

The 2014/15 audit of Glasgow Clyde College

AUDITOR GENERAL 

Prepared for the Public Audit Committee by the Auditor General for Scotland
Made under section 22 of the Public Finance and Accountability (Scotland) Act 2000

March 2016

Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. It provides services to the Auditor General for Scotland and the Accounts Commission. Together they ensure that the Scottish Government and public sector bodies in Scotland are held to account for the proper, efficient and effective use of public funds.

Contents

Introduction	4
The auditor's opinion	4
Background	4
Outcome of audit investigations.....	8
GCC is taking action to address concerns in governance.....	13
Looking forward.....	14
Conclusion	15
Appendix: audit methodology	16

Introduction

1. I have received the audited financial statements and the auditor's report for Glasgow Clyde College (GCC) for 2014/15.¹ The purpose of this report is to draw Parliament's attention to significant concerns about governance at GCC during 2014/15.
2. I am submitting these financial statements and the independent auditor's report under section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report that I have prepared under section 22(3) of the Act.
3. My report is based on information provided through the 2014/15 audit of GCC and additional work undertaken by the auditor and Audit Scotland. This additional work focussed on documentary evidence and included a detailed review of the minutes of the GCC Board of Management (the Board) during both 2014/15 and 2013/14. The review of 2013/14 minutes allowed auditors to examine comparisons in practice between the two years. A fuller methodology and key sources of evidence for this work can be found in the Appendix.
4. Significant events took place at GCC during 2015 including: the suspension of the Principal in February; the decision by Scottish Ministers to remove the Board members (with the exception of the Principal) and appoint an Emergency Board in October; and the Principal's return to post in December. It is not within the remit of Audit Scotland to comment on any of these decisions or whether correct procedures were followed. This report is the result of specific concerns about governance identified as part of the 2014/15 audit of GCC.
5. On 8 January 2016, a former Board member launched a petition for a judicial review into the decision taken by Scottish Ministers in October 2015 to remove Board members (see paragraph 14). As at the date of this report, the judicial review proceedings were ongoing.

The auditor's opinion

6. The auditor has given an unqualified audit opinion on the GCC financial statements but draws attention to concerns relating to governance, as the Board did not comply with the *Code of Good Governance for Scotland's Colleges* (CoGG) throughout 2014/15.
7. The auditor also draws attention to the use of public funds incurred by the Board in relation to legal advice and services provided in 2014/15. GCC did not comply with the Scottish Funding Council's (SFC) *Financial Memorandum with Fundable bodies in the College Sector* throughout 2014/15.

Background

8. GCC came into being on 1 August 2013, as a result of the merger of Anniesland, Cardonald and Langside colleges. GCC is an independent legal body with charitable status as defined by

¹ The financial statements and auditor's report for 2014/15 cover the 16-month period from 1 April 2014 to 31 July 2015.

the Further and Higher Education (Scotland) Act 1992 (the 1992 Act). It is governed by a Board which is responsible for determining the overall strategy of the college and the proper use of public funds, the quality of provision and appointing the Principal and other senior staff.

9. In accordance with the 1992 Act, the Board is responsible for the administration and management of the college's affairs, including ensuring an effective system of internal control and the presentation of audited financial statements for each financial year. The Board is also required to comply with the terms and conditions of its grant from the SFC, including compliance with the SFC's Financial Memorandum and the CoGG.
10. 2014/15 was a challenging period for GCC. In August 2014, the new regional strategic body, Glasgow Colleges' Regional Board (GCRB), became responsible under the Post-16 Education (Scotland) Act 2013 for securing further and higher education for Glasgow's three colleges: City of Glasgow, Glasgow Clyde and Glasgow Kelvin. To operate fully as the regional strategic body, GCRB has to have operational fundable body status. Without operational fundable body status, the SFC will not allocate funding to GCRB and will instead administer funding to the three colleges directly. GCRB has yet to achieve operational fundable body status. Minutes from Board meetings at GCC during 2014/15 record tensions in the relationship between GCRB and GCC.²
11. There were also significant changes and events taking place within GCC. The Board Chair resigned in September 2014 and an interim appointment was made, which the GCRB made permanent in December 2014. On 5 February 2015, the Educational Institute of Scotland (EIS) sent a letter to the Board raising a number of issues that it felt to be matters of concern. On 12 February 2015, proposals to amend the Student Association staff structure were postponed. On the 18 February 2015, the Principal wrote to the GCC Board, SFC and Scottish Government outlining her own concerns in relation to governance although these were not addressed at the time. On 19 February 2015, the Principal was suspended on full pay by the Board Chair.

