

**The role of the clerk to the corporation  
of further education colleges in England  
in ensuring high quality college governance**

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## **Introduction**

The role of ‘clerk to the corporation’ of further education (FE) institutions in England is a very significant one in the governance of those institutions. To find out more about the role, the Education and Training Foundation commissioned a team from the University of Bath to research the role in particular in relation to ensuring high quality college governance. This document reports the research undertaken and the findings.

Following this introduction, we give the background to the research, set out the aims of the research and the objectives, describe the research design and methods and the present the findings. In the penultimate section, we discuss some of the more important findings and the report ends with some concluding comments.

## **Background**

The role of the clerk is increasingly recognised as significant in the governance of colleges in the FE sector. The role and the responsibility is set out in statute and guidance and in practice the role is increasing in importance and gaining enhanced status in college governing. The Learning and Skills Improvement Service report entitled ‘Clerking in the New Era’ (LSIS, 2013) gave a comprehensive picture of FE college clerks and their work and the challenges to effective clerking resulting from the 2011 Education Act. The report described clerks’ practices and experiences and conceptualised the role on that basis. The outcomes of a follow-up survey have recently been published (Brumwell 2015). The findings “*reiterate the 2013 survey*” (p.4) and give important insights into the role. Recently completed research (Hill and James 2014; 2015) into the FE college and sixth-form (SF) college chair’s role and responsibility has highlighted the significance of the clerk’s role. The role and responsibility are important in supporting and facilitating high quality college governance in particular in relation to the clerk’s working relationship with the chair of the college corporation and governing body. This finding added to a growing sense generally in the FE community in England that the role of the clerk is not simply one of advising those responsible for effective college governance as set out in the regulatory guidance but more overseeing governing practice and ensuring and enabling the legitimacy of that governing practice. Indeed, the recently published foundation Code of Good Governance for English Colleges makes clear that “*The clerk should be independent, report directly to the board, and have the appropriate skills and experience to facilitate effective governance*” AoC 2015, p.15). It also spells out the clerk’s role in ensuring sound governance: “*The clerk must inform the board if s/he believes that any proposed action would exceed its powers or involve regulatory risk*” (p.17). The logic of that view is strong and indeed there is a robust case for arguing that ensuring high quality college governance should be the FE clerk’s central responsibility and that the role should be conceptualised from that standpoint.

Set against this positive image, the most recent FE Commissioner’s Report (BIS, 2014) indicated that in the instances of interest to the FE Commissioner, that is FE colleges identified at high risk, the clerk had a very restricted role, limited only to governance

administrative matters. The changing, variable and inconsistent expectations around the clerk's role, the need to ensure that clerking practice is strong in all settings, and the challenging nature of college governing provided the setting – and the rationale - for this study.

## **Research aims and objectives**

The overall aims of the project were to:

1. gain new research-based insights into the role of the clerk
2. engage the 'FE clerk community' to enhance those new research-based insights
3. to bring about professional learning across the 'FE clerk community' by engaging clerks in the various regions in England fully in the research process.

The project's objectives were as follows.

1. To analyse the policy, regulatory and guidance documentation on the responsibilities of the clerk in FE institutions in relation to ensuring high quality college governance.
2. To analyse the literature on positions and roles analogous to that of the clerk in FE colleges in other 'education and training providers', and in the private, public and voluntary sectors in relation to ensuring high quality college governance.
3. To understand the nature of the responsibility and the role of the clerk to the FE corporation in FE institutions in England in relation to ensuring high quality college governance.
4. To engage clerks in all the regions in England in the research thereby enhancing their professional learning and development in relation to ensuring high quality college governance.
5. To disseminate the findings as widely as possible to all relevant audiences: practitioners, trainers, sector membership organisations, policy-makers and academics.

## **The research design and methods**

### ***Analysis of the regulatory and guidance documentation***

The initial stage of the project entailed analysing the regulatory and guidance documentation on the responsibilities of the clerk in FE institutions (see the References and Bibliography section). In truth, this literature is not extensive and arguably much of it construes the role in a somewhat restricted way, seeing the role as primarily advisory. Having said that the clerk is seen as having a central role – part of the so-called 'triumvirate', which comprises the chair, the principal and the clerk, at the core of college governing (AoC 2014).

