

Revision to RHC Instrument & Articles

Date of Meeting: 13 January 2020 for RHC Governors and 27 Jan 2020 for RHC Foundation Trustees

Report for: RHC Governors and RHC Foundation Trustees

Report author: Principal/Clerk Appendices: I&As with tracked changes

Financial Implications: As detailed within the report
Risk Implications: As detailed within the report
Safeguarding Implications: NA.
Strategic Aims: ALL

Executive summary

The reports sets out the recommended changes to the I&As of Government to accommodate the separation of Chief Executive and Principal.

Recommendation(s)

To recommend the changes, as detailed in the summary table, to the RHC I&As of Government to the RHC Foundation Trustees on 21 Jan 20 for final approval.

Decision **Discussion** **Information** **Approval**

Please confirm that your report has covered:

Strategy Risk Finance Value for money Impact on Teaching and Learning

Report content

1. Background on the Instrument and Articles and the flexibilities afforded to Colleges.

The Further & Higher Education Act 1992 removed colleges from local authority control and set them up as freestanding public bodies. The F&HE Act 1992 requires every college to have an Instrument and Articles of Government setting out how it will conduct its business. Schedule 4 to the Act (which was substantially revised by the Education Act of 2011) states what the Instrument and Articles *must* include –

so when amending the Instrument and Articles we must keep to what the Revised Schedule 4 states are the minimal requirements.

Revised Schedule 4 affords Colleges with great flexibilities and they are able to amend anything other than that listed in the Schedule as a minimum. A number of colleges have reduced their I&As but added more detail in to their Standing Orders.

Any changes to the RHC I&As must be approved by the RHC Foundation Trustees using a special resolution (with 14 days' notice).

2. Splitting CEO and Principal Role

Whilst it is common for the Principal/Chief Executive Officer to be referred to as the "Principal and Chief Executive", some Corporations have chosen to split the role of "Principal and Chief Executive" into two separate roles performed by two separate individuals.

If a Corporation adopts this course, it will be necessary to amend the Instrument and Articles of Government to make it clear that there will be a Chief Executive and a Principal and to specify the responsibilities of each. This will require an amendment to Article 3 of the Articles of Government together with a number of consequential changes.

Revised Schedule 4 requires the Instrument to set out the Chief Executive's responsibilities but it does not itself specify what these are.

3. The Accounting Officer Role

Where the Corporation is considering the possibility of splitting the role of Principal into two, to provide for the appointment of a Chief Executive, to whom the holder of the role of Principal would report, it will be important to ensure that responsibility for the role of Accounting Officer is clearly and appropriately identified. Discussion of the proposal with the ESFA is advisable. Article 9 (*Delegable and non-delegable functions*) may need some amendments.

The CEO is normally the Accounting Officer, the CEO/Accounting Officer is normally on the Corporation Board of Governors as an ex-officio member (unless they don't want to be). Whoever is the Accounting Officer would normally have a seat on the Corporation. Having both the Principal and the CEO on the Corporation is not recommended, this would dilute the independent governors with too many staff employees.

Reference should also be made to the Funding Agreement which reinforces the allocation of responsibilities between the Corporation, the Principal and the Clerk.

- 4. Recommended Amendments to the 2015 RHC Instrument and Articles summarised.** The existing RHC I&As are appended with the recommended changes tracked. A summary of these changes are in the table below:

Instrument (Clause No)	Original	Revised to	Reason for change/other information
Interpretation of the terms used in the instrument (1)	-	any reference to " <i>the Chief Executive</i> " shall include a person acting as the Chief Executive Officer	Add reference to the Chief Executive includes a person acting as the Chief Executive Officer
The Composition of the Corporation (2)	the Principal of the institution, unless the Principal chooses not to be a member;	the <i>Chief Executive</i> of the institution, unless the <i>Chief Executive</i> chooses not to be a member;	
The Composition of the Corporation (2)	at least two and not more than three members who are students at the institution and have been nominated and elected by their fellow students, or if the Corporation so decides, by a recognised association representing such students ("student members");	at least two and not more than three members who are students at the institution and have been nominated and elected by their fellow students, or if the Corporation so decides, by a recognised association representing such students ("student members"), <i>or selected by members.</i>	Agreed on 22 Jan 2019 by RHC Foundation Trustees

