

Audit & Assurance Committee

Date of Meeting	Tuesday 10 October 2023
Paper Title	Review of Governance Framework
Agenda Item	15
Paper Number	AAC1-K
Responsible Officer	Board Secretary
Recommended Status	Disclosable
Action	For Noting

1. Executive Summary

1.1 This report is produced annually to apprise the Committee of changes to the legislative and regulatory framework within which the Board operates over the past year.

1.2 There are no compliance concerns highlighted in the report, which is for information.

2. Recommendations

2.1. The Committee is invited to **note** the report.

3. Background

- 3.1.** Over the course of a year there are amendments to regulation and, occasionally, legislation, across the breadth of GCRB's operation which may have implications for GCRB's governance practice and reporting.
- 3.2.** While reporting to the Committee regularly considers aspects of financial regulation, and other changes are reported individually at Committee or Board, as appropriate, by the Executive or Board Secretary, the following report brings together relevant changes into a single, summary chart, in the interests of:
 - a. ensuring that the Committee has an overview of the range and scale of changes in the past year, and
 - b. supporting the Committee in considering whether appropriate controls are in place to comply with legal and regulatory requirements.
- 3.3** The report does not focus on financial regulation, which is reported on separately, nor is it an exhaustive list of all legislation and regulation that applies to GCRB, but covers areas that have greater relevance to its activities.

GCRB Governance Framework – Review September 2023

Area of Influence	Legislation/Regulation	Outline Description	Review of Status/Implications
<p>Education Acts</p>	<p>Further & Higher Education (Scotland) Act 1992</p>	<p>Established incorporated colleges (Assigned Colleges); determined constitution, functions and powers</p>	<p>A revised Code of Good Governance was issued in September 2022. The review of compliance conducted in May 2023 as a basis for the Chair’s statement in the annual accounts referred to that Code.</p> <p>2014 Guidance on non-executive board appointments remains in place. Revised guidance has been developed and consultation should be imminent. Implementation is still expected during 2023-24.</p> <p>Secondary legislation introducing Trade Union Members on all college sector boards, plus two additional non-executive members to GCRB board is expected to come into effect in January 2024. (Draft order being laid before Parliament September 2023.)</p> <p>Introduction of remuneration of AC Chairs is now expected to come into force after 2024. SFC is due to consult RSBs on affordability during 2023.</p> <p>Other changes pending (all of these now put back to 2024+):</p> <ul style="list-style-type: none"> - guidance for SFC/colleges on SFC reviews - SFC rights to address AC meetings - provision for appointing bodies to suspend members
	<p>Further & Higher Education (Scotland) Act 2005</p>	<p>Established Funding Council and regional governing bodies; determined constitution, functions and powers of Regional Strategic Bodies/Regional Boards; statutory basis for Regional Outcome Agreements, Financial Memorandum, Code of Good Governance, Appointments Guidance.</p>	
	<p>Post-16 Education (Scotland) Act 2013</p>	<p>Amended previous Education Acts to create regional governance structures.</p>	
<p>Ethical Conduct</p>	<p>Ethical Standards in Public Life etc. (Scotland) Act 2000</p>	<p>Provided for Code of Conduct for public bodies</p>	<p>2022 Code adopted 2022.</p> <p>Standing Orders reviewed during 2023 to ensure compliance.</p>

	Register of Interest Regulations 2003		Register of Interest reviewed/updated (as required and) annually in September.
	Code of Practice for Ministerial Appointments to Public Bodies 2013	Public Appointments process (applies directly to Regional Chairs and indirectly to Non-Executive Board Member appointments)	This was reissued March 2022. Directly applies only to Regional Chair appointment, otherwise, implications are via appointments guidance since this is informed by PA.
	Bribery Act 2010	Redefined bribery offences and penalties	Code of Conduct refers to board member duties. Anti-bribery policy for review October 2023 meeting.
Charitable Status	Charities Trustee and Investment (Scotland) Act 2005 Associated regulations	Established current legislative framework for Scottish charities and created OSCR.	ACs are charities. GCRB is not a charity but may become one with Ministerial and OSCR consent. Charities (Regulation and Administration) (Scotland) Bill was supported by Scottish Parliament June 2023. Royal Assent now awaited. Purpose of legislation is increasing transparency and OSCR powers, including publication of unredacted accounts online.
Information Protection/ Disclosure	Public Interest Disclosure Act 1998 (as amended by the Enterprise and Regulatory Reform Act 2013)	Made provisions for whistleblowing	There have been no changes to whistleblowing legislation in the past year. GCRB's policy is appended on the basis that it is good practice to review periodically. For clarity, the policy is now presented as a standalone document and is available on the website.
	Freedom of Information (Scotland) Act 2002	Defined right of access to information and exemptions.	GCRB Publication Scheme reviewed and updated March 2021. GCRB received one information request that fell within the scope of FOI(S)A during 2022-23. A response was issued and no further communication received.
	Re-use of Public Sector Information Regulations 2015 Environmental Information (Scotland) Regulations 2004	Provision under Section 61 of FOI(S)A to regulate on access to environmental information held by public authorities.	