### ***Analysis of literature on positions and roles analogous to that of the clerk in further education institutions***

In parallel with the review of the regulatory and guidance literature, we also analysed the literature pertaining to positions and roles analogous to that of the clerk in FE and SF colleges in other 'education and training providers', and in the private, public and voluntary sectors in relation to ensuring high quality college governance. This review was important because it gave a reference point from which to analyse the role of the clerk in FE and SF college settings. The sources reviewed are listed in the References and Bibliography section.

Much of the literature, particularly that relating to the corporate sector, conceptualises the comparable role from the standpoint of 'the company secretary'. That literature gives insights into: the requirements of role-holders in terms of how they are appointed and by whom; company secretary's qualifications and experience; and who company secretaries are

accountable to. The literature also indicates two main aspects to the role: (1) The company secretary in relation to the company (Does their role and remit extend to governance responsibilities within the company?) (2) The company secretary's contribution to the governing practice of the corporate board (Is the role and remit restricted to corporate board activities?).

In our consideration of relevant key concepts, we also considered: the notion of authority; institutionalisation theory and the carriers of institutionalisation; and the nature of management and influence/leadership.

### ***Empirical research: the nature of the responsibility and the role of the clerk to the further education corporation***

Two main methods were used to understand the nature of the responsibility and the role of the clerk to the FE corporation and governing body in FE institutions in England in relation to ensuring high quality college governance, as follows.

1. A national survey of clerks to the corporations of FE and SF colleges in England.
2. Regional meetings with clerks.

#### **The national survey**

A survey questionnaire and covering letter were developed and trialled, and the survey took place between late February and late-March 2015. The following framework shaped the questions and the development of the trial version.

#### ***The college where they are the clerk***

This aspect explored whether the 'college': was a single college or a group of college brands; sponsored academy schools; was involved with university technical colleges (UTCs); and had any subsidiary companies. It also sought to ascertain: the college's overall total income; the college's most recent Ofsted effectiveness grades; whether the college had adopted the English Colleges Foundation Code of Governance, published by the Association of Colleges (AoC) in 2011 (AoC 2011) and amended subsequently in 2013. The recently published code (AoC 2015) had yet to be published at the time of the research.

#### ***The basis for the clerks authority in the role***

This part was principally concerned with characterising the legitimacy of the role-holder and the influence they seek to exert. It is important because it will condition how clerks act. This part also explored the clerk's appointment, qualifications, experience, and accountability.

#### ***Concepts from institutionalisation theory***

This aspect was considered important because institutionalisation is primarily concerned with establishing legitimacy. The three pillars of institutionalisation are:

- Legal/regulatory – what are the rules/laws/regulations that must for legal reasons be adhered to?
- Norms/best practice – what is the proper way of 'doing things'?
- Culture – what values/principles/ideals/assumptions/tenets underpin governors' interpretation of events (how they make sense of things) and which provide a basis for legitimate practice? (Scott 2014).

Our thinking here was based on the notion that the 'company secretary' is the carrier of the pillars (Scott 2014), ensuring conformance to regulation and statute; norms/best practice and ideals.

### ***Management***

This aspect is concerned with what the company secretary/clerk has direct responsibility for in relation to the wider company/college and the board/governing body.

### ***Influence***

We conceptualised this aspect from the standpoint that the company secretary/clerk can take up a range of positions and act in a range of ways along a spectrum which ranges from monitor/checker to provider of information/advice to pro-active changer of practice.

### ***The company secretary/clerk in relation to the company/college***

Key questions for this aspect were: (1) Do clerks undertake governance activities within the company/college as a result of the way their role and remit are specified? (2) If they do, what is the nature of those activities?

### ***The company secretary/clerk in relation to the board/governing body***

Two key related questions for this aspect were: (1) Is the clerk's role restricted to 'board/governing body' activities? (2) If so, what is the nature of that role?

The survey was sent to clerks of general FE colleges (n = 231), land-based colleges (n = 17), art and design colleges (n = 30) and SF colleges (n = 93), giving a total sample (N) of 371. 131 completed questionnaires were received representing a 35% return rate overall. 94 replies were received from general further education college clerks (72% of all the completed questionnaires received) 8 land-based college clerks (6% of the questionnaires received); 0 art and design college clerks (0%); 24 sixth-form college clerks (19%) and 3 from clerks in other kinds of college (2%).

### **Regional meetings of clerks**

Clerks in the various regions in England were engaged directly in the research through eight regional meetings as in the table below.

