

## Nominations & Remuneration Committee

Date of Meeting	Thursday 30 November 2017
Paper Title	GCRB Responsibilities in Relation to Assigned College Principals
Agenda Item	7
Paper Number	NRC3-C
Responsible Officer	Penny Davis, Board Secretary
Status	Disclosable subject to redaction of legal advice
Action	For Decision

### 1. Report Purpose

- 1.1** To ensure GCRB fulfils its legal role effectively in relation to Assigned College Principals' appointment and terms and conditions.

### 2. Recommendations

- 2.1.** The Committee is invited to:
- **note** the decision of the GCRB Board to establish a separate Board panel to approve changes to Assigned College Principals' terms and conditions;
  - **consider** the subsequent SFC opinion and legal advice provided to GCRB in the extent of GCRB's powers over changes to the terms and conditions of assigned college principals; and
  - **consider** the implications for GCRB and **agree**, if appropriate, any new recommendation(s) to the GCRB Board as to how it should proceed.

### 3. GCRB Responsibilities in Relation to Assigned College Principals

- 3.1.** The Further & Higher Education (Scotland) Act 1992 (Paragraph 16A) states that:

*The appointment of a principal of a college which is not a regional college, and the terms and conditions of such an appointment, have effect only if approved by the regional strategic body for the college.*

- 3.2.** Members will recall that the Committee and GCRB Board has discussed the issue of GCRB's role in approving the appointment of Assigned College principals and setting their terms and conditions. These discussions took place in the context of ensuring GCRB meets its legal and regulatory duties.
- 3.3.** Legal advice provided by GCRB's lawyers stated that if terms and conditions of the principal are being amended and this constitutes a renewal, then GCRB must also approve the terms and conditions as amended. GCRB's consolidated legal advice is provided for information at Annex A.

- 3.4. Based on its legal advice, the GCRB Board agreed at its meeting of September 4, 2017, that a separate panel is appointed to approve changes to Assigned College Principals' terms and conditions.
- 3.5. The initial task of the panel set by the GCRB Board was, "...gathering information and reviewing arrangements that are in place for the review of Assigned College Principals' terms and conditions."
- 3.6. Following the GCRB Board decision, and to support the panel in its work, the GCRB Executive Director wrote to the SFC Interim Chief Executive setting out the intentions of the GCRB Board and the basis of its decision.
- 3.7. The SFC then wrote to GCRB, setting out its views on the extent of GCRB's powers, based on its own legal opinion. The SFC letter and associated legal advice is provided in Annex B and C attached to this report.
- 3.8. The SFC opinion is that GCRB does not have any continuing role in the salaries of principals and therefore GCRB will not be accountable for any (unspecified) "variations" in the terms and conditions of assigned college principals.
- 3.9. Given that this runs counter to the advice received by GCRB prior to this, and in light of the clarity of the SFC opinion, it is proposed that the matter is considered further by the GCRB Nominations and Remuneration Committee so that it may, if appropriate, make a new recommendation to the GCRB Board as to how it should proceed.

#### **4. Risk Analysis**

- 4.1 There is a risk to GCRB in acting on legal advice provided on the instruction of another body, particularly given that the GCRB legal opinion differs from the advice provided by SFC's lawyers. However, as GCRB is accountable to the SFC, there would also be risks associated with acting against their option, particularly in terms of it being perceived that GCRB was seeking to go beyond the technicalities of its powers as defined by the SFC.