Summary of events at GCC between March and December 2015

12. In March 2015, the SFC commenced a review of governance at GCC and reported its findings to Scottish Ministers in June 2015. During June and July 2015, the Scottish Government was in regular correspondence with the Board Chair to request information required for Scottish Ministers to exercise their powers and perform their duties under Part 1 of the 1992 Act. In September 2015, the Cabinet Secretary wrote to the full Board and met subsequently with the Board Chair and some of the Board members to discuss concerns she had that the Board had committed repeated breaches of the terms and conditions of a grant made to it and may have mismanaged its affairs.
13. The suspension of the Principal and the subsequent SFC review of governance became a significant focus at Board meetings between February and September 2015. Analysis of

² I have prepared a separate report on the 2014/15 audit of GCRB.

Board minutes shows evidence that discussion around these issues dominated Board meetings. The Board met 11 times during this period (three ordinary and eight extra-ordinary meetings), compared to four times in the same ten-month period in 2014 (three ordinary and one extra-ordinary meeting).

14. On 8 October 2015, using powers under section 24(2)(a) of the 1992 Act, Scottish Ministers removed the Board from office with the exception of the Principal because “*it appeared to them that the Board of Management of Glasgow Clyde College had committed repeated breaches of terms and conditions of a grant made to them under section 12 of the Further and Higher Education (Scotland) Act 2005(b) and had mismanaged the affairs of that Board*”.³ This is the only time Scottish Ministers have removed a college board.
15. Under section 24(2)(b) of the 1992 Act, Ministers may appoint another person in place of the removed member.⁴ An Emergency Board was appointed on 8 October 2015 and will hold office until 30 September 2016. Thereafter, Ministers expect the Board posts to be filled through an open recruitment process as set out in the *College Sector Board Appointments: 2014 Ministerial Guidance*.
16. Following their appointment, the Emergency Board reviewed the case against the Principal’s suspension and decided not to pursue any disciplinary action on 16 November 2015. The Principal was reinstated and returned to work on 7 December 2015.
17. The full timeline of key events during 2015 is outlined in [Exhibit 1](#).

³ The Glasgow Clyde College (Removal and Appointment of Board Members) (Scotland) Order 2015: Scottish Statutory Instrument 2015/348

⁴ Where a removed member was appointed under paragraph 3A(2)(a) or (f) of Schedule 2 to the 1992 Act

Exhibit 1 – Timeline of key events at GCC during 2015⁵

Key event	Date (2015)
EIS send a letter to the Board raising a number of issues that it felt to be matters of concern.	5 February
Proposals to amend the Student Association staff structure were postponed.	12 February
Principal writes to the Board, the SFC and the Scottish Government raising governance concerns.	18 February
Principal suspended on full pay by the Board Chair pending a review.	19 February
Simpson & Marwick LLP ⁶ is appointed to provide legal advice relating to the suspension and issues an engagement letter to the Board Secretary. ⁷	20 February
Depute Principal takes over responsibility for the operational running of GCC.	20 February
Extraordinary Board meeting to brief the Board about the Principal's suspension. Student Board members are excluded from parts of the meeting.	23 February
Board Chair writes to formally advise the SFC of the Principal's suspension.	4 March
SFC writes to the Board Chair stating its intention to carry out a review of governance and management at GCC.	6 March
GCC's Executive Management Team (EMT) become aware that financial limits are in danger of being breached in relation to spending on legal services from Simpson & Marwick LLP and alert the Board Chair and Board Secretary.	18 March
SFC begins a review of governance at GCC.	27 March
Depute Principal advises the Board Chair and Board Secretary that financial limits have been breached in relation to legal services from Simpson & Marwick.	30 March
Depute Principal contacts the SFC to seek retrospective permission to go beyond the £25,000 delegated limit, regarding the payment of fees to Simpson & Marwick.	22 April
SFC denies retrospective permission to exceed delegated limit and instructs GCC to cease using Simpson & Marwick LLP as there is a risk of GCC incurring additional costs.	23 April
Board takes further legal advice in relation to the legitimacy of the SFC governance review, the Student Association structure and its constitutional documents using GCC's lawyers, Brodies LLP. Terms of engagement agreed between the Depute Principal and Brodies LLP.	29 April
Board engages a further law firm, Thorntons Law LLP, through the APUC ⁸ , for the provision of legal services relating to the Principal's disciplinary proceedings. Terms of engagement agreed between the Depute Principal and Thorntons LLP.	12 May
Chair of the Audit Committee commissions a special internal audit using BDO, into the procurement process and expenditure associated with legal and management consultancy	

