Item 16
For Noting

Glasgow Kelvin College

Audit and Risk Committee – 29 November 2022

Governance Update

Report by Director of Corporate Services

1. Introduction

The purpose of this report is to provide an update to members in relation to the following areas of corporate governance:

2 - Copyright Licensing Agency Royalties Data Collection Survey 2022
3 - Ethical Standards Commission
4 - Code of Good Governance/Good Governance Steering Group
5 - In-Person Charity Trustee Training with Turcan Connell
6 - Complaint Escalation to SPSO

2. Copyright Licensing Agency (CLA) Royalties Data Collection Survey 2022 3 October 2022 to 18 November 2022

As members are aware, this survey ran between 3 October 2022 to 18 November 2022. The last survey was conducted in the College in 2017.

Prior to the CLA survey commencing, a refresher on Copyright was provided by Alan Rae, the sector Copyright expert. These sessions were delivered on-line and were well received by staff attending. The slides are attached as **Appendix 1** via the link below:

- Glasgow Kelvin College - The Story of Copyright

As part of this survey, the College also provided a list of 'favourite resources' used by each Faculty.

Top Publications and Websites
Faculties and Library Staff have supplied the following:

- **64 top publications**, of which:
  - 53 were Print publications
  - 9 were Digital publications
  - 2 were unspecified
- **28 websites**

Copies
College staff were asked to provide information on copies they made from published sources via a link to an online form. Over the course of the audit College Staff provided 36 responses, the breakdown is:

- 19 were copied from Print Books
- 9 printed from the Web

- 3 printed from E Books
- 3 printed from Newspapers
- 1 printed from a Journal
- 1 printed from Other

Audit and Risk Committee members will be kept apprised of any update we receive in relation to the Survey outcome.

3. Ethical Standards Consultation Questionnaire/Annual Report for 2021/22

This consultation paper invited comments on the Investigations Manual of the Ethical Standards Commissioner's Office in relation to the complaints handling process.

This questionnaire was considered by the Director of Corporate Services and the Secretary to the Board and a response submitted by the deadline date of 28 November 2022.

The Acting Ethical Standards Commissioner has also published his Annual Report for the year 2021/22; this is available at **Appendix 2** via this link.

In publishing, the Acting Commissioner, Ian Bruce said: *At the time of writing I continue to fulfil the role of Acting Ethical Standards Commissioner, following my temporary appointment on 20 April 2021. Although, as the report attests, our office has faced a number of challenges, we are very positive about the future. This summary of the year does little justice to the challenges we faced as an office and to the extraordinary efforts that the Senior Management Team and staff have gone to in order to repair an almost broken organisation and to restore trust in us and in the ethical standards framework in Scotland. We have worked very hard to implement all of the recommendations made by our auditors and have done so alongside acquitting our core statutory functions. At times, it has felt akin to rebuilding a plane in flight. We are very grateful for the constructive criticism as well as the support that we have received from the many organisations with a stake in our work.*

Key statistics for the year include:

- 330 complaints about the conduct of local authority Councillors and board members of public bodies were received during the year. These were processed as 164 cases. (238 complaints/130 cases in 2020/21)
- There were six hearings before the Standards Commission for Scotland (16 in 2020/21)
- 118 complaints about the conduct of MSPs were received. These were processed as 54 cases. (799 complaints/54 cases in 2020/21)
- 50.8% of the board members of regulated public bodies were women (51.7% in 2020/21)
- 8.6% of the board members of regulated public bodies declared a disability compared to 19.6% in the wider population (7.4% in 2020/21)
- We regulate appointment to 733 board positions on 99 public bodies
- There were 133 appointment rounds active in 2021/22 (98 in 2020/21)
- Staff turnover during the year reduced to 9% reflecting the key work undertaken to stabilise the workforce (2020/21: 60%)

4. Code of Good Governance/Good Governance Steering Group

An updated Code of Good Governance for Scotland's Colleges has recently been circulated by Colleges Scotland. The Good Governance Steering Group will be reviewing and revising the Code again during 2023 to ensure it remains current and in line with the imminent governance reforms. The updated Code and related documentation are attached as **Appendix 3** via this link.

These are listed as follows:

- Audit and Assurance Committee Handbook
- Code of Good Governance for Scotland's Colleges - September 2022
- Framework for the Development of Strong and Effective College Students' Associations in Scotland.
- Guidance Note - Conducting Externally Facilitated Effectiveness Reviews - September 2022
- Guide for Board Members
- OSCR Guidance and Good Practice for Charity Trustees
- Staff Governance Standard

The Director of Corporate Services and the Secretary to the Board are in the process of reviewing all above documentation and will ensure these are actioned accordingly. Furthermore, the Director of Corporate Services and Secretary to the Board have read the updated Code and this has been plotted against the old Code – refer to **Appendix 4** via this link. Changes to the Code are denoted in blue text and deletions are highlighted via strikethroughs.