#### **5. Legal Implications**

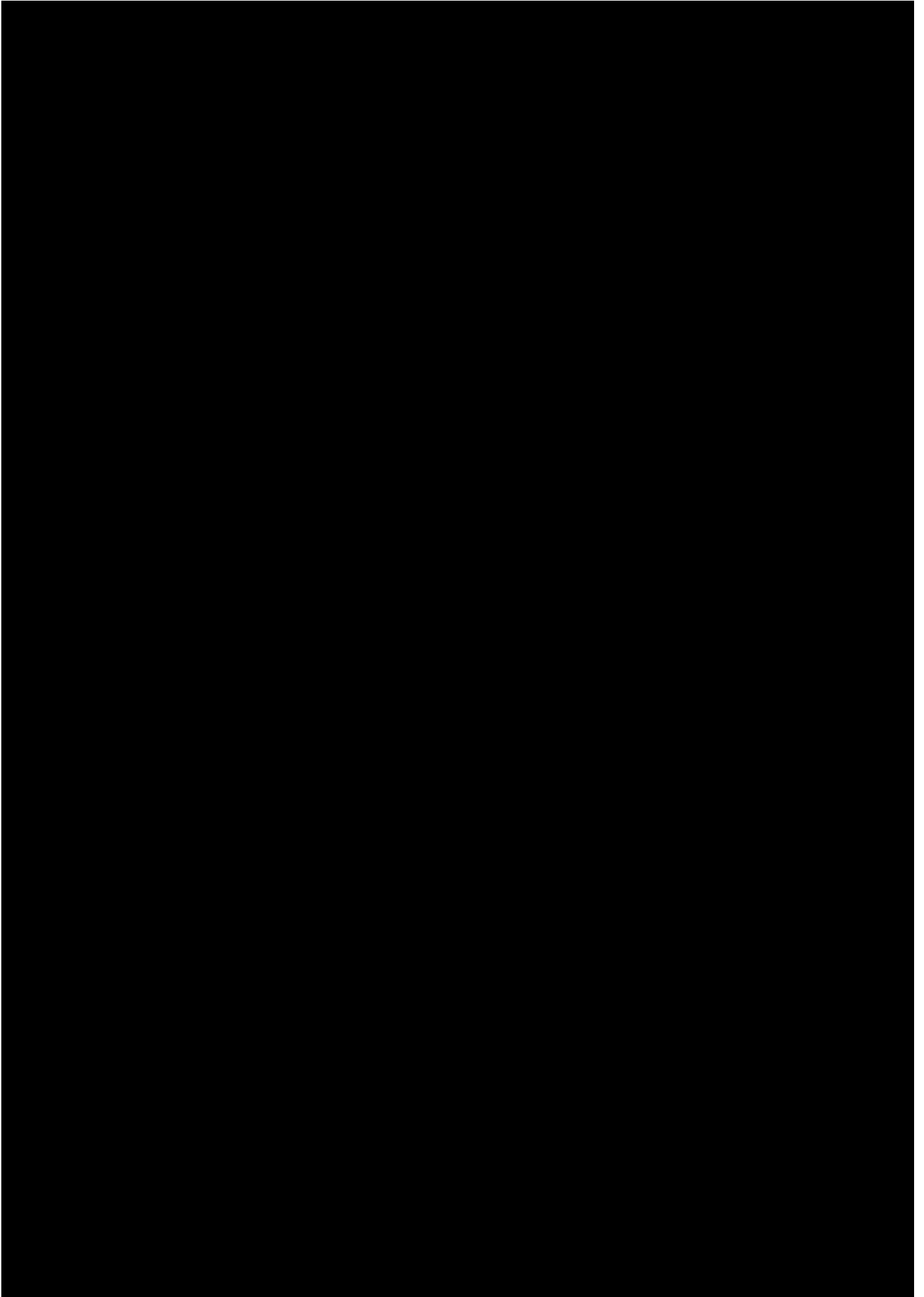
- 5.1. Legal implications are considered in the paper.