⁵ The Board engaged three law firms during 2015. For more information about what each of the firms were engaged to do, please refer to Exhibit 3.

⁶ On 1 October 2015, Simpson & Marwick merged with Clyde & Co and now trades under this name.

⁷ An engagement letter can be defined as the legal relationship (or engagement) between a professional organisation (the law firm) and its client (GCC).

⁸ Advanced Procurement for Universities and Colleges (APUC) is the procurement centre of expertise for Scotland's universities and colleges.

advice at GCC.	
A Board member makes a formal complaint against the Board Chair to the Commissioner for Ethical Standards in Public Life in Scotland concerning an alleged contravention of the Code of Conduct for the Board. ⁹ (<i>In November 2015, the Commissioner concludes that the Board Chair did not contravene the Code</i>).	19 June
Outcome of the SFC governance review shared with the Board.	26 June
SFC provides a briefing to the Scottish Government based on its governance review.	30 June
Board Secretary resigns. No new appointment made.	30 June
Correspondence from the Scottish Government to the Board Chair requesting further information regarding governance issues.	30 July
Cabinet Secretary formally writes to the Board raising concerns that GCC may have breached the terms and conditions of the grant made to GCC by the SFC.	9 September
Cabinet Secretary meets the Board Chair and some Board members to discuss governance concerns.	14 September
Some of the Board members write to the Cabinet Secretary responding to the concerns raised, refuting many of the allegations made.	18 September
All Board members who were members between February and July 2015 (with the exception of the Principal) are removed by the Cabinet Secretary with immediate effect. An Emergency Board was appointed on the same day.	8 October
Principal returns to work.	7 December

Source: Audit Scotland/GCC/SFC

Outcome of audit investigations

18. Audit Scotland worked alongside GCC's auditor during November 2015 to February 2016 to carry out additional audit work focussing on governance. This work identified:
- significant concerns in relation to governance at GCC
 - non-compliance with the principles of the CoGG
 - non-compliance with the SFC's Financial Memorandum.

Governance

19. High standards of governance should underpin the use of public money. Citizens and taxpayers have an important and legitimate interest in the value for money provided by public bodies. *The Good Governance Standard for Public Services* sets out six core principles of good governance that public bodies should strive to achieve.¹⁰

⁹ Allegations included breaching the key principles of paragraph 2.1 in terms of Duty, Objectivity, Accountability and Stewardship, Honesty, Leadership and Respect and paragraph 3.3 (General Conduct).

¹⁰ *The Good Governance Standard for Public Services*, Independent Commission on Good Governance in Public Services, 2004.

20. Work undertaken to inform the auditor's report and additional work carried out by the auditor and Audit Scotland identify that GCC did not fully meet the six principles contained within the *Good Governance Standards*. Documentary evidence reviewed demonstrates significant concerns relating to governance, including a failure to meet the standards expected of public bodies in the use of public money and a lack of:

- strategic direction and focus (the suspension of the Principal and subsequent SFC governance review dominated discussions at Board meetings)
- focus on the quality of the student learning experience
- open and transparent decision-making (eg, minutes not circulated and agreed in a timely manner)
- effective engagement with a range of internal and external stakeholders (including the EMT, GCRB and the SFC).

Non-compliance with the Code of Good Governance

21. As a condition of their grant from either the SFC or their regional strategic body, all colleges must comply with the CoGG. The CoGG sets standards of good governance practice for all college boards across five areas - leadership and strategy, quality of the student experience, accountability, effectiveness and relationships and collaboration.
22. In their audit report for GCC, the auditor reported that the Board did not comply with the principles contained within the CoGG throughout 2014/15. [Exhibit 2](#) outlines a number of particular examples, specific to the focus of the audit work, of non-compliance with the CoGG across each of the five key areas of governance.

