



ASSOCIATION
OF COLLEGES

Appendix

AoC Explanatory Notes and Guidance on the Colleges' Senior Post Holder Remuneration Code

Association of Colleges Governor's Council

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Section 1 - Introduction, Acknowledgements and Glossary of Terms

AoC Governors' Council was established in 2008 "to develop and use the experience and expertise of governors, to represent their views in the formulation of AoC policy and to promote best practice in college governance". Governors' Council comprises elected representatives, co-opted and ex officio members from across the college sector.

In 2015, AoC Governors' Council produced the AoC Code of Good Governance for English Colleges, which was widely adopted across colleges in England.

In May 2018, AoC Governors' Council established a working group to produce the Colleges Senior Post Holder Remuneration Code (the Remuneration Code) and related guidance to support colleges in good governance practice. In terms of context, three other factors influenced Governors' Council thinking:

- to ensure colleges remain at the forefront of good governance nationally
- in response to new Office for Students (OfS) regulatory requirements and, in part,
- as a response to the political and media interest in senior staff pay and to respond to high-profile examples of questioning trustee, governor and other boards' oversight.

This Remuneration Code aligns with and is equivalent to the Committee of University Chairs (CUC) Remuneration Code. This supports colleges in meeting the requirements for registration with OfS, ESFA reporting requirements and ensuring efficient and consistent practice across educational sectors.

The introduction of the Remuneration Code is an amendment to and addition to the AoC Code of Good Governance (the Code). This amendment takes effect from December 2018 and in order to be compliant with the Code from this date, Governing Bodies must have due regard to the Remuneration Code or should adopt the Remuneration Code.

The information in this appendix covers each key element and includes:

- Explanatory Notes

- Outline Structure for a Remuneration Annual Report
- Guidance on Severance Payments in Colleges
- Guidance on Median Pay Multiples and Methodologies
- References, Links and Further Information

Acknowledgements

The Remuneration Code aligns with, equates to and largely originates from the CUC Code, May 2018. We formally thank and acknowledge the contribution of the Committee of University Chairs to the development of the Remuneration Code.

We also acknowledge the support and advice of the Accounts Direction Team in Education and Skills Funding Agency (ESFA) and Office for Students (OfS) for their advice and assistance in developing this code with the aim of meeting ESFA / OFS regulatory requirements.

AoC Governors' Council acknowledge the considerable advice and guidance in the production of this code. Particular thanks are due to the Governors' Council Working Group and for the work of the experienced chairs, governors and governance professionals who brought their expertise and insight to bear in the development of these documents.

Glossary of Terms and Notes

The following terms and meanings are used throughout the Remuneration Code and Appendix documents.

Term	Meaning
Accounts Direction	Reference to accounts direction throughout means Education and Skills Funding Agency College Accounts Direction. The ESFA sets out the funding body's requirements for each college's audit, accountability and assurance arrangements, and provides a broad framework in which colleges should operate. This can be found on ESFA's website and is updated annually.
College	The term college refers to the college or college group throughout. This means the single accountable legal entity governed by the individual board of governors.

Chief Executive/Principal	The Chief Executive is the most senior executive of the college. The Chief Executive is responsible for the performance of the college, as dictated by the board's overall strategy; they are also the Chief Accounting Officer for the college.
Remuneration Code	Colleges' Senior Post Holder Remuneration Code.
Remuneration Committee	A formal committee of independent members of the Governing Body, whose Terms of Reference include making recommendations on the remuneration of all Senior Post Holders to the Governing Body, to ensure that Senior Post Holders are fairly rewarded for their individual contributions to the college's overall performance. Where remuneration functions are combined with other functions in a committee, for example Search, Governance and Remuneration Committee, Governing Bodies must make appropriate arrangements and adhere to the Remuneration Code in the servicing of the remuneration function.
Senior Post Holder	In many colleges, a small number of senior members of staff are appointed by, and are accountable to, the governing body. These staff are known as 'Senior Post Holders'. Because it appoints Senior Post Holders, the Governing Body has obligations to these individuals as their employer that it cannot delegate to the Chief Executive/Principal. In this respect, the position of a Senior Post Holder in relation to the governing body is analogous to that of the Governance Professional (who in some colleges is classified as a senior post-holder).
Settlement Agreement	A settlement agreement (formerly known as a compromise agreement) is a legally binding agreement between a person and their employer. This usually provides for a severance payment by the employer in return for an agreement not to pursue any claims in a tribunal or a court.
The Code	AoC Code of Good Governance for English Colleges, as amended in December 2018