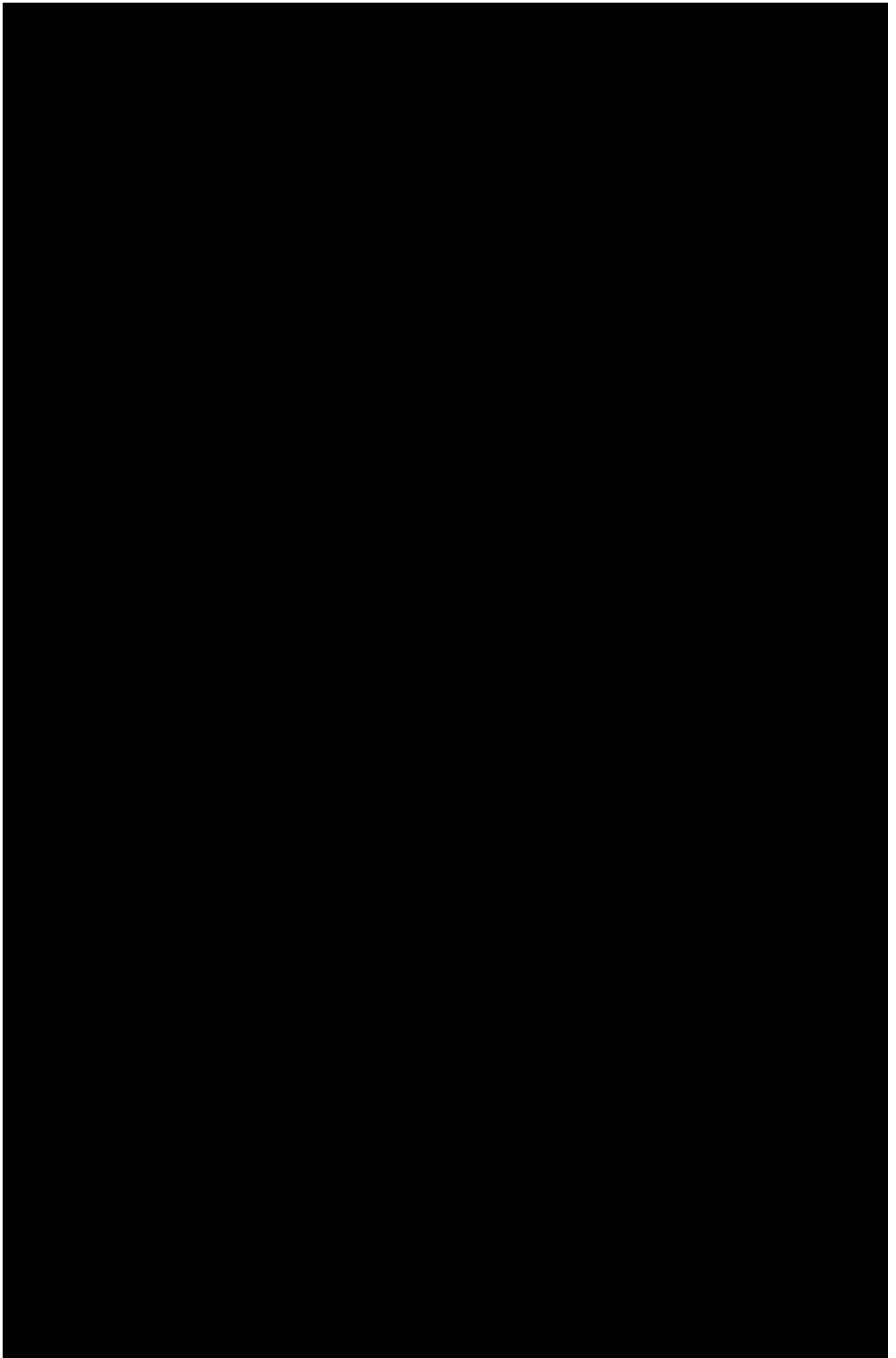
#### **6. Financial Implications**