	Inspire (Scotland) Regulations 2009		
	Public Services Reform (Scotland) Act 2010	Placed duties on public authorities to publish information on expenditure >£25k on hospitality/entertainment, overseas travel, PR or consultancy and any staff paid >£150k	Financial Memorandum/SPFM refer. No recent changes.
	Data Protection Act 2018	2018 Act replaced 1998 Act and supplemented GDPR. Provides statutory basis for processing/storing/disclosing personal information.	DPO due to provide update to Board on developments in DP regulation (including changes to international data transfers) during 2023-24. GCRB data protection arrangements remain compliant.

Finance/ Audit	(Further & Higher Education (Scotland) Act 2005) Financial Memorandum	Defines relationship to SFC and delegation of authority/reporting requirements; revised 2014 to accommodate ONS changes and Post-16 Act. GCRB replicates at AC level.	Still under review by SG/SFC; will require GCRB to review AC level memorandum subsequently.
	(Public Finance & Accountability (Scotland) Act 2000) Scottish Public Finance Manual	Comprehensive regulations for public bodies with legal status via the 2000 Act, on which FM draws, which applies post ONS.	No recent changes reported to Audit Committee Handbook. Significant changes are reported to Committees/Board by GCRB executive as appropriate. Audit Scotland were appointed as external auditors, replacing Azets, in 2023.
	Procurement Reform (Scotland) Act 2014	Defined terms and duties in relation to regulated procurements and contracts.	SPFM refers. GCRB policy compliant with current law/regulation.
Safeguarding	Protection of Vulnerable Groups (Scotland) Act 2007	Introduced PVG scheme in place of previous disclosure scheme.	GCRB Board Members not formally required to undergo disclosure but it may be appropriate for them to do so/additional terms may be imposed for future appointments.

		Ministerial Appointments guidance refers.	
Community	Community Empowerment Act 2015	Introduced new rights for communities to engage in public authority decision-making, purchase land held by public authorities, etc	GCRB continues to engage in Community Planning Partnerships across college region.
Quality	Scotland Act 1998 2005 Education Act	Established authority for inspectorate with Government Executive Agency status; merger in 2011 of HMIE with LTS created joint authority for curriculum development and inspection. GCRB general duty under 2005 Act refers.	Further to a review by Professor Louise Hayward, Education Secretary Jenny Gilruth confirmed that the change would be postponed, at least until the next parliamentary year. Additional time will now be provided to allow further consultation, including with teachers. Legislation to establish new education bodies, including a separate inspections agency, will only be introduced after ministers have considered the findings of the review.
Complaints	Scottish Public Services Ombudsman Act 2002 (amended by 2005 Education Act)	Established SPSO to oversee and investigate complaints by members of the public against public bodies. Provided for model complaint handling procedure.	GCRB has compliant complaints policy in place. No complaints received during past year.
Equalities	Equality Acts (Scotland) 2006 and 2010 Equality Regulations 2012 2016 Amendment to Specific Duties	2006 Act was precursor which established Equality & Human Rights Commission (NDPB); 2010 Act Introduced Public Sector Equality Duty; incorporated/replaced all previous anti-discrimination legislation including equal pay (1970 Act mostly superseded by section 5 part 3) 2016 amendment required publication of certain data and diversity succession plan.	GCRB will publish its periodical equality mainstreaming report this calendar year (this is a delayed publication from last year; reporting deadlines were relaxed during the pandemic). Board diversity succession plan subject to annual review by NRC in October. No further changes in legislation since last report.