Exhibit 2. Examples of non-compliance with the CoGG throughout 2014/15

What does good practice look like	Evidence from audit work at GCC
Leadership and Strategy	
<p><i>The Board is responsible for formulating and agreeing strategy by identifying strategic priorities and providing direction within a structured planning framework.</i></p>	<ul style="list-style-type: none"> • The suspension of the Principal and the SFC governance review dominated discussion at Board meetings from February - September 2015. • Other strategic items of business were not adequately considered at Board meetings, eg the Corporate Plan, the Regional Outcome Agreement and GCC's International Strategy. This is in contrast to previous years.
Quality of the Student Experience	
<p><i>Staff and student Board members are full Board members and bring essential and unique, skills, knowledge and experience to the Board. Staff and student Board members must not be excluded from Board business unless there is a clear conflict of interest, in common with all Board members.</i></p>	<ul style="list-style-type: none"> • Student Board members were excluded from parts of the Board meeting on 23 February 2015, when the Principal's suspension was discussed. • Minutes from Board meetings identify tensions between the Board Chair and Student Board members. • One Student Board member chose not to attend any Board meetings from April 2015 onwards. • In March 2015, a motion of vote of no confidence in the Board Chair was made by the GCC Student Association on the decision to exclude student Board members from parts of a meeting in February 2015. The motion was not supported.
Accountability	
<p><i>Colleges must maintain and publically disclose a current register of interests for all Board members.</i></p> <p><i>Boards ...must ensure that there is effective reporting and two way communication between committees and the Board.</i></p>	<ul style="list-style-type: none"> • A register of Board members' interests was not available on GCC's website. • There was a reliance on verbal updates from Committees to the Board. • Committee minutes during 2014/15 were not routinely and timeously provided to the Board.
Effectiveness	
<p><i>All Board members must have access to a board secretary who has an important governance role in advising the Board and individual Board members and supporting good governance.</i></p>	<p>The Board Secretary</p> <ul style="list-style-type: none"> • Board meetings were regularly conducted in the absence of the Board Secretary from October 2014 until June 2015, when they left their post. • Board minutes were taken by a range of people

What does good practice look like	Evidence from audit work at GCC
	including; a Board member and a legal representative. In some cases it is unclear who took a formal note of the meeting. This led to an inconsistent approach to the way meetings were recorded and decisions minuted.
<i>The Principal has an important role in supporting effective governance. The Principal, as a Board member, shares responsibility with the Chair and the Board, supported by the Board Secretary, for enabling good governance through supporting effective communication and interaction between the Board and the rest of the college.</i>	<p>Principal and Chief Executive</p> <ul style="list-style-type: none"> The Board did not seek further information about the governance concerns raised by the Principal immediately prior to her suspension.
<i>The Board must keep its effectiveness under annual review and have in place a robust self evaluation process.</i>	<p>Board evaluation</p> <ul style="list-style-type: none"> There is no evidence of an annual self-evaluation process having been undertaken during 2014/15. This is in contrast to the previous year.
Relationships and Collaboration	
<i>Colleges and/or regional strategic bodies must ensure effective consultation, local and regional planning and must follow the principles of effective collaborative working: mutual respect, trust and working towards commonly agreed outcomes.</i>	<p>Partnership working</p> <ul style="list-style-type: none"> Minutes demonstrate that there was a breakdown in relationships between the Board and the SFC as a result of the governance review, and tensions in GCC's relationship with GCRB.
<i>The Board, via the board secretary, must ensure the Board agenda, minutes, policies and appropriate reports are published within appropriate time frames, ensuring and monitoring compliance with freedom of information legislation.</i>	<p>Openness and Transparency</p> <ul style="list-style-type: none"> Board meetings took place without agendas in April and May 2015. At the time of the audit, Board minutes were not publicly available on GCC's website. This has only recently been addressed. Board minutes were not consistently ratified at the next Board meeting. During 2015, minutes of meetings on 12 February, 23 February, 26 March, 25 June and 15 July were approved on 30 July.
<i>The Board must encourage a strong and independent students' association.</i>	<p>Staff and Students</p> <ul style="list-style-type: none"> In 2014/15, no student put themselves forward for election to the Student Association. The planned election was postponed.