SECTION 2 – Colleges Senior Staff Remuneration Code - Explanatory Notes

1. Colleges will be able to apply the above principles in a way that is appropriate to their circumstances. **These notes do not expand the Remuneration Code but are intended to assist institutions' discussions as to their use of it.**
2. When reviewing remuneration, consider the value delivered by an individual acting within a role. The value of a role is based on a number of components and criteria for assessing the value of roles, which could include:
 - complexity (scale and range of decision making, collaboration and contact, time-critical activity);
 - impact (on students, research, finances and people, including employees, partners and citizens);
 - discretion (level of accountability, degree of autonomy and decision-making authority);
 - levels of experience;
 - knowledge and skills (including specialist skills) required;
 - reputation and academic/professional credibility needed for the role;
 - an ability to recruit and retain key staff; and
 - external comparisons.
3. To retain staff, Remuneration Committees need to consider market position – typically by looking at a set of comparator colleges/organisations. Comparator selection may depend on the type of post being filled.
4. Colleges also need to reflect on what the consequences will be in instances where individuals do not deliver the expected contribution. Consequences for individuals will depend on the nature of the remuneration package offered, but might mean no uplift of basic pay, no participation in performance related payments, or some form of performance management.

5. For colleges that use metric-driven performance assessments, a balance between the achievement of colleges' long and short-term objectives and, for those that use them, the impact of team-based assessments is recommended.
6. In making severance payments, colleges will continue to meet their contractual obligations and be able to explain the reasons for any payments made. Colleges will need to carefully consider any advice that is available from regulators. Remuneration Committees have specific responsibilities in this area – in particular, ensuring that contracts agreed with Senior Post Holders are fair, reasonable, constitute best value, are justifiable and do not expose the institution to significant potential liabilities, for example by being able to explain notice periods of more than six months.
7. If it is important for colleges that staff represent them on various bodies and boards and carry out academic and civic responsibilities at other organisations, e.g. non-executive director roles. Publishing a clear policy on any such activity that generates additional income for the individual from the external body enables transparency. Senior Post Holders are generally unlikely to be able retain significant sums, but any income they do retain needs to be disclosed and explained.
8. In their approach to expenses colleges should identify normal business costs separately and adopt a single published scheme that applies to all staff.
9. In line with Element II procedural fairness of the Remuneration Code: *c. No individual can be involved in deciding his or her own remuneration; and d. Remuneration Committees must be independent, competent and should not be chaired by the Chair of the Governing Body.*

Remuneration Committees are comprised of people who are independent of the college's management – primarily external (independent) members of the governing body.

Whilst the Chair of the Governing Body should not chair the Remuneration Committee, they may be a member of the Remuneration Committee, and whilst the Chief Executive/Principal may not be a member of the Remuneration Committee, they may advise the Committee on the performance of other Senior Post Holders to inform recommendations regarding remuneration.

Remuneration Committees are able to engage external independent expertise.

10. In line with Element III Transparency and Accountability: *The remuneration of the Chief Executive/Principal must be separately justified, published and related to the remuneration of all staff within the organisation.*

Colleges will publish the multiple of the remuneration of the Chief Executive / Principal and the median earnings of the college's whole workforce annually, providing sufficient explanation and context to enable useful comparison. This will also ensure that median pay and pay multiples are fully explained (for example: if lower median pay is due to contracting out of cleaning and catering services, or higher multiples are due to interim leadership arrangements).