	Gender Representation on Public Boards (Scotland) Act 2018	Introduced requirement to appoint in the interests of 50% female membership of public sector boards where there equally qualified male and female candidates for a vacancy.	Revised sector appointments guidance will refer. GCRB monitors its practice in this regard and is compliant with 2018 Act.
Environment	Climate Change Act 2008 Climate Change (Scotland) Act 2009	Scottish Government has action plan 2018-32; sector activity/compliance monitored by SFC.	GCRB reports on high-level CO2 emission targets via the Outcome Agreement, which is jointly delivered by the Glasgow college system, including City of Glasgow College, Glasgow Clyde College and Glasgow Kelvin College. In addition, GCRB has a region environment and sustainability strategy which is delivered and monitored in collaboration with the colleges, reported via the appropriate committee, and which maps to the College Development Network national strategy for colleges.
Health & Safety	Health & Safety at Work Act 1974 Subsequent Acts and Regulations Working Time Regulations also regulated by HSE	Main piece of health and safety legislation defined duties to employees and to the public.	Duties are qualified by principle of “so far as is reasonably practicable”; primary requirement is risk assessment and to act on findings. Detail of H&S reporting not included here as primarily responsibility of ACs. Proportionate GCRB H&S policy in place.

4. Risk & Compliance Implications

4.1 Robust monitoring arrangements will help to mitigate Risk 013: There is a breach of legislation/ guidance/code of practice and this results in a failure of governance.

5. Financial & Resource Implications

5.1. There are no resource implications arising from this paper.

6. Equalities Implications

6.1. There are no new equalities considerations arising from this paper. The report refers to Equalities requirements.

7. Learner Implications

7.1. There are no direct implications arising from this paper. Robust governance arrangements support GCRB in the delivery of its objectives, which are learner-focused.

**GLASGOW COLLEGES' REGIONAL BOARD
GUIDANCE ON WHISTLEBLOWING
(PUBLIC INTEREST DISCLOSURE ACT)**

BACKGROUND

1. GCRB is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of the sponsoring department and the standards in public life set out in the reports of the Nolan Committee.
2. One report issued by the Nolan Committee covered the area of whistleblowing, in which the following best practices were identified and recommended. That the body:
 - Possesses a clear statement that malpractice is taken seriously in the organisation, and an indication of the sorts of matters regarded as malpractice
 - Respects the confidentiality of workers raising concerns, and provides the opportunity of raising concerns outwith established line management
 - Ensures that there are known penalties for making false and malicious allegations and
 - Provides an indication of the correct procedures in which concerns may be raised outwith the organisation if necessary.
3. The Nolan Committee reports led to the implementation of the Public Interest Disclosure Act 1998, which became law on 2 July 1998, effective 1 January 1999. The terms of the Act provide protection in law to workers who make certain disclosures of information in the public interest (an action commonly referred to as whistleblowing). In order to comply with the terms of the Act GCRB is required to have in place formal procedures for dealing with instances of whistle-blowing. The 1998 Act has been amended by the Enterprise and Regulatory Reform Act 2013. The right to make a public interest disclosure is extended to anyone within the workplace – this includes employees of GCRB, secondees, agency workers and contractors.
4. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employers' affairs. Where, however, a worker discovers information which they believe shows malpractice/wrongdoing within the organisation then this information should be disclosed without fear of reprisal, and may be made independently of line management.
5. The Act is designed to offer protection to a person who discloses such concerns, if:

- The disclosure is not made for the purposes of personal gain
 - Given the circumstances of the case, it is reasonable for the disclosure to be made and
 - The person reasonably believes that they will be subject to a detriment of his employer if they make a disclosure to the employer, or if evidence relating to the disclosure will be concealed or destroyed.
6. Whistleblowing can be defined as ‘the act of bringing to the attention of an appropriate body a concern over a threat to the public interest caused by malpractice or misconduct’.
7. Qualifying disclosures – the Act provides protection for a worker who raises a legitimate concern about specified matters. A qualifying disclosure is one made in the public interest by a worker who has a reasonable belief one of the following is being, has been or is likely to be committed:
- A criminal offence
 - A miscarriage of justice
 - An act creating risk to health and safety
 - An act causing damage to the environment
 - A breach of any other legal obligation or
 - Concealment of any of the above.
8. Investigation – the worker making the disclosure has no responsibility for investigating the matter – it is GCRB’s responsibility to ensure that an investigation has taken place.
9. Note: From June 2013, Whistleblowing is about a disclosure which is in the public interest. This means that employees will generally be precluded from raising issues about their terms and conditions of employment via the whistleblowing procedure – such claims should instead be raised via the relevant grievance procedure.