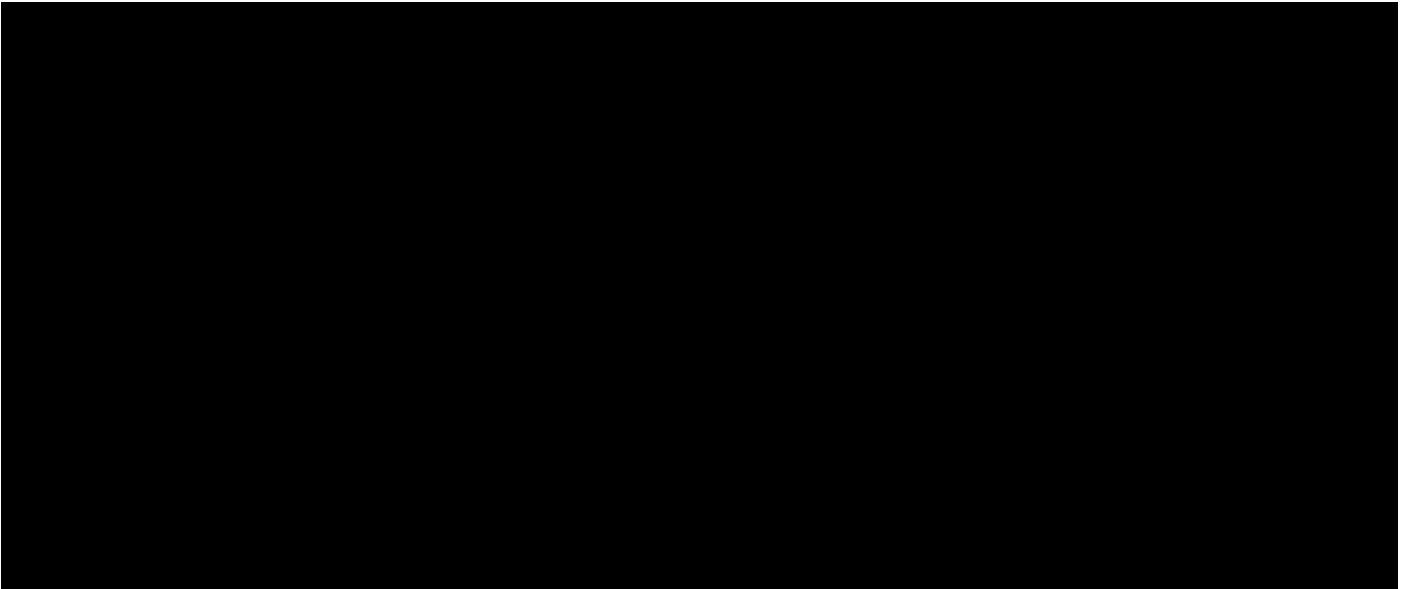
- 6.1. There are no new financial implications arising from this paper.