The Director of Corporate Services and Secretary to the Board will note work being undertaken against each item and, along with the Governance and Executive Support Manager, will ensure this is being documented to show compliance; any gaps uncovered will be closed. This will form part of the routine Externally Facilitated Effectiveness Review.

In relation to the Good Governance Steering Group we are advised of the following:

- **Trade Union Nominees on Boards** – there has been a delay in the Scottish Government publishing its 12-week consultation on the Draft Order. It is now planned that the consultation will run between the end-October 2022 and mid-January 2023. There is no change to the implementation date of August 2023.

- **Review College *Sector Board Appointments: Ministerial Guidance 2014*** – The intention is now to publish the 6-week consultation on the Guidance after the Trade Union Nominees on Boards consultation has been published, so that changes to the Guidance will reflect governance reforms and ensure that it is up to date as possible.

- **Externally Facilitated Effectiveness Reviews** – in line with the agreed changes to conducting board externally facilitated evaluation reviews 'every three to five years'. As aforementioned, the updated Guidance Note is contained within the link at **Appendix 3.**

  Given the very positive Externally Facilitated Effectiveness Review which was previously carried out in 2021, it is anticipated that the College could extend its review to the maximum period of five years.

5. In-Person Charity Trustee Training with Turcan Connell

The Director of Corporate Services attended the above training in Glasgow on 10 November 2022. This was a useful refresher event which detailed the legal obligations of being a charity trustee. The presentation is attached at **Appendix 5** via this link.

6. Complaint Escalation to Scottish Public Services Ombudsman (SPSO)

Notification has been received that an individual has escalated their complaint to the SPSO as they are discontent with the College response. The SPSO is the final stage for complaints about public service organisations in Scotland. A deadline date of 30 November 2022 has been requested for the College to provide all necessary documentary evidence for SPSO to review. The Director of Corporate Services and the Corporate Support and Administration Manager will attend to this matter by the date requested.

7. Resource Implications

There are no negative resource implications arising as a consequence of matters contained within this report.

8. Impact on Students

There are no negative impact on students identified as a consequence of anything within this report.

9. Equalities

There are no equality implications arising as a consequence of matters contained within this report.

10. Risk and Assurance

This report seeks to provide members with assurance that a number of governance matters related to the smooth running and operations of the College are being taken forward accordingly and will be carefully handled.

11. Data Protection

There are no data protection implications arising as a consequence of this report.

12. Recommendations

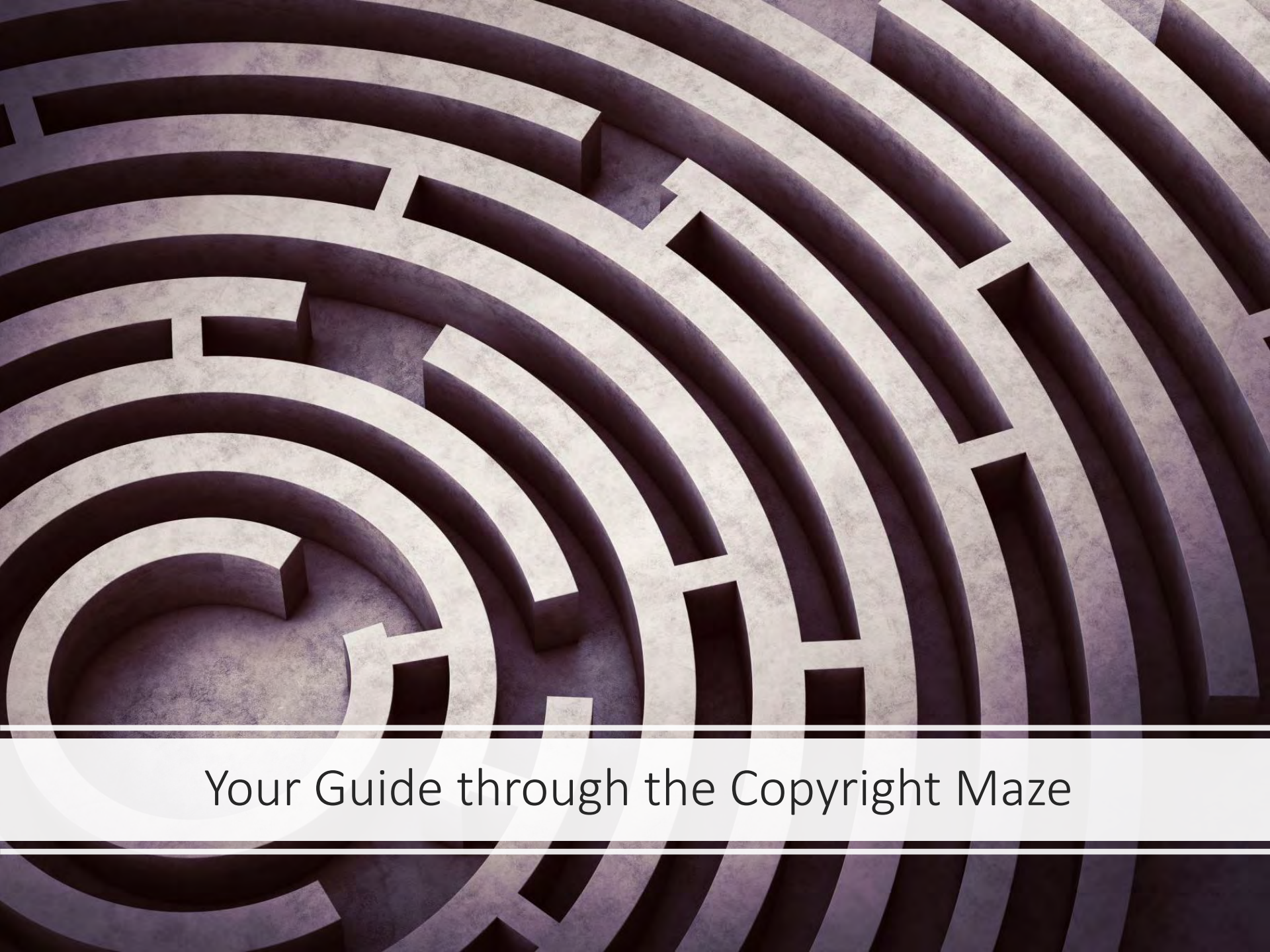
It is recommended that members note the content of this report and appendices.