<b>Region or Category</b>	<b>Date</b>	<b>Location</b>
<b>Southern</b>	Friday 6 February 2015	Winchester
<b>West Midlands</b>	Tuesday 10 February 2015	Redditch, Worcestershire
<b>North West</b>	Wednesday 18 February 2015	Liverpool
<b>Eastern</b>	Thursday 19 February 2015	St Ives, Cambridgeshire.
<b>SF Colleges Clerks (National)</b>	Monday 23 February 2015	South London
<b>Yorkshire and the Humber</b>	Thursday 26 February 2015	Sheffield
<b>London</b>	Friday 27 February 2015	Central London
<b>South West</b>	Thursday 12 March 2015	Taunton

Four of these groups were part of a routine meetings of the regional AoC Clerks' Network; the others were specially convened for the purpose of the research. One group was made up of clerks from SF colleges and included some colleges with a religious character. 74 clerks attended the meetings in total and the meetings lasted between 60 and 90 minutes. The characteristic of those attending and the nature of their colleges was diverse: clerks who were employed part-time and full-time; clerks in single and multiple college settings; clerks with 'combined roles' for example as a company secretary or as a senior member of staff; and clerks with varied lengths of service. The meetings were recorded and the recordings were analysed for key themes. Clerks from the North East Region were involved in piloting the draft questionnaire although no meeting was held in that region.

Before the meetings started, participants were briefed in relation to confidentiality and anonymity and were informed that 'Chatham House rules' were to be observed.

In the first seven meetings, the clerks were encouraged to consider and to reflect on their practice in relation to the key responsibilities of the governing body as set out in the model Instrument and Articles of Government for FE Colleges as required by legislation, most recently the Education Act 2011 (Department for Business Skills and Innovation 2013). These responsibilities relate to: the educational character of the college; the college quality of teaching and learning strategy; securing value for money, solvency, and safeguarding the assets; and employment of the principal and the college staff. There were further reflections on the role of the clerk in relation to financial memoranda; the audit and risk framework; membership of the governing body; and governor development. These responsibilities were used in the meetings to guide the discussion and to provide a secure basis for the participants' reflections on their practice.

In the early meetings in the Southern and West Midlands Regions, the participants reviewed the draft questionnaire in addition to reflecting on these themes. For the meeting of the eighth group in the South West Region, we adopted a different approach. By this stage, the research team had formulated the key emerging findings from both the survey and the other meetings. These preliminary findings were shared with this final group to gain their views on the emerging findings and our interpretation of the findings.

It was clear that the clerks who attended these meetings welcomed the chance to discuss their role in a structured way, and valued the attention being given to them in their role as clerks. The sessions gave the participants an opportunity to enhance their professional learning and development in relation to ensuring high quality college governance, which is one of the project's main objectives.

## **Findings**

In this section, we summarise the findings of the research. We initially give the findings from the survey and, as appropriate, enlarge on and extend the survey findings using the data collected at the various regional meetings of clerks. A preliminary analysis indicated that the roles of the clerk varied significantly dependent on the type of college. The findings had been set out to reflect the substantive differences between the different types of colleges.

### ***Qualifications of clerks***

57% of respondents hold a degree or professional qualification in a relevant subject and 44% of respondents hold a qualification in the role/responsibilities of the clerk in FE colleges, such as the ICSA certificate in FE governance.

### ***Clerk's experience of the sector and in the role***

The clerks who responded to the survey were typically very experienced in the role. 46% of clerks of FE colleges and 48% of clerks of SF colleges had been in post for more than six years.

More than half the clerks of FE colleges (55%) and 44% of clerks of SF colleges reported they had previous experience of working in the FE sector.

### ***Terms of employment***

Clerks of SF colleges are generally paid less than those in FE settings. From the responses, the average full-time equivalent salary range for clerks of FE colleges was approximately £49K per annum and for clerks of SF colleges it was approximately £41K per annum.

There were also differences in the contracted hours worked by clerks in FE and SF college settings. 78% of clerks of FE colleges were contracted to work more than 0.5 full-time equivalent hours compared with 50% of clerks of SF colleges.

93% of clerks of FE colleges were contracted to work throughout the year, compared with 52% of clerks of SF colleges.

In terms of who the clerks felt they were formally accountable to, 66% of FE clerks said they were formally accountable to the chair, and 32% to the governing body, with a very small but none the less significant minority (two respondents) saying they were primarily accountable to the principal. The proportions were broadly similar amongst clerks of SF colleges again with two respondents saying they were primarily accountable to the principal. This response, alongside other indicators, suggests some clarification may be needed for clerks and their governing bodies. Technically, clerks are responsible to the governing body which appoints them and which determines performance management and operational arrangements.