Appointment of the Chair and Vice-Chair (5)	Neither the Principal nor any staff or student member shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair in their absence	Neither the <i>Chief Executive</i> , nor any staff or student member shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair in their absence	Revised to accommodate the separation of CE and Principal
Appointment of the Clerk to the Corporation (6)(1)	The Corporation shall appoint a person to serve as its Clerk, but the Principal may not be appointed as Clerk.	The Corporation shall appoint a person to serve as its Clerk, but the <i>Chief Executive</i> may not be appointed as Clerk.	
Appointment of the Clerk to the Corporation (6)(2)	In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the Principal may not be appointed as temporary Clerk.	In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the <i>Chief Executive</i> may not be appointed as temporary Clerk.	
Persons who are ineligible to be members (7) (3)	A person who is a member of staff of the institution may not be, or continue as, a member, except as a staff member or in the capacity of Principal.	A person who is a member of staff of the institution may not be, or continue as, a member, except as a staff member or in the capacity of <i>Chief Executive</i> .	
Persons who are ineligible to be members (7) (5)	Deleted: adjudged bankrupt or is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Insolvency Act 1986, or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement	A person shall be disqualified from holding, or from continuing to hold, office as a member, if that person is disqualified from acting as a charity trustee under the Charities Act 2011 (as amended from time to time).	Eversheds updates following new rules that came into force from 1st August 2018 regarding the disqualification rules for being a Trustee
Termination of membership (9) (3)	Any person who is a member of the Corporation by virtue of being a member of the staff at the institution, including the Principal, shall cease to hold office upon ceasing to be a member of the staff and the office shall then be vacant.	Any person who is a member of the Corporation by virtue of being a member of the staff at the institution, including the <i>Chief Executive</i> , shall cease to hold office upon ceasing to be a member of the staff and the office shall then be vacant.	
Termination of	A member may resign from office at any time by giving notice in writing to the Clerk.	A member may resign from office at any time by giving notice in writing to the Clerk.	Eversheds updates following new rules

membership (9) (1)		Upon a member becoming disqualified from being a charity trustee under the Charities Act 2011 (as amended from time to time) they shall cease to be a member with immediate effect and shall notify the Clerk as soon as they become aware of such disqualification.	that came into force from 1st August 2018 regarding the disqualification rules for being a Trustee.
Quorum (12)	<p>(1) Meetings of the Corporation shall be quorate if the number of members present is at least 40% of the total number of members, determined according to clause 3,</p> <p>(2) If the number of members present for a meeting of the Corporation does not constitute a quorum, the meeting shall not be held.</p> <p>(3) If during a meeting of the Corporation there ceases to be a quorum, the meeting shall be terminated at once.</p> <p>(4) If a meeting cannot be held or cannot continue for lack of a quorum, the Chair may call a special meeting as soon as it is convenient.</p>	(1) Meetings of the Corporation shall be quorate if the number of members present is at least 40% of the total number of members <i>in post</i> , determined according to clause 3,	Agreed by RHC Foundation Trustees on 22 Jan 2019 to achieve quorum when carrying vacancies.
Proceedings of meetings (13) (5)	<p>Except as provided by procedures made pursuant to Article 16 of the Articles of Government, a member of the Corporation who is a member of staff at the institution, including the Principal, shall withdraw—</p> <p>(a) from that part of any meeting of the Corporation, or any of its committees, at which staff matters relating solely to that member of the staff, as distinct from staff matters relating to all members of staff or all members of staff in a particular class, are to be considered;</p> <p>(b) from that part of any meeting of the Corporation, or any of its committees, at which that member's reappointment or the appointment</p>	Except as provided by procedures made pursuant to Article 16 of the Articles of Government, a member of the Corporation who is a member of staff at the institution, including the <i>Chief Executive</i> , shall withdraw—the remaining text remains unchanged	