Sources: Code of Good Governance for Scotland's Colleges (December 2014); and work undertaken by the auditor and Audit Scotland.

Non-compliance with the SFC Financial Memorandum

23. All public bodies that spend public money, either in commissioning services or directly providing them, have a duty to strive for economy, efficiency and effectiveness in their work. During 2014/15, the Board sought legal advice on a range of issues relating to the suspension of the Principal and the legitimacy of the SFC review of governance. By 31 July 2015, GCC had spent a total of £213,850. A breakdown of the total costs incurred and the purpose of the expenditure for each service is outlined in [Exhibit 3](#).

Exhibit 3. Costs incurred relating to Legal, HR and PR services during 2014/15¹¹

Service	Expenditure	Purpose of Expenditure ¹²
Simpson & Marwick LLP ¹³	£90,956	<ul style="list-style-type: none"> To provide advice in relation to employment law support To provide assistance in conducting a disciplinary investigation
Brodies LLP	£68,283	To provide advice to the Board in respect of: <ul style="list-style-type: none"> the SFC governance review the proposal by GCC's student association for a revised structure advice about its powers, duties and constitutional documents.
Thorntons Law LLP	£17,850	To advise GCC, the Board Chair and the Board in respect of various employment law matters related to the on-going disciplinary procedure involving the Principal, including: <ul style="list-style-type: none"> advice to members of the disciplinary committee administrative support in the disciplinary process.
John Brown PR Consultancy	£3,099	To provide PR/media services to the Board Chair and the Board following the decision to suspend the Principal.
Jan Scott HR Consultancy	£12,025	To provide HR support for the investigation into the Principal's suspension.
BDO	£20,451	An internal audit investigation into the process and expenditure associated with legal and management consultancy advice relating to: <ul style="list-style-type: none"> expenditure in respect of Simpson & Marwick connected to the disciplinary process relating to the Principal and associated advice legal fees in respect of Brodies LLP for the SFC's governance review spending on management consultants.
Regus room booking	£1,186	Cancelled room bookings originally made for the disciplinary hearing.
Total	£213,850	

Source: Information provided by GCC

¹¹ Between 1 August and 31 December 2015, a further £34,400 was spent on these services.

¹² Summary of extracts from engagement letters and other correspondence provided by GCC.

-
24. As part of the terms and conditions of the grant colleges receive from the SFC, they must comply with the SFC's Financial Memorandum. This provides clear guidance about the delegated financial limits within which colleges must operate. GCC did not comply with this Financial Memorandum throughout 2014/15, as outlined in the audit report for GCC.
 25. In February 2015, the Board Chair sought legal advice in relation to the suspension of the Principal. Simpson & Marwick LLP were appointed to provide this advice. Audit work has identified that:
 - Simpson & Marwick LLP were appointed without a competitive process.
 - GCC's own procurement processes were not followed in appointing Simpson & Marwick LLP.
 - There were no cost monitoring or controls in place for the first month, following the appointment of Simpson & Marwick LLP.
 - GCC exceeded the SFC's delegated limit of £25,000 for non-competitive action.
 - There was a lack of shared understanding between the Board Chair, the Board Secretary and the EMT regarding the arrangements for managing this specific external contract and establishing and monitoring the costs.
 26. In April 2015, GCC formally sought retrospective approval from the SFC for legal advice provided by Simpson & Marwick LLP between February and April 2015, as the delegated limit of £25,000 for non competitive action was exceeded. At that point, the SFC instructed GCC to cease using Simpson & Marwick LLP as there was a risk of them incurring additional costs.
 27. During 2014/15, GCC sought further legal advice from two other law firms (Brodies LLP and Thorntons Law LLP). GCC followed the correct procurement processes for the appointment of both of these law firms; Brodies LLP are GCC's existing lawyers and Thorntons Law LLP were appointed using the APUC framework. Fee caps were also put in place for services provided by Thorntons Law LLP.