### ***The role and contribution of the clerk in enabling high quality college governance***

We asked clerks about their contribution to six aspects of governing body functioning as identified by analysis of the specification of analogous roles in similar settings.

The questions in this part of the questionnaire were aggregated under the six main headings with the percentage of clerks who indicated that they made a substantial or very substantial contribution to governing tasks under these headings as follows.

- **Legal/regulatory compliance:** FE clerks: 85%; SFC clerks: 89%. Clerks typically did not act as signatories for the board.
- **Ensuring/Promoting best practice by the corporation governing body:** FE clerks: 81%; SFC clerks: 79%.
- **Communication amongst governors and meetings:** FE clerks: 91%; SFC clerks: 92%.
- **New governor recruitment, induction and governor professional development:** FE clerks: 72%; SFC clerks: 65%.
- **The governance culture of the corporation governing body (underpinning assumptions, principles and values that shape what the governing body does):** FE clerks: 92%; SFC clerks: 90%.
- **The clerk's work in the corporation governing body's environment:** FE clerks: 90%; SFC clerks: 98%.

Clerks had a number of roles in relation to the organisation of the governing body. This involvement came under the heading of ensuring/promoting best practice by the corporation governing body. In all college settings, the percentage of respondents who had a very substantial role in various governing tasks in this category were as follows.

- Promoting best practice (67%)
- Agreeing how decisions should be made between meetings (60%)
- Assisting members to make a full contribution at and outside meetings (45%)
- Proposing succession planning for key office holders (45%)
- Self-assessment and periodic review of governance (46%)
- Providing specific support for the staff governor(s) (52%)
- Supporting senior staff in drafting governance reports (30%)
- Contributing to the induction of new senior college staff on governance (34%)
- Undertaking exit interviews with governors completing a final term of office (24%)
- Providing specific support for the student governor(s) (63%)

64% of respondents in FE settings and 44% of SF college clerks reported that, as the clerk, they had ‘governance responsibilities’ within the college. These responsibilities typically related to compliance with legislation, for example public interest disclosure and freedom of information requests.

### **Insights from the regional meetings**

All the clerks attending the regional meetings indicated that they played a role, either directly or indirectly, in arranging board and sub-committees’ agendas and minutes. This work had an administrative element, often without much administrative support, but participants were clear that they added significant value in this aspect of their role.

A picture of the clerk emerged who maintained the governing body narrative and acted, for positive reasons of discretion and boundary observation, as a gatekeeper on behalf of the governing body. The clerk was a key communicator for the governing body and to the governing body. Clerks strived to manage the information flow and presentation to governors. Some clerks were frustrated by the attitude and level of expertise of senior staff regarding reporting to governors.

A significant theme articulated by the participants in the regional meetings was that they were grounded in the ‘core business’ of the college and that this grounding helped them to maintain this central activity as the focus of high quality governing. The priority was often described as ‘securing high quality teaching, learning and assessment’. The importance of all three aspects was highlighted. Participants referred to the clerk’s contribution in developing the educational understanding of governors without an educational background.

The importance of governing in sustaining the financial viability of the college was a feature of many of the participants’ contributions in the regional meetings. How clerks saw themselves and positioned themselves in this dynamic context varied considerably. Risk management and the role of the audit committee (*“the graveyard of committees”* as one participant referred to it) featured strongly with participants seeing the need for clerks to contribute indirectly to *“audit quality”*. This contribution was especially significant in the context of the removal of the requirement for internal audit and therefore created extra expectations on the clerk.

Discussions on audit and risk management drew out comparisons from the participants on similarities and differences between the roles of clerks and company secretaries. Several participants adopted both roles across multiple aspects of the college’s activity. The ICSA-

commissioned research on the role of the company secretary (ISCA 2013) was signposted as showing many parallels with the clerk's role. Differences included different involvement with risk management and the development of board members.

### ***The constraints on the role of clerk***

Approximately a quarter of clerks of FE colleges feel unduly constrained in their role across the range of activities and tasks those in analogous settings are expected to undertake in relation to the work of the board. The percentage of respondents who feel unduly constrained in relation to different aspects of governing body work are as follows.