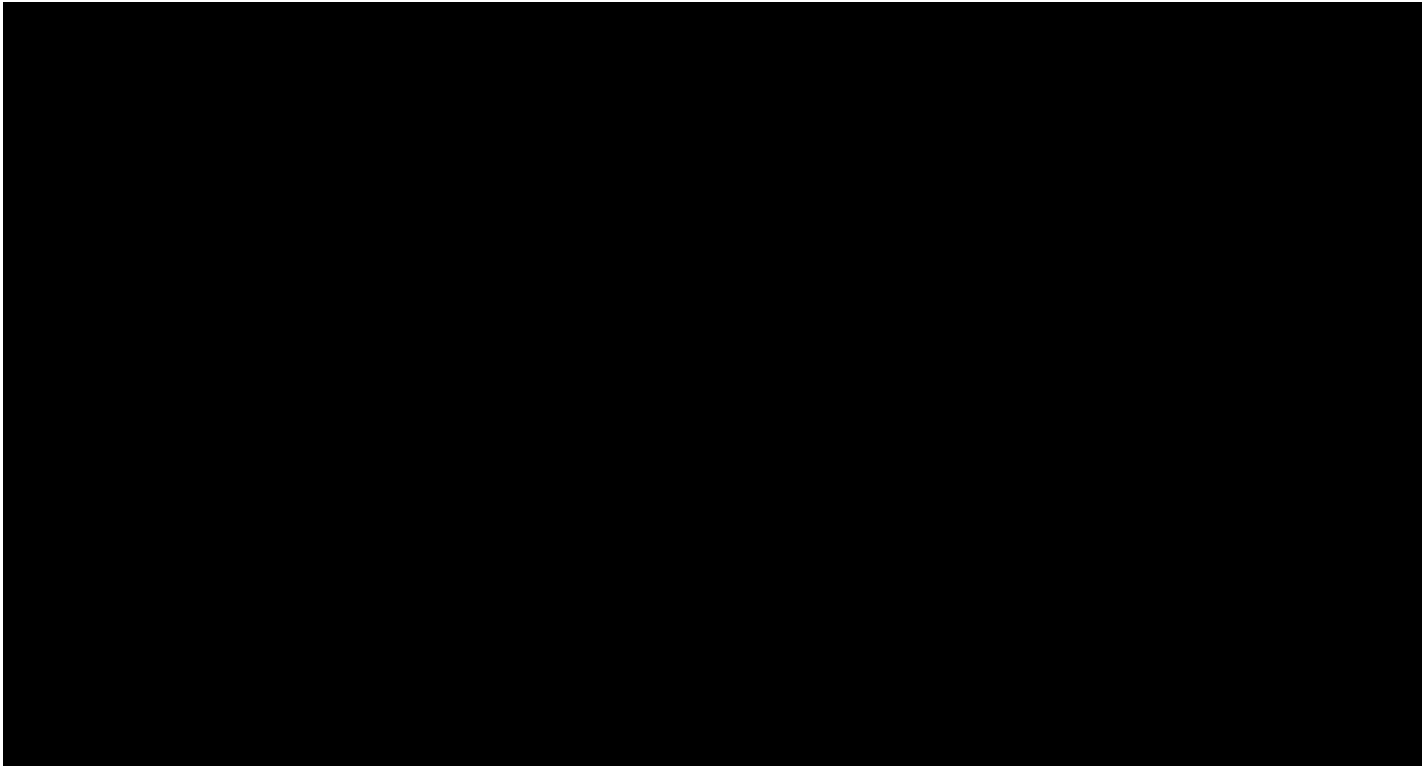
#### **7. Strategic Implications**

- 7.1. This report is not directly relevant to the Strategic Plan or Regional Outcome Agreement. However, robust governance arrangements are essential to the effective determination and delivery of GCRB objectives.









Our ref: 248707872

15 November 2017

Grahame Smith  
Interim Chair  
Glasgow Colleges Regional Board  
By email

Dear Grahame,

I am writing to follow up recent communications from Robin Ashton and the discussion we had on 27 October on the role of the GCRB in principals' salaries.

When we met I said that the legal advice that SFC had sought on this issue confirmed that GCRB's role was in approving the appointment and the terms of conditions of principals of assigned college on appointment. The GCRB had no role in the salaries of principals appointed prior to the 2013 Act coming into force.

At the meeting we discussed whether GCRB had any continuing role in the salaries of principals appointed after the Act had come into force and which had been approved by GCRB on appointment. Our legal advice is that the GCRB does not have a role in this. While the Act makes reference to GCRB's role on appointment, the accompanying guidance suggests that GCRB has a role 'when contracts become due for renewal'. Our interpretation, based on legal advice, of this is that this would only apply where there was a fixed term contract and the principal was, in effect, being reappointed. In that case the GCRB role would be as in an appointment. Other changes would be variations rather than renewals and would not involve GCRB.

I hope this clarification is useful.

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A handwritten signature in black ink, appearing to read 'J. Kemp', with a stylized flourish at the end.

**John Kemp**

Interim Chief Executive

Cc Robin Ashton, Linda McLeod



Annex C: SFC Legal Advice