11. To assist with consistency and comparison, the definition for the multiple should be clearly defined (please see Section 5 AoC Guidance on Median Pay Multiples and Methodologies). Colleges will adopt a range for their chosen pay multiples that they regard as acceptable. The diversity of the sector means these ranges will differ between colleges. Colleges that position themselves higher end of the scale, taking into account the specific features of the institution, will need to be prepared to provide additional explanations to stakeholders and their regulators as to why this is desirable.

12. In line with Element III Transparency and Accountability: *Each college must publish a readily accessible annual statement based on an annual report to its Governing Body:*

The college's published annual statement may be within the annual report and accounts (as an Annex or separate section), or it may be published as a stand-alone document. Ideally, the published annual statement will be the same as the annual remuneration report to the governing body. However, modifications may be necessary to preserve commercial confidentiality.

13. The annual remuneration report will need to provide sufficient assurance to the governing body that the Remuneration Committee has effectively discharged its responsibilities.

SECTION 3 - A Possible Outline Structure for a Remuneration Annual Report to the Governing Body

The Remuneration Code requires the production of a Remuneration Annual Report. This document sets out a possible approach to producing this report, but it is not prescriptive and is not intended to be additional to the Remuneration Code. Colleges will need to decide themselves the format that is most suitable for their circumstances. This is not an exhaustive list of options, nor a minimum requirement, since not all elements need to be included. It is only included to assist colleges in their consideration of how best to report to their Governing Bodies.

Introduction

1. Terms of reference: including a hyperlink to and/or appendix containing the Committee's terms of reference. These might refer to the determination of remuneration and conditions of Senior Post Holders as defined by the college. They may also refer to oversight of a framework for the setting and reviewing objectives, remuneration and conditions of all staff, monitoring of remuneration and conditions of Senior Post Holders and any responsibilities placed on them for oversight of pay gaps based on protected characteristics.
2. Remuneration Committee membership: including names of members for the period, and how they were appointed. This section might also include any use of consultants and details of any other relationships between consultants with the college.
3. Remuneration Committee meetings: the number and dates of meetings in the previous year and members' attendance.
4. The college's key strategic objectives, outcomes and main performance indicators.
5. You may wish to include a statement regarding your staffing structure to contextualise median pay as this may differ for organisations which directly employ or outsource services such as cleaning and catering.

Approach to Remuneration

6. A statement as to the competitive environment and markets that the institution operates within.
7. A statement of any fundamental principle agreed by the governing body that will guide all decisions related to remuneration. This will probably reference the balance to be struck between recruiting, retaining and rewarding the best staff possible, to deliver the best outcomes for students, society and the economy while demonstrating effective use of resources.
8. The approach to setting remuneration, e.g. the extent to which economic factors, competition, market rates, roles, skills, experience and individual performance influence decision making.
9. The type of factors used in considering reward proposals for Senior Post Holders.

These should take into account the individual institutional performance and might include, but are not limited to:

- a) performance in support of the college's strategic objectives in areas such as:
 - teaching, learning and outcomes for students
 - management, financial performance and administration
 - leadership of staff
 - stakeholder, partner and employer satisfaction
 - external relations nationally and locally
 - major initiatives and projects;
 - b) the size and / or complexity of the college;
 - c) the nature of the post-16 markets and issues of recruitment and retention; and
 - d) the college's objectives in relation to the diversity of the workforce.
10. Where the data that supports these indicators is drawn from, possibly including:
 - a) College finance record data available on ESFA and AoC websites
 - b) AoC Senior Staff Pay Survey
 - c) College Internal Analysis and External Reports.

11. A reference to the use of job evaluation schemes, pay awards and pension schemes that are applicable to the rest of the workforce.
12. A description of which (if any) staff are eligible for performance-related pay, in accordance with the college's policy on performance pay – with a hyperlink to and/or appendix containing that policy, and a statement as to whether these staff also receive annual inflation uplifts to their base pay.
13. A statement on the approaches used by the committee in benchmarking positions offered within comparator institutions.
14. The current value for the college of the pay multiple of Chief Executive/Principal earnings against the median of all staff, plus details of how this indicator has changed over an extended period of time, e.g. the last five years.