- **Ensuring legal/regulatory compliance:** 27% of clerks felt unduly constrained in this aspect of the role.
- **Ensuring/promoting best governance practice:** 25% felt unduly constrained in this aspect of the role.
- **Communicating amongst governors and organising meetings:** 22% felt unduly constrained in this aspect of the role.
- **New governor recruitment, induction and governor professional development:** 27% felt unduly constrained in this aspect of the role.
- **Promoting a proper governance culture of the corporation governing body:** 15% felt unduly constrained in this aspect of the role.
- **Their work in the corporation governing body's environment:** 24% felt unduly constrained in this aspect of the role.

The main reasons for this constraint were lack of time allocated to clerks and lack of administrative support for clerks. Interestingly, 5% of respondents felt that they did not have the expertise to make a more substantial contribution.

### **Insights from the regional meetings**

A significant theme was that participants in the regional meetings considered their role to be an isolated one with a sub-theme that participants saw their contribution as potentially "*downgraded, where the role isn't seen as important*" as one participant put it. However, even in these settings, a distinctive picture of clerks emerged as influencers of the behaviour of others and providing leadership. A key contribution by clerks was 'connecting management to governance' and vice versa. Participants indicated that they needed to understand the world of other key players to exert their influence in creating and modifying the processes of governing. Responses from participants included: "*governors get tied up on structure*", "*the clerk needs to make sure that there are no surprises*", "*the need to mediate between the different players*", "*a supportive role that requires mediating and influencing*", and "*an educating and steering role*".

There was evidence that clerks, in occupying the middle ground between key governing players, that is, senior staff and governors, were working in contested territory where the clerk's influencing skills were frequently deployed. Participants described: 'battles' with, for example, the director of finance or human resources; occasions where the clerk is 'deliberately marginalised' by the principal or chair; and times when they needed to be 'repossessed' by the governing body having become too close to the principal. Participants often referred to the need to change behaviour substantially when, for example, the chair or principal, moved on.

Actual or perceived lack of status was an important factor in how the participants felt constrained in their ability to contribute to effective governing. Some participants saw the title 'clerk' as trivialising the role, although others disagreed. Low salary levels were seen as

impacting on recruitment and retention of clerks. One participant highlighted that the clerk's role lacked visibility and was only seen as significant when there are substantial problems – “*when the wheels came off*”, as she put it. Another likened the contributions of the clerk to “*Virgil guiding senior managers and governors through the governing underworld*”.

Career progression emerged as a theme with the role being described as a ‘dead end’ with no opportunity for progression. One participant pointed out that data have not been collected on “*life after clerking*” in studies over the years. The importance of having a professional standard, recognition and a professional body were highlighted.

### ***The extent to which the clerks has an ‘independent voice’***

The extent to which the clerk can remain ‘independent’ in relation to others who have a role in college governance is significant and features in the new code of governance (AoC 2015). A key factor in this independence is the other roles and responsibilities the clerk may have within the college. There are two main issues here: (1) Whether the clerk holds a formal position, that is, has another job, within the college and who they are then accountable to; (2) whether they have other governance responsibilities ‘within’ the college which could compromise their independence. This governance role within the institution is often seen to be part of the company secretary role in corporate settings.

From the survey, 17% of respondents from FE settings were employed in another role or position within the college, while in SF college settings, 12% had a ‘within college’ position/role. These other roles encompassed: acting as company secretary; working with an academy trust sponsored by the college; developing and writing applications for capital funding and awards; data protection; and school partnership and recruitment. In these other roles, the respondents were either directly responsible to the college principal or to a member of the college senior management.

As noted earlier, a significant number of respondents reported that they had ‘governance responsibilities’ within their colleges – 64% of respondents in FE settings and 44% of SF college clerks. These responsibilities typically related to compliance with legislation, for example public interest disclosure and freedom of information requests. These responsibilities may have implications for the extent to which the clerks can retain independence in relation to college governance matters.

### **Insights from the regional meetings**

A significant and clear theme to emerge from the regional meeting was that the notion of the independent clerk is inseparable from the compliance aspect that is central to the role. Several clerks who attended the regional meetings also held senior posts within their colleges. This mixed model was seen as allowing such clerks to make enhanced contributions through, for example: being the ‘eyes and ears of governors’ in the college and being able to articulate the importance of teaching and learning. Participants also pointed out potential conflicts, for example, with the risk and the audit committee, during college restructures and in pay review discussions.