	<p>of that member's successor is to be considered;</p> <p>(c) from that part of any meeting of the Corporation, or any of its committees, at which the matter under consideration concerns the pay or conditions of service of all members of staff, or all members of staff in a particular class, where the member of staff is acting as a representative (whether or not on behalf of a recognised trade union) of all members of staff or the class of staff (as the case may be); and</p> <p>(d) if so required by a resolution of the other members present, from that part of any meeting of the Corporation or any of its committees, at which staff matters relating to any member of staff holding a post senior to that member's are to be considered, except those relating to the pay and conditions of all staff or all staff in a particular class.</p>		
Proceedings of meetings (13) (6)	The Principal shall withdraw in any case where the Principal would be required to withdraw under paragraph (5), or if required to do so by a resolution of other members present.	The <i>Chief Executive</i> shall withdraw in any case where the <i>Chief Executive</i> would be required to withdraw under paragraph (5), or if required to do so by a resolution of other members present.	
Minutes 15 (4)	Separate confidential minutes shall be taken of those parts of closed meetings from which staff members, the Principal, student members or the Clerk have withdrawn from a meeting in accordance with clause 13(5), (6), (8),	Separate confidential minutes shall be taken of those parts of closed meetings from which staff members, <i>the Chief Executive</i> , student members or the Clerk have withdrawn from a meeting in accordance with clause 13(5), (6), (8),	
Articles (Clause No)	Original	Revised to	Reason for change

Contents List	Responsibilities of the Corporation, the Principal and the Clerk (Article 3 refers)	Responsibilities of the Corporation, the <i>Chief Executive</i> , the Principal and the Clerk	
Interpretation of terms	Any reference to “the Principal” shall include a person acting as the Principal;	Any reference to “the Chief Executive” shall include a person acting as the Chief Executive Officer;	
	“senior post” means the post of Principal and such other senior posts as the Corporation may decide for the purposes of these Articles;	“senior post” means the post of <i>Chief Executive</i> , Principal and such other senior posts as the Corporation may decide for the purposes of these Articles	
Responsibilities of the Corporation, the Principal and the Clerk (3)	Responsibilities of the Corporation, the Principal and the Clerk	Responsibilities of the Corporation, the <i>Chief Executive</i> , the Principal and the Clerk	
Responsibilities of the Corporation, the Principal and the Clerk (3)(2)	<p>Deleted text</p> <p>(2) Subject to the responsibilities of the Corporation, the Principal shall be the Chief Executive of the institution, and shall be responsible for the following functions-</p> <p>(a) making proposals to the Corporation about the educational character and mission of the institution and implementing the decisions of the Corporation;</p> <p>(b) the determination of the institution’s academic and other activities;</p> <p>(c) preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;</p> <p>(d) the organisation, direction and</p>	<p>Subject to the responsibilities of the Corporation, the Chief Executive shall be the Chief Executive and Accounting Officer of the institution, and shall be responsible for the following functions:</p> <p>(a) making proposals to the Corporation about the educational character, mission and strategic direction of the institution and implementing the decisions of the Corporation;</p> <p>(b) reviewing and approving annual estimates of income and expenditure prepared by the Principal and taking such annual estimates to the Corporation for consideration and approval;</p> <p>(c) overall management of budget and resources within the estimates approved by the Corporation;</p> <p>(d) the organisation, direction and management of the institution and leadership of the staff;</p>	

	<p>management of the institution and leadership of the staff;</p> <p>(e) the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk,</p> <p>(f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.</p> <p>(g) 'The Principal's job description will be reviewed annually as part of the work of the Remuneration Committee.</p>		
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<p>Responsibilities of the Corporation, the Principal and the Clerk (3)(2)</p>		<p>(2) Subject to the responsibilities of the Corporation, the Principal shall be the Principal of the Institution and shall be responsible for the following functions:</p> <p>(a) implementing the decisions of the Corporation;</p> <p>(b) the determination of the institution's academic and other activities;</p> <p>(c) preparing annual estimates of income and expenditure for consideration and approval first by the Chief Executive and subsequently the Corporation;</p> <p>(d) day-to-day management of budget and resources within the estimates approved by the Corporation;</p> <p>(e) leadership of the staff;</p> <p>(f) the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the Chief Executive, holders of senior posts or the Clerk, where the Clerk is also a member of the staff; and</p> <p>(g) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.</p>	
<p>The establishment of committees and delegation of functions generally</p>	<p>The Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the Principal or Clerk and may delegate powers to-</p> <p>(a) such committees; or</p>	<p>The Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the <i>Chief Executive</i>, Principal or Clerk and may delegate powers to-</p> <p>(a) such committees; or</p>	