Institutional performance

15. Set out a summary of how some of the key factors listed in point 7 have changed over the year. For those that have explicit performance pay schemes, this might include:
 - a) a note that performance pay is based on key indicators set out in the college strategy (with a hyperlink provided);
 - b) a list of key indicators used for remuneration purposes;
 - c) a statement as to whether performance pay is released if financial targets are not met;
 - d) a statement as to whether staff are put into different groups of performance (for example: 'satisfactory', 'good' or 'exceptional');
 - e) a statement of how the college has performed in the previous year in respect to the indicators used for performance pay;
 - f) total of funds distributed for performance pay;
 - g) a disclosure of how the funds for performance pay were distributed;
 - h) an assessment of the Chief Executive's/Principal's performance using the same metrics; and
 - i) a table outlining total remuneration for the Chief Executive/Principal, with year on-year comparator data, as follows:

Emoluments of the Chief Executive/Principal	2018/19	2017/18
Salary		
Performance related pay		
Benefits		
Subtotal		
Pension costs		
Total		

External appointments and expenses

16. A statement and hyperlink to and/or appendix containing the policy on the retention of income generated from external bodies.
17. The amount retained from external bodies by the Chief Executive/Principal.
18. A statement about the expenses policy, with a hyperlink and/or appendix, and a statement about the extent of expenses incurred.

SECTION 4 – Guidance on Decisions Taken about Severance Payments in Colleges

1. There is significant student and public interest in the remuneration of Chief Executives/Principals of colleges and in the severance payments and packages received by those vacating such positions. There is also considerable press interest in these matters, with colleges and other

charities being challenged and held to account for the levels of pay for their chief executives. This interest poses questions over the proper use of funds and assets and may impact on the reputation of individual colleges and the college sector as a whole.

2. In response, the AoC has published the Remuneration Code. This document sets out guidance to support Governing Bodies in their determination of remuneration and severance payments to Chief Executives/Principals and Senior Post Holders.
3. Since colleges are also charities, the governors (who are the trustees of the charity) may only use charitable funds and assets only to further the charitable purposes of their college. This duty applies to trustees' stewardship of all of the charity's funds and assets – not just those that derive from public funds.
4. Appropriate severance payments require three key elements – namely that there is:
 - a) a reasonable, appropriate and justifiable amount;
 - b) procedural fairness; and
 - c) transparency and accountability.
5. The actions of those taking decisions about severance payments and those potentially in receipt of such payments will need to be mindful of the standards of personal conduct set out by the Committee on Standards in Public Life (the seven Nolan Principles).

Element I – A reasonable, appropriate and justifiable amount

6. In making severance payments, institutions will continue to meet their contractual obligations and be able to explain the reasons for any payments made. Colleges will need carefully to consider any advice that is available from regulators. Remuneration Committees have specific responsibilities in this area: in particular, ensuring that contracts agreed with Senior Post Holders are fair, reasonable and justifiable and do not expose the institution to significant potential liabilities. For example, for notice periods of longer than six months, colleges will be required to provide an explanation of why this is the case.

7. It is important to consider matters of equality, diversity and inclusion when considering severance payments with a view to ensuring that there are no biases based on gender, or other protected characteristics regarding any payments made.
8. A college considering severance payments needs to ensure that it is being fair and equitable in its decision-making about different groups of staff.
9. Enhancements to severance packages are not usually provided out of public funds. As colleges are charities, Governing Bodies need to be mindful that non-public funds are assets of the charity and therefore need to ensure that any use of these assets to make severance payments is in accordance with the use of charitable funds only to further the college's charitable purpose.
10. When a severance arises following poor performance on the part of an individual, consideration may be given to the size of payment to ensure there is no perception that poor performance is being rewarded. It is recommended that final-year salaries are not inflated to boost pension benefits.