Several contributions revealed that clerks were frequently analysing the space that they occupy for aspects that might compromise their independence and therefore impair their contributions to governing. Participants identified a number of problematic areas including: “*leading on governance self-assessment with the chair*”; “*strengthening links with college leadership/management team and specific directors*”; “*involvement in new build project*”; “*risk assessment when role is combined with company secretary role*”; and “*defining who is*

*the boss*". Independence could be reinforced by practical action, for example, "*deliberately not giving the clerk an office in the college*".

### ***The complexity of the role***

#### **The diversity of the institutional context for understanding the work of the clerk**

The institutional context for governance and therefore the work of the clerk is very diverse especially in the FE sector in terms of: the number of college brands; involvement with academies and UTCs; whether the college has subsidiary companies; and the financial scale of the operation. This diversity may have implications for the governing task which is likely to have implications for the role and responsibilities of the clerk.

#### **The complexity of the governance tasks and the implications for the work of the clerk**

For colleges in the 'upper ranges of the diversity of institutional context' there will be significant implications for the nature, extent and complexity of the overall governance responsibility – what the corporation and the governing body is responsible for. For colleges in the FE sector in particular, the governance task will be substantial. In the FE sector, 5 respondents out of 94 reported that their college encompassed four or more different 'college brands'; 22 colleges sponsored academy schools; 14 colleges were involved with UTCs; 57 colleges had subsidiary companies and approximately half had a total annual income in excess of £25 million. In any of these settings, the clerk is working in a context of substantial and diverse governance responsibility.

#### **The complexity of the role dynamics in relation to the clerk's role**

The data from the meetings in particular paint a picture of a complex and dynamic inter-relationship between the role of the clerk, and those of the chair and the principal. The nature of this 'role territory' and the configurations of the role boundaries of these three players adds to the overall complexity of the clerk's role. Any change in the principal or chair is likely to have consequences for 'the way to do things' and will then have implications for the clerk's role. Further, the roles and responsibilities are specified locally, which can add another dimension of potential complexity. In addition, the variable nature of governing work and the events that can influence governing work contribute to the dynamics. In this changing and changeable context, there is then considerable potential for 'role suction' – for the clerks to be expected to take on too much – and for responsibilities to shift and become inappropriate for the role. There are indications from the data that some clerks are apparently substantially involved in "*managing governors*", for example, conducting the annual governor reviews and leading governor disciplinary procedures – responsibilities which arguably should lie with the chair.

#### **Insights from the regional meetings**

From discussions with clerks in the regional meetings, it was apparent that the role of the clerk is a multi-layered one. The majority of clerks are operating as high-level strategists in the territory between governors and the senior staff. Participants made clear that the role is dynamic and largely, but not wholly, owned and defined by individual clerks themselves. A common job description seems to exist within the FE and SF college sectors that is grounded in ensuring compliance but in reality this specification is significantly contextualised and framed by the relationships between the clerk and the principal/CEO, senior leadership team, the chair and board members. The environment and context in which the college is operating is also a major influence on the clerk's contribution, for example, when the college is under the scrutiny of the FE Commissioner or Ofsted. Funding is also a major element of this context. Clerking is a role under constant configuration and development.

### ***The gendered context for clerking***

There is evidence that the context for clerking – especially amongst the ‘triumvirate’ – the chair, the principal and the clerk – is gendered, especially in FE colleges. From the survey data, the gender of these three key members of the FE governance is as follows.

	<b>FE Colleges</b>	<b>SF colleges</b>
<b>Gender of clerk</b>	74% female	68% female
<b>Gender of chair</b>	27% female	28% female
<b>Gender of principal</b>	46% female	60% female

This gendered context may have implications for the power/influencing relations amongst key participants.

### ***FE college governance/clerking and SF college governance/clerking***

The data – especially the questionnaire data – show that there are differences between the institutional and governance context of FE colleges and SF colleges and differences between the roles of the clerk in those settings.

**Institutional differences.** The differences between the institutional and governance context of general FE colleges and a SF college are as follows.

FE colleges tend to:

- have more college ‘brands’
- sponsor more academy schools
- be more involved with UTCs
- have more subsidiary companies
- be larger in terms of their annual income

**Ofsted grades.** FE colleges tend to have lower Ofsted overall grades and lower grades for leadership and management.

**The Foundation Code.** FE colleges more typically adopt the Foundation Code for Governance.

**The characteristics of clerks and their employment.** In relation to the SF college counterparts, clerks in FE colleges are typically:

- better qualified
- as experienced in terms of years in post
- better paid
- employed for more contracted time
- more likely to work full time as opposed to term-time only
- more likely to work in the college in another role.

