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REGIONAL BOARD REPORT

Subject: Review of Corporate Governance Guide	**Purpose:** **For Approval** ☒ **For Discussion** ☐ **For Information** ☐
Prepared by: James Ayling	**Date:** 15 October 2018

Purpose: To obtain the Board's view on two items in the current Standing Orders

Linked to Strategic Goal 3: Provide a high quality College experience.

Executive Summary:

A Corporate Governance Guide for Regional Board members was approved by the Board in 2015. It is due for review in July 2018 and accordingly the Secretary to the Board is considering its terms.

The current Guide is contained within the Borders College website at http://board.borderscollege.ac.uk/code-of-governance/.

The revisions to be made to the Guide will in the main fall into one of 3 categories.

1. Updating of factual details e.g. management structure and adding in the role of the Vice Chair and of the Senior Independent member.
2. Amendments to the standing orders principally designed to facilitate and clarify the operation of the Board.
3. Revision and updating of the terms of references of the Board Committees.

This revision work is currently underway with the main focus on updating of the standing orders. It is anticipated that this will include matters such as the inclusion of a provision confirming that an urgent decision of the Board may be obtained by written procedure (e-mail) subject to compliance with specific conditions and the extension of current provisions regarding the holding of meetings electronically .

There are two matters on which the Secretary would like to obtain the views of the Board at this stage.

A
Whilst it is unusual for any meeting of the Board to be inquorate it is recognised that the attendance of members in some cases can be difficult and therefore it is prudent as part of this overall review to consider the current rules governing the constitution of a quorum.

The Standing Orders currently provide that:

29. A quorum shall not be less than one third of the members, 50% of whom must be external Members of the Board appointed under Clause 3 of Schedule 2 of The Act. If 15 minutes after the time appointed for a meeting of the Board a quorum of members is not then present, the meeting shall stand adjourned and the Clerk shall minute that owing to the want of the necessary quorum no business was done.

30. No business shall be transacted at a meeting of the Board unless a quorum of members is present, but members present may discuss the business of the Board and those discussions and any conclusions in respect of them will be brought forward to the next meeting of the Board.

In this context external members are interpreted to comprise those who are not the Chair, Principal, staff or student members. Similar provisions have been adopted by other Colleges.

The result of Standing Order 29 is that the constitution of a quorum is a two part test based on both the number and the appointment status of those attending.

It has been noted however that the provisions setting out the quorum provisions in some other colleges do not follow this two part test i.e the only test is the number of members attending the meeting. For example the Standing Orders of the City of Glasgow College simply state that the quorum for a meeting shall be no less than one third of the members entitled to vote at such a meeting.

This makes the constitution of a quorum considerably simpler as it is simply based on numbers. However it does raise the possibility that a quorum could be constituted at one extreme by a combination of the Chair, the Principal, the two staff appointed members and the two student members or by a combination whereby the "internal" appointees outnumber non- executives and the Chair. These hypothetical yet possible scenarios would result in decisions being taken by a Board at which non executive externally appointed members would or could be outvoted by internal appointees.

It must be noted however that the Code of Good Governance for Scotland's Colleges states that :

D.3 Each Board member is collectively responsible and accountable for all Board decisions. Board members must make decisions in the best interests of the College and/or region as a whole rather than selectively or in the interests of a particular group.

It is well established therefore and understood that all Board members whether they be non executive or otherwise have equal status at Board meetings and must always act in the best interests of the College and on that basis there is no reason why this should be an issue. In addition if the Chair felt that due to the particular nature of any matter up for decision there was an issue then he or she could determine that the matter be deferred.
.However, a member of the public, who is unaware of the duty of members to the College as a whole may find it hard to reconcile a decision taken by a Board constituted by a majority of "internal" members especially where this results in adverse publicity involving a sensitive decision.

It is recommended that in the interests of transparency and public perception that Borders College retain its requirement that 50% of the quorum must be non executive members

The Board is invited to consider the above and confirm its view.

B
Scheme of Delegation
Section 1 of the Scheme sets out the matters delegated to the Chair of the Board.

It provides that the Chair of the Board is authorised amongst other things to exercise judgement in the event of a need for an urgent decision during the period between Board meetings such that:

a. either an emergency Board meeting is called in the case of material decisions: or
b. to make the required decision ,subject to homologation at the next Board meeting.

As this stands the Chair can under part (b) make the required decision but it is subject to homolgation at the next Board meeting. However, the board could subsequently not agree the Chair's decision which would then invalidate the action already taken.

It is submitted that there should be no expectation that the Board should then require to approve retrospectively a decision that has already been delegated to the Chair and that rather, the Board should simply be kept informed of the decision as and when made. It is proposed that the obligation here should therefore be amended to reporting same to the next Board. At that time the Board's role is to note the decision and it would then be open to members of the Board to raise any questions it may have if it felt that the Chair had exceeded his or her authority.

Members are asked to agree the proposed change.

Recommendation:
That the Board consider the above as part of the review of the College's Standing Orders and agree the above proposed amendment.

Previous Committee Approvals:

For publication ☒	**For publication with redactions** ☐	**Not for publication** ☐