Element II – Procedural fairness

11. In line with b. *'No individual can be involved in deciding his or her own remuneration'*
Procedural fairness requires severance payments to be set through a process that is based on competent people applying a consistent framework with independent decision making using appropriate evidence. No individual can be involved in deciding his or her own severance payments.
- 12 It is recommended that in negotiations about severance packages and payments, both parties seek legal advice.

Element III – Transparency and accountability

- 13 The process for determining severance payments must be transparent.

- 14 The decisions about severance payments should be made in such a way as to ensure the accountability of those making the decisions as well as those in receipt of such payments.
- 15 Severance payments to Senior Post Holders should be disclosed in the Annual Remuneration Report to the governing body.
- 16 Confidentiality clauses can require both sides not to disclose the terms of the agreement or the circumstances leading up to the severance. Colleges and their outgoing staff may need these protections, but this should be balanced by requirements for accountability and openness.
- 17 Therefore, settlement agreements for Senior Post Holders that include confidentiality clauses are acceptable, however, transparency is preferable. When including a confidentiality clause consideration should be given to the wider public interest being served, and any undertakings about confidentiality will need to leave severance transactions open to adequate public scrutiny by the National Audit Office (NAO) and the Public Accounts Committee. This means that both sides in a severance agreement will understand that any information covered by a confidentiality clause will need to be disclosed, if required, to the appropriate regulator or the NAO.

SECTION 5 - Guidance on Median Pay Multiples and Methodologies

Context

1. The Remuneration Code and related guidance has been produced for three reasons:
 - to ensure colleges remain at the forefront of good governance nationally
 - in response to new Office for Students regulatory requirements and, in part,

- as a response to the political and media interest in senior staff pay and to respond to high-profile examples of questioning the oversight by trustees and boards.
2. This Remuneration Code aligns with and is equivalent to the Committee of University Chairs (CUC) Remuneration Code. This supports colleges in meeting the requirements for registration with Office for Students and ensuring efficient and consistent practice across educational sectors. The CUC Code includes the requirements to publish the median pay of the college's workforce and the CEO/Principal pay expressed as a multiple of this.
 3. For the purposes of the Remuneration Code, Principal / Chief Executive remuneration will be benchmarked as a multiple of the median pay of the entire workforce of the college. The Remuneration Code requires colleges to publish information about median pay across a college and related pay multiple information for Principals / Chief Executives (see Section 3, Outline Structure for a Remuneration Annual Report, Pt 13).
 4. Following the recommendations of the Hutton Report, this introduces the practices of calculating median pay across a college and establishing median pay multiples (or ratios). A median pay multiple is therefore a measure against which specific staff can be benchmarked and provides a ratio to aid Remuneration Committee deliberations.
 5. The requirement for median pay multiple calculation reporting applies to the Principal / Chief Executive only.
 6. AoC is committed to providing further guidance on median pay multiples and benchmarking data in the future.

SECTION 6 - References, Links and Further Information

1. [Hutton Review of Fair Pay in the public sector: Final Report, March 2011](#)
2. [Reforms to public sector exit payments: response to the consultation](#). HM Treasury (2016)

3. [Committee of University Chairs \(CUC\)](#)
4. [Office for Students \(OfS\)](#)
OfS regulate English higher education providers on behalf of all students. The [regulatory framework](#) explains how they do this, and the OFS [strategy](#) describes their objectives and priorities.
5. [Office for Students Regulatory Advice 9:](#)
Accounts Direction – Guidance on preparing and publishing financial statements. Published 19 Jun 2018.
6. [Further Education Workforce Data for England](#)
Analysis of the 2015-2016 Staff Individualised Record, Education and Training Foundation, June 2017.
7. [AoC Annual Senior Staff Pay Survey](#)
8. [Association of Colleges Governor Briefings](#)
9. [Association of Colleges Governance Helpline](#)

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