We asked respondents their contribution to various governance tasks and the degree to which they believed they were constrained in making a contribution clerks in FE and SF college settings responded as follows.

**Legal/regulatory compliance:** similar contribution; SF college clerks feel less constrained in this aspect

**Best governance practice:** similar contribution; similarly constrained in this aspect

**Communication amongst governors and meetings:** similar contribution; SF college clerks less constrained in this aspect

**New governor recruitment, induction and governor professional development:** SF college clerks less involved in governor development, governor appraisal, and reviewing the chair's performance; SF college clerks less constrained in this aspect

**The governance culture of the corporation governing body (underpinning assumptions, principles and values that shape what the governing body does):** - similar contribution; SF college clerks feel less constrained in this aspect

**Their work in the corporation governing body's environment:** – broadly similar contribution; SF college clerks feel less constrained in this aspect

### ***The implementation of the English Colleges' Foundation Code of Governance***

The English Colleges' Foundation Code of Governance has been fully implemented to varying extents particularly in relation to the different kinds of college as follows.

- FE colleges: 75 out of 94 colleges (80%)
- Land-based colleges: 8 out of 8 colleges (100%)
- SF Colleges: 6 out of 25 colleges (24%)

### **Discussion**

The context for this study was: the shifting expectations around the clerk's role; the need to ensure that clerking and governance practice is strong in all settings; and the challenging nature of college governing – especially but not exclusively due to present and likely future financial constraints. This study has in many ways looked at the role afresh using analogous roles in other settings as the touchstone, the reference point, for investigation. It has revealed a number of substantive issues, which we discuss briefly in this section.

**Clerks' experience and qualifications.** In general, clerks, particularly of FE college corporations and governing bodies, are experienced and well-qualified. Arguably though, there is scope for improving the qualification level of clerks and ensuring that all clerks have the expertise to fulfil the potential of the role – to do the job thoroughly and properly - through improved continuous professional development. The importance of the work and its significance in relation to ensuring 'good governing' would seem to warrant an ambition where all clerks of FE and SF colleges were appropriately and relevantly qualified and supported.

**Clerks' contribution to high quality governance.** Clerks make a very significant contribution to enabling the high quality governance of their institutions. Across the range of responsibilities and tasks undertaken by those holding analogous roles in other settings, the overwhelming majority of clerks consider they make a substantial or very substantial contribution to:

- legal/regulatory compliance
- best governance practice
- communication amongst governors and meetings
- new governor recruitment, induction and governor professional development
- the governance culture of the corporation governing body (underpinning assumptions, principles and values that shape what the governing body does)

- the clerk's work in the corporation governing body's environment.

The overwhelming majority of clerks also consider that their involvement and influence are significant or very significant. The number of roles where clerks were substantially or very substantially involved in relation to the organisation of the governing body was of interest. They were extensive and arguably should have been the responsibility of the governing body chair.

**Constraints on the clerk's role.** Many clerks feel constrained in much of their work for college governing bodies because of shortage of time allocated to them (their contracted hours would appear to be too few) and because they lack administrative support. Of course, lacking the time and resources to 'do the job properly' are familiar complaints – if not stated as excuses - in work settings. However, when such a view is combined with clerks feeling undervalued, and in some instances undermined, a picture develops of clerks not being accorded the status their role and responsibilities deserve.

**The independent nature of the role.** The independence of the clerk and the clerk's role as an impartial overseer of proper governing and governance is a significant matter. Two aspects are important. First, a clerk's involvement in 'operational' governance matters 'within the college' (although an expectation in other settings, for example in the corporate sector) arguably compromises their role. It will be difficult for the clerk, for example to judge on regulatory compliance in relation to freedom of information requests, if they have been involved in responding to such requests. Second, a not insignificant proportion of clerks are employed within the colleges with either direct or indirect line accountability to the principal. While there is a case for arguing that holding such dual roles gives insights into the workings of the college, probably more significant is that such 'in-college employment' could compromise the clerk's autonomy and independence unless appropriate measures are put in place to test and secure the delivery of independence.