(4)	(b) the Chair of the Corporation, or in the Chair's absence, the Vice-Chair(s) of the Corporation; or the Principal	(b) the Chair of the Corporation, or in the Chair's absence, the Vice-Chair(s) of the Corporation; or the <i>Chief Executive</i> or Principal	
Delegable and non-delegable functions (9)	The Corporation shall not delegate the following functions- the determination of the educational character and mission of the institution; the approval of the annual estimates of income and expenditure; the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets; the appointment of the Principal or holder of a senior post; the appointment of the Clerk, (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity as a member of staff); and the modification or revocation of these Articles.	The Corporation shall not delegate the following functions- the determination of the educational character and mission of the institution; the approval of the annual estimates of income and expenditure; the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets; the appointment of the <i>Chief Executive</i> , Principal or holder of a senior post; the appointment of the Clerk, (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity as a member of staff); and the modification or revocation of these Articles.	
Delegable and non-delegable functions (10)	(h) The Corporation may not delegate - (i) the consideration of the case for dismissal, and (j) the power to determine an appeal in connection with the dismissal (k) of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation. (l) The Corporation shall make rules specifying the way in which a committee having functions under paragraph (1) shall be established and conducted.	The Corporation may not delegate - the consideration of the case for dismissal, and the power to determine an appeal in connection with the dismissal of the <i>Chief Executive</i> , Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation. The Corporation shall make rules specifying the way in which a committee having functions under paragraph (1) shall be established and conducted.	

Delegable and non-delegable functions (11)	<p>The Chief Executive and Principal may delegate functions to the holder of any other senior post other than-</p> <p>the management of budget and resources; and</p> <p>(any functions that have been delegated to the Principal by the Corporation.</p>	<p>The Chief Executive and Principal may delegate functions to the holder of any other senior post other than-</p> <p>the management of budget and resources; and</p> <p>(any functions that have been delegated to the <i>Chief Executive</i> or Principal by the Corporation.</p>	
Appointment and promotion of staff (12)	<p>Where there is a vacancy or expected vacancy in a senior post, the Corporation shall—</p> <p>(Delete)In the case of a vacancy for the position of Principal advertise the vacancy nationally; and</p> <p>in all other cases decide whether it is in the Corporation's and the College's best interests to advertise the vacancy nationally before proceeding with the appointment process.</p> <p>appoint a selection panel consisting of—</p> <ul style="list-style-type: none"> - at least five members of the Corporation including the Chair or the Vice-Chair or both, where the vacancy is for the post of Chief Executive or Principal ; or - the Chief Executive, Principal and at least three other members of the Corporation, where the vacancy is for any other senior post. 	<p>Where there is a vacancy or expected vacancy in a senior post, the Corporation shall—</p> <p>in all cases decide whether it is in the Corporation's and the College's best interests to advertise the vacancy nationally before proceeding with the appointment process.</p> <p>appoint a selection panel consisting of—</p> <ul style="list-style-type: none"> - at least five members of the Corporation including the Chair or the Vice-Chair or both, where the vacancy is for the post of <i>Chief Executive</i> or Principal ; or - the <i>Chief Executive</i>, Principal and at least three other members of the Corporation, where the vacancy is for any other senior post 	<p>To provide greater flexibility</p>
Appointment and promotion of staff (13)	<p>Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff-</p> <p>(a) may be required to act as Principal or in the place of any other senior</p>	<p>Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff-</p> <p>(a) may be required to act as <i>Chief Executive</i>, Principal or in the place of any other senior</p>	

	<p>post holder; and</p> <p>(b) if so required, shall have all the duties and responsibilities of the Principal or such other senior post holder during the period of the vacancy or temporary absence.</p> <p>The Corporation shall seek the Secretary of State's consent before making any temporary appointment to the post of Principal or any other senior post, where it is intended that such a post holder will not have a contract of employment with the Corporation.</p>	<p>post holder; and</p> <p>(m) (b) if so required, shall have all the duties and responsibilities of the <i>Chief Executive</i>, Principal or such other senior post holder during the period of the vacancy or temporary absence.</p> <p>The Corporation shall seek the Secretary of State's consent before making any temporary appointment to the post of <i>Chief Executive</i>, Principal or any other senior post, where it is intended that such a post holder will not have a contract of employment with the Corporation.</p>	
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