation of ‘private’ – technically Not-for-Profit Institutions Serving Households – for colleges in England and Wales permits more flexibility in financial reporting and financial decision making at institutional level.

Implications for Governing Colleges

Naturally, the national framework that has been established for governing colleges has implications for governors and governing. It is an obvious condition of governing that ‘playing to the rules’ is required. There are consequences for governor/board member recruitment and motivation, and governing board agendas, reporting, culture and reflections on board impact and performance. There could also be consequences for principals and senior staff, and the role and contribution of the governance professional.

There is a strong commonality for governing colleges across the U.K. based on establishing college strategic plans and monitoring their implementation, whether the board is acting within a defined funding outcome agreement (Scotland) or a much looser funding provision (England). Whatever the circumstances, college governing boards are trying to achieve successful colleges for their students, staff and many external stakeholders.



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ANNEX - Table to compare legal and regulatory frameworks for colleges in the four nations of the United Kingdom

Country	Legal Personality of Institution	Status of board members	Public body or accounted for as 'private'	Regulatory regime
ENGLAND	<p>Further education corporations (which can operate a number of 'colleges') are exempt charities</p> <p>Exempt from annual accounting to the Charity Commission for England and Wales</p> <p>Principal Regulator: Secretary of State for Education</p> <p>Primary legislation: Further and Higher Education Act 1992</p>	<p>Governors are trustees of a charity</p> <p>Charity legislation and the expectations of trustees* apply</p> <p>*prohibits remuneration, except in specific, approved circumstances</p>	<p>Private – designated as Not for Profit Institutions Serving Households (NPISH)</p> <p>N.B. 2010 ONS classification 'Public' for colleges across the U.K.</p> <p>Amendment: Office for National Statistics designation from April 2012 'Private'.</p> <p>Source: AoC Note (Jan 2019)</p>	<p>Education and Skills Funding Agency</p> <p>F.E. Commissioner</p> <p>OfSTED inspections (institutional & themed)</p> <p>Quality Assurance Agency</p> <p>Office for Students</p> <p>Charity Commission</p> <p>Code of Good Governance for Colleges</p>
NORTHERN IRELAND	<p>Each college is defined as an executive non-departmental public body</p> <p>Primary legislation: F.E. (N.I.) Order 1997</p>	<p>Non-Executive Governors (Board Members) appointed under F.E. (NI) Order 1997 [charity status <u>not</u> agreed with N.I. Charity Commission]</p> <p>N.I. Board members remuneration policy and scheme in place</p>	<p>Public (i.e., classified within the central government sector) [Financial Memorandum between Department for the Economy and F.E. Colleges - 2018]</p>	<p>Department for the Economy</p> <p>N.I. Audit Office</p> <p>N.I. Department of Finance</p> <p>Code of Governance for F.E. Colleges in Northern Ireland (2016)</p>
SCOTLAND	<p>Colleges as institutions are defined as charities</p>	<p>College board members are trustees of a charity</p>	<p>Public</p> <p>Source: Good College Governance Task Group (2016)</p>	<p>Scottish Funding Council</p> <p>Skills Development Scotland</p> <p>Audit Scotland</p>

ANNEX - Table to compare legal and regulatory frameworks for colleges in the four nations of the United Kingdom

Country	Legal Personality of Institution	Status of board members	Public body or accounted for as 'private'	Regulatory regime
SCOTLAND (continued)	<p>Guidance from OSCR – Scottish charity regulator applies Principal regulator: Scottish Ministers</p> <p>Primary legislation: Further and Higher Education (Scotland) Act 1992 Further and Higher Education (Scotland) Act 2005 Post-16 Education (Scotland) Act 2013 (introduced regionalisation of colleges)</p>	<p>Remuneration policy and scheme in place</p> <p>Currently only Regional College Chairs are remunerated.</p> <p>Legislation to be introduced to enable Assigned College Chairs also to be remunerated (expected 2021)</p>		<p>Education Scotland</p> <p>Scottish Public Finance Manual (SPFM)</p> <p>Externally facilitated governance reviews</p> <p>Code of Good Governance in Scotland's Colleges</p> <p>Good Governance Steering Group (guardian of the Code)</p> <p>OSCR (Charity regulator)</p>
WALES	<p>Further education corporations are exempt charities</p> <p>Principal Regulator: Welsh Ministers</p> <p>Primary legislation: Further and Higher Education Act 1992</p>	<p>Governors are trustees of a charity</p> <p>Charity legislation and the expectations of trustees* apply</p> <p>*prohibits remuneration, except in specific, approved circumstances</p>	<p>Private – Not-for-Profit Institutions Serving Households</p> <p>In 2014, the Welsh colleges returned to NPISH status following the Further and Higher Education (Governance and Information) (Wales) Act 2014.</p> <p>Source: Welsh Government oversight of further education colleges' finances and delivery (Auditor General for Wales, 2017)</p>	<p>Estyn Inspections</p> <p>Funding from Welsh Government</p> <p>Higher education funding council for Wales</p> <p>Provider Assurance and Governance Service (Welsh Government)</p> <p>Code of Good Governance for Colleges in Wales</p> <p>Charity Commission</p>