**The dynamic nature of the role.** From the research, the dynamic and potentially very malleable nature of the clerk's role and responsibilities become very apparent. The clerk's role and responsibilities are formed by:

- the individual characteristics and predispositions of key players (of which gender may be one – potentially important - aspect)
- varied and changeable institutional characteristics
- diverse and complex governance practices
- complex accountabilities (for example, where the clerk may have to stand firm against the chair even though they consider the chair to be their 'line manager')
- events, which may be significant and unpredictable.

Such characteristics might not be a matter for much concern were it not for the fact that this pliable and flexible structure, which is in truth inherently instable, is at the very heart the governance of FE colleges, which are major educational institutions. While such a pliable structure may bring benefits in terms of responsiveness and adaptability, overall, the case for establishing greater clarity, specificity and delineation of roles and responsibilities is strong.

**Clerking in FE and SF college settings.** It is clear from the data that FE and SF Colleges are very typically different as institutions in the scale and scope of their activities. In saying that, we are aware that there is considerable diversity among the two types of institution. However, as a generality, they are different. The governing task in FE colleges and the governing task in SF colleges, which although designated similarly, are therefore likely to be enacted differently. This difference has implications for how the governing of the two different FE institutional forms is viewed, configured, and overseen. Importantly, as far as this study is

concerned, there are implications for how the role of the clerk is conceptualised and specified.

**The Code of Governance.** Finally, the varied extent of the implementation of the English Colleges' Foundation Code of Governance is a matter of concern, especially in the light of the dynamic nature of roles and responsibilities at the heart of college governing processes referred to above. An updated Code – The Code of Good Governance (AoC 2015) - has just been published and full and whole-hearted adoption and implementation of the Code could help to secure roles and responsibilities. In that regard, the involvement of the clerk in the 'management of the governing body and the members', which many respondents in the student indicated they were heavily involved in, is a matter of interest. This matter is of particular significance when many aspects of clerks' involvement – in relation to the 'management of the board' – should arguably be the responsibility of the chair in other settings.

### Concluding comments

The findings of the research project described in this report draw attention to a number of important aspects of the role of the clerk as follows.

1. **The development of clerking expertise.** Approximately half the respondents have a relevant qualification, and/or have been in post more than six years and/or have experience in the FE sector, all of which should be viewed positively. However, there is scope for further improvement, for example by increasing the proportion of clerks who have relevant qualifications so that the expertise required within the system is further developed.
2. **Clerks' contribution to FE governance.** The data indicates that clerks make a considerable contribution to enabling high quality governing of FE colleges.
3. **Support for the role and enhancing the role's status.** The apparent lack of resources assigned to the role in many instances in terms of the contracted time allocated and the administrative support given to the role-holders and the apparent low status accorded to the role are matters of interest. Importantly, they were factors which respondents felt constrained them in their role. Arguably, there is scope here raising the role's status and ensuring that in every instance adequate resources are allocated to the role.
4. **The importance of the adopting of a code of practice that sets out clearly and unequivocally the roles and responsibilities of all those involved in FE governing and governance.** The recently published code of practice (AoC 2015) presents a very significant opportunity to ensure enhanced governing practice, particularly in relation to the role of the clerk. Similarly, reports on college governance published by the Department for Business Innovation and Skills (2013) will help to support and secure a proper role for clerks.
5. **Ensuring that the clerk's authority – the legitimacy of their power to influence - is not compromised in any way is important.** The clerk's authority can potentially be undermined in a range of ways, through for example, conflicting accountabilities and playing down the status of the role. To enhance the overall quality of FE governance, any undermining of the clerk's authority should be avoided if at all possible.
6. **The role of the clerk in FE is different from the role in SF settings.** Arguably, this difference could feature in any guidance of the role in FE settings.
7. **The clerk's role is dynamic and potentially very malleable in nature.** Key features of the context of the clerk's work, such as the way the principal and the chair enact

their roles and the constitution and operation of the governing body are susceptible to change and may do so rapidly.

8. **There is potential for changing the way the role is conceptualised and configured in practice which could improve the quality of FE governance.** From this research and other recent research into the role of the clerk in FE settings (Brumwell 2015) a picture emerges of a potentially changeable role, that is embedded in practice in an array of very complex and sensitive accountability relationships and undertaken in very diverse institutions, some of which are large s, have substantial incomes, and have numerous associated private and public sector organisations. Together with the apparent lack of resources allocated to the role and the relatively low status currently accorded to it, there is strong argument for: revising the accepted and defined role of the clerk to the corporation to raise its standing in the governance of FE institutions, re-thinking its significance; and shaping the role into one of being the guardian of good FE institutional governance.

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