GCRB’S APPLICATION OF THE ACT

10. GCRB fully acknowledges and implements the application of the Public Interest Disclosure Act in the procedures detailed in the following paragraphs. GCRB considers relevant acts as matters of a serious nature and would seek to resolve such matters in an efficient and effective manner. The *Code of Conduct for Staff* summarises such acts as listed below:

If a worker believes that they are being required to act in a way which:

- is illegal, improper or unethical

- is in breach of a professional code
- may involve possible maladministration, fraud or misuse of public funds
- threatens to endanger the health and safety of any worker or damage the environment and/or
- is otherwise inconsistent with the *Code of Conduct for Staff*

or, they believe there is:

- evidence of irregular or improper behaviour elsewhere in the organisation, but where they have not been personally involved
- evidence of criminal or unlawful activity by others

or:

- they are otherwise required to act in a way which, for them, raises a fundamental issue of concern.

11. GCRB will treat all such disclosures in a confidential and sensitive manner. The identity of the worker making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the worker making the disclosure may need to provide a statement as part of the evidence required.

12. This policy encourages workers to put their name to any disclosure they make. Concerns expressed anonymously are less powerful, but they will be considered at the discretion of the Executive Director, the Board Secretary and the Chair of GCRB, who are required to take into account:

- The seriousness of the issues raised
- The credibility of the concern and
- The likelihood of confirming the allegation from attributable sources.

13. If any of the above office-holders are the subject of the anonymous disclosure they would not be involved in considering it.

14. The identity of a worker raising a concern who requests at the time of raising the concern with the Board Secretary, or another post-holder with responsibility for whistleblowing concerns within the organisation, that their identity remains confidential will not be disclosed except where disclosure is required by law.

15. If a worker makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that worker. If, however, a worker

makes malicious or vexatious allegations, and particularly if they persist with making them, disciplinary action may be taken against the worker concerned.

16. A worker raising a whistleblowing concern is afforded protection against suffering any detriment, bullying or harassment from other workers of GCRB as result of raising the concern. GCRB will sanction, as appropriate, any worker proven to have subjected another worker to such detriment.

PROCEDURES FOR MAKING A DISCLOSURE

17. There are five steps to the disclosure procedures. It is important that these procedures are followed to ensure that the person/s making the disclosure are afforded the full protection of the Act.

- Initial step
- Process
- Investigation
- Feedback
- Reporting outcomes.

18. Initial Step: The worker should make the disclosure to the Board Secretary, who is responsible for the investigation of workers' concerns about illegal, improper or unethical behaviour. The Board Secretary is required to inform the Executive Director and Chair of GCRB, unless:

- Requested not to do so by the discloser or
- If the Executive Director is the subject of the disclosure, in which case the Board Secretary will inform the Chair of GCRB.

19. If the disclosure pertains to the Board Secretary then the disclosure should be made directly to the Executive Director, who will inform the Chair of GCRB. If the Chair is the subject of the disclosure, the Board Secretary should be informed and the matter will be raised with the Scottish Funding Council.

20. The Chair of the Audit Committee should also be informed of all cases of alleged financial impropriety and should be directly involved in any related investigation. Concerns may also be raised with the Chair of the Audit Committee in the first instance or with the External Auditor in circumstances where other named office-holders may be considered to have a conflict of interest.

21. Process: In all instances, there should be at least two people involved in the initial decision whether to investigate further an allegation. Normally the Executive Director, Board Secretary and the Chair of GCRB will consider the information made

available to them and decide on the form of the investigation to be undertaken, this may be:

- To investigate the matter internally
- To refer the matter to the Scottish Funding Council
- To refer the matter to GCRB's Internal Auditor or
- To call for an independent investigation.