GCC is taking action to address concerns in governance

28. Following the appointment of the Emergency Board in October 2015, GCC has put in place a number of actions to ensure it complies with the CoGG. This includes the development of a governance action plan. Examples of other positive steps include:
 - the appointment of a new Board Secretary in February 2016.¹⁴ Prior to this, GCC secured temporary Board Secretariat support from the University of Glasgow to ensure continuity at Board meetings
 - all Board and committee draft minutes are now distributed for agreement by the relevant Chair within ten days of a meeting. The minutes are then distributed to the Board members and the EMT

¹⁴ This post has now been renamed Clerk to the Board.

-
- EMT attendance and involvement at Board meetings
 - ongoing engagement with students including regular meetings between the Student Association and the EMT.
29. These actions lay the foundation in starting to address the significant concerns relating to governance at GCC during 2014/15.
30. GCC has developed an action plan in response to the key finding identified in the BDO report in relation to the procurement of legal services. This plan was discussed at a meeting of the Audit Committee on 25 November 2015. Examples of actions within the plan include:
- setting capped fees at agreed stages for all professional services appointments
 - sharing contractual documentation with relevant finance staff for all professional services
 - nominating a GCC staff member for any contract initiated by the Board, who will take responsibility for:
 - ensuring appropriate procurement processes are followed
 - establishing estimates of anticipated expenditure
 - monitoring ongoing costs
 - setting staged fees caps
 - providing training sessions to Board members to ensure they understand the relevant regulatory and procurement requirements within which GCC must operate.

Looking forward

31. Audit Scotland's analysis of Board minutes since October 2015 indicates that the Emergency Board is complying with the principles of the CoGG. There is evidence of clear and transparent decision-making and joint working with the EMT. There are also clear linkages from meeting to meeting, demonstrated through the effective use of 'matters arising' at Board meetings.
32. The Board Chair has been appointed to another post within the college sector from June 2016 and the remaining Board members are in office until September 2016. This presents a risk to GCC in terms of both succession planning and maintaining good governance, as it seeks to appoint a new Board. GCC has put plans in place to address these issues. GCC advertised for new Board members in January 2016 and expects to have the first round of appointments concluded by the end of April 2016. In addition, the new Board Secretary took up post in March 2016.
33. A formal induction for new Board members and an accompanying training and development programme will be critical to the success of the new Board. Planning for this needs to begin now. A skills matrix was conducted by the former Board which provided an overview of their skills. A similar exercise will be important for new Board members to help inform and target relevant training. It must have a clear focus on the CoGG and the college's Articles of

Governance to help ensure Board members fully understand their individual and collective responsibilities. GCC should also make use of national training and development programmes available. The new Board Secretary will play a pivotal role in setting this up.

34. The Board's remit requires an annual self-evaluation exercise and a process for evaluating the Board Chair and committee Chairs. It is important that the Board keeps its effectiveness under annual review so that it is focussed on continuous improvement and the right priorities for the college. Sufficient resources must be put in place to support such self-evaluation activity.

Conclusion

35. There are examples of significant concerns relating to governance at GCC during 2014/15. This is of clear interest to the Parliament and to the public. The Emergency Board and the EMT have taken positive steps to address the weaknesses identified within this report and the auditor's report. I have asked the auditors of GCC to monitor progress as part of their 2015/16 audit.

Appendix: audit methodology

A wide range of documents were reviewed as part of the audit work. This information formed the basis of the audit judgements and included:

GCC Board papers and other documentation

- Ordinary and extra-ordinary Board meeting minutes during 2013/14
- Ordinary and extra-ordinary Board meeting minutes during 2014/15
- Committee meeting minutes during 2013/14 and 2014/15
- BDO internal audit report and subsequent action plan
- Letters of engagement and invoices from legal firms and consultants
- GCC Governance Action Plan (in response to the Scottish Government Policy Note)

Guidance

- The Good Governance Standard for Public Services
- Code of Good Governance for Scotland's Colleges
- Scottish Funding Council's Financial Memorandum with Fundable Bodies in the College Sector
- GCC's Constitution and Articles of Association (August 2013) and the updated Articles of Association (December 2015)

Other reports

- SFC Governance review
- SFC Advice to Scottish Ministers
- Scottish Government Policy note
- External Review by Education Scotland

Interviews also took place with relevant stakeholders to discuss the chronology of events and to identify and provide additional documentary evidence. They included:

- Members of the Executive Management Team
- The Scottish Funding Council