Introduction

The Secretary to the Board Network is a forum for the development of Secretaries and Clerks to Boards of Management of colleges in Scotland and also promotes good governance practice in the college sector. The Board Secretary provides advice and expertise on developments in governance both inside and outside the sector to enable Boards to function effectively. Board Secretaries therefore have a sound general understanding of what constitutes good practice in governance.

To complement the written evidence from Colleges Scotland and individual Colleges on the general principles of the Post 16 Education (Scotland) Bill (the Bill), the Board Secretary Network has developed scenarios around some key aspects of the legislation, particularly in relation to the relationship of the proposed new ‘Regional Strategic Bodies’ with College Boards in multi College regions.

The idea for developing scenarios arose from a helpful and informative session with Col Baird, at which around 20 Board Secretaries were present. These scenarios are intended to contextualise some potential consequences of the Bill in order to inform the development of the legislation. It is hoped that they will provide the Committee with useful illustrations of some potential governance issues.

The scenarios relate to the following areas:

1. The appointment of the Principal in a multi College Region
2. College Board size in a multi College Region
3. Accountability in a multi College Region
4. Commercial income generation in a multi College Region
5. The removal of the statutory bar on Councillors chairing College Boards

Scenarios

1. The appointment of the Principal in a multi College Region

For multi college regions, the Bill creates ‘Regional Strategic Bodies’ which will be responsible for the appointment and terms and conditions of the Principal of the Colleges in region. The Colleges in the Region will be the Principal’s employer.

Scenario: The Regional Strategic Body for Region A (which encompasses Colleges A, B & C) is delighted with the Principal of College A’s performance. He has focused on the directives given to him by the Regional Strategic Body and a substantial pay increase for the Principal is approved. The Board of College A is directed to implement this pay increase. However, the Board of College A is not as satisfied with the Principal’s performance, indeed the Board believes the Principal has prioritised fulfilling the Strategic Regional Body’s directives to the detriment of leaners in the...
College A’s locality and that, in their view, College A’s finances are not secure and sustainable. On that basis, College A’s Chair implements disciplinary procedure against the Principal for mismanagement of the College. The Principal engages a legal team to fight this disciplinary action and a lengthy contractual dispute ensues, with the College arguing that as employer they are entitled to manage their staff member and the Principal contending that they were appointed by the Regional Strategic Body and therefore the College, despite being their employer, has no mandate. This attracts much adverse publicity to the sector and diverts essential funds from learners.

2. College Board size in a multi College Region

For multi college regions, College Boards would be reduced in size, from 10-16 members to 7-10 members. Given that there will be one staff Board member and one Student Board member, this potentially means that just 5 – 8 external individuals will be undertaking all the Board work.

Scenario: The Chair of College D has real concerns and is considering her position. New Regional directives have significantly reframed College D’s 2015-16 financial strategy. Strategic planning in regard to the Estate is on hold, as capital allocations are being re-considered in the light of a major new build at College E (another College in the multi college region).

Two Board members from the Finance and Estates Committee suddenly resign, stating their role is now impossible, given the number of meetings and lack of clarity regarding their responsibilities. Now, she is hearing that no Board members are prepared to work on the Finance and Estates Committee. Recruitment for new Board members has failed to attract the calibre of individuals expected for public service in Scotland.

There is too much to do, and too few skilled individuals to support the College leadership staff. How can she be confident that appropriate governance scrutiny, let alone leadership and direction, is being given to the College D’s plans for the following year?

3. Accountability in a multi College Region

Scenario: In the construction department of College D, a student traps his hand in a machine, resulting in permanent damage. Subsequent investigation by the Health and Safety Executive identifies that the student may not have been adequately supervised to operate the machine as the lecturer had another class to cover at that time. A prosecution under the Health and Safety at Work Act is a real risk. The Board of College D’s defence is that the lack of supervision was as a result of funding decisions by the Strategic Regional Body, which is responsible for planning and estate decisions and therefore for the safety of staff and students on the estate. The Regional Strategic Body is therefore accountable and should be held liable for any breach of safe working practices. The Regional Strategic Body contends that Board
4. **Commercial Income generation in a multi College Region**

**Scenario**: The Board of P College has close business links in the local community and representatives attend CPP, Chamber of Commerce and local employer events. When a need for short course provision is identified, P College has a good reputation for working with employers to meet that demand and has generated commercial income through that route, allowing investment in P College to further benefit P learners and the locality. The Regional Strategic Body of P,Q & R Colleges decides on a new campus development at R College, which has historically struggled to be financially stable and has a previous history of an unmanaged deficit. The funding of this diverts resource from P College. Board members of P College resign in protest, stating that resources generated by the people of P are being wasted. P College has an aging campus that requires upgrade, but cannot invest in essential repair as a result of a new campus build at R, funded by P’s income. The Local Authority joins the fight, demanding that the needs of P’s learners are met. Commercial income through P College dries up as a result of the reputational damage and consequently there is less resource available in the region as a whole to meet learner needs.

5. **The removal of the statutory bar on Councillors Chairing College Boards**

**Scenario**: Councillor from Local Authority B chairs the Regional Strategic Body for B&C Colleges. Changes to the curriculum are proposed that will necessitate resource from C College being redeployed at B College. The Board of C College raises concerns that the Chair has a conflict of interest and is trying to promote B College’s interests at the expense of C College and its locality, in line with his mandate to represent the B area’s constituents. Further, the Chair is a Councillor of the White Party and the White Party manifesto has recommendations regarding Colleges that the Board of C College contends prevent him from considering the matter independently. The Board Secretary is concerned there could be a perception that the Chair is not able to demonstrate independence and objectivity in decision making in line with the Code of Conduct for members of Public Bodies. The Board Secretary therefore advises that the Chair should declare an interest and step aside from these discussions. Curriculum development is a major strategic area that dominates the agenda for the Regional Strategic Body over the next 12 months, with the Chair unable to provide leadership through this period as a result of a potential outside interest.