22. If the Executive Director, Board Secretary and Chair decide that the investigation should be conducted by more than one of these means, they should satisfy themselves that such a course of action is warranted. The decision and underpinning reason is required to be appropriately documented.

23. Where the matter is to be the subject of an internal investigation, the Board Secretary will consider how to conclude whether there is a prima facie case to answer. This consideration will include determining:

- Who should undertake the investigation
- The procedures that should be followed and
- The scope of the concluding report.

24. All such decisions and determinations are to be appropriately documented by the Board Secretary. If either the Executive Director or the Board Secretary are the subject of the disclosure then they will not be involved in determining the process.

25. Investigation: An independent officer, either internal or external, will be appointed by the Board Secretary to perform the investigation. It is the responsibility of this independent officer to investigate the matter and report the findings back to the Board Secretary. Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigation is to be conducted as sensitively and speedily as possible.

26. A worker who has raised a concern shall be informed within ten working days of whether and how an investigation will be carried out, by whom, and the proposed timescale for completion of any investigation. Where it is not possible for a response to be provided within ten working days, the worker shall be informed of the date by which they will receive a response. Where an investigation is carried out, the worker who raised the concern shall, where appropriate, be informed of the outcome within a reasonable timescale, which shall normally be within ten working days of completion of the investigation.

27. As a result of any investigation, other procedures may also have to be followed, e.g. disciplinary, grievance/complaints or harassment, or it might form the basis of a special investigation.
28. In cases alleging misuse of public funds, Audit Scotland may wish to undertake its own investigation.
29. Feedback: The designated officer will inform the worker making the disclosure of what action, if any, is to be taken. If no further action is to be taken then the worker making the disclosure should be informed of the reason for this and allowed the opportunity to remake the disclosure to another appropriate person. It is the responsibility of this other appropriate person to review all the information presented; the procedures originally followed; and the reasons for not taking any further action. The outcome of this review will be to either confirm that no further action is required or that further investigation is required. Should further action be required the procedures outlined in this manual should be followed. However, prior to a further investigation or further action being made, the person/s who have been investigated will be told of the disclosure and the evidence supporting it and will then be given the opportunity to comment on the disclosure prior to further investigation or action being undertaken.
30. Where a worker has reported a matter and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to a nominated official in the Scottish Funding Council. In such cases the report should be addressed to the Secretary to the Council at the Scottish Funding Council.
31. Reporting of Outcomes: A report of each disclosure and any subsequent actions taken will be made by the Board Secretary who will retain them for a minimum of three years. In all cases, a report of the outcomes of any investigation will be made to the Audit Committee; reports pertaining to those disclosures made which fall within the Committee's remit will be made in detail, and other reports will be summarised. The monitoring of the effectiveness of this procedure forms part of the remit of the Audit Committee.

CONCERNS RAISED BY WORKERS OF ASSIGNED COLLEGES

32. It is recognised that in some circumstances workers of colleges assigned to GCRB may choose to raise whistleblowing concerns with GCRB.
33. In the event of such a concern being raised, GCRB will:

- a. where the area of concern is within the scope of GCRB’s authority, deal with it under this procedure;
- b. where the area of concern is within the authority of an Assigned College, refer the whistleblower to the College’s own procedures or to the appropriate external body, for example, the Health & Safety Executive;
- c. where appropriate, seek the advice of the Scottish Funding Council, auditor or another body in the interests of ensuring that the concern is dealt with in an appropriate manner.

FURTHER ACTIONS

34. In accordance with the Act we would hope that a worker would make their disclosure via GCRB’s procedure; however, disclosure to certain other organisations may be protected by law. These organisations are laid out in the regulations and depending on the nature of the concern e.g. the Health and Safety Executive if it concerns safety, the Scottish Environmental Protection Agency if it is about damage to the environment, Audit Scotland if it concerns public administration, misuse of public funds, fraud or corruption. Further details of relevant organisations can be obtained from the Gov.UK website.

35. Further guidance on Public Interest Disclosure can be obtained from the relevant organisations including:

- Public Concern at Work
- Audit Scotland
- The Advisory Conciliation and Arbitration Service (ACAS)
- Your trade union

DOCUMENT CONTROL AND REVIEW

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Approved by	Board	
Signature		
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Lead Officer(s)	Executive Director	
Board Committee	Audit Committee	