13. Further Information

Further information can be obtained from Lisa Clark, Director of Corporate Services - lisaclark@glasgowkelvin.ac.uk

Lisa Clark
Director of Corporate Services
November 2022


Glasgow
Kelvin
College



Your Guide through the Copyright Maze



Alan Rae

- A copyright enthusiast
- Passionate about copyright
- Passionate about golf
- Passionate about life
- Copyright adviser for 30 years
- Not a solicitor!!!

Hello

- Copyright came into my life in 1988 with the introduction of the Copyright Designs and Patents Act. Since then, I have worked with colleagues throughout Scottish FE, helping solve copyright issues and offering guidance to colleges on copyright policy and strategy
- During that period, teaching and learning moved from analogue to digital. Copyright kept developing with changes to legislation and Colleges also became responsible for dealing with their own copyright licensing.
- When I started my copyright career, photocopiers were all the rage and there weren't too many issues to deal with.
- That's all changed and there are many copyright challenges in Colleges now, dealing with licensing, ownership of copyright, the shift from analogue to digital platforms and what education is/is not allowed to do.
- To deal with these challenges, it has become an objective of mine to do as much as I can to raise awareness of copyright and to encourage copyright literacy.
- That's what this module is intended to do – be aware and be literate.

Why this resource?

- This is a resource designed to raise awareness of copyright in further education and to improve copyright literacy in the FE community
- The content is, as far as possible, jargon-free
- The content can be accessed from a variety of starting points
- There are resources within resources
- It is not intended that the reader slavishly works through every single slide – pick and choose as you require
- The resource is licensed for staff and learner use at Glasgow Kelvin College and may not be transferred to any other educational establishment without the written permission of the author.
- It is the intention of the author to update the resource at appropriate times – and to add relevant case studies from time to time.

Contents

- Copyright background
- What is copyright?
- Where is copyright?
- Importance of copyright
- Businesses of copyright
- Educational licences
- Educational exceptions
- Risks
- Ownership of copyright
- Copyright for creative people
- Puzzles, Teasers, questions
- Image Copyright
- A Cautious Case Study
- Copyright and the VLE
- YouTube
- Alternative Copyright Landscape
- Who wants to be a millionaire?



Wait a minute!

There's more to copyright than meets the eye, and in true 21st century practice, I must include a disclaimer before we go any further



Dire legal warning

I'm not a solicitor.
I would like to be, but I'm not!
Anything I say, demonstrate or illustrate in what I hope is an entertaining and informative resource – please, just take it as information, not legal advice.
Thanks very much

However

Although I am not a practicing solicitor, I am qualified in copyright. I have a post graduate diploma in UK, EU and US copyright law from King's College, London.

I also have 34 years of copyright experience, starting off in Scottish FE and in recent years, while still assisting colleges, I also work in the business sector and have added Trademark guidance to my repertoire

I have contributed to copyright panels and advisory boards and was delighted to sit on the Board of the much-missed Copyright Hub project – a story to be told at length over a refreshment!

And I run my own consultancy. It's appropriately called © Here and further information and all sorts of random copyright knowledge can be found on my badly maintained website www.copyrightscotland.co.uk (it's completely my own fault that it is poorly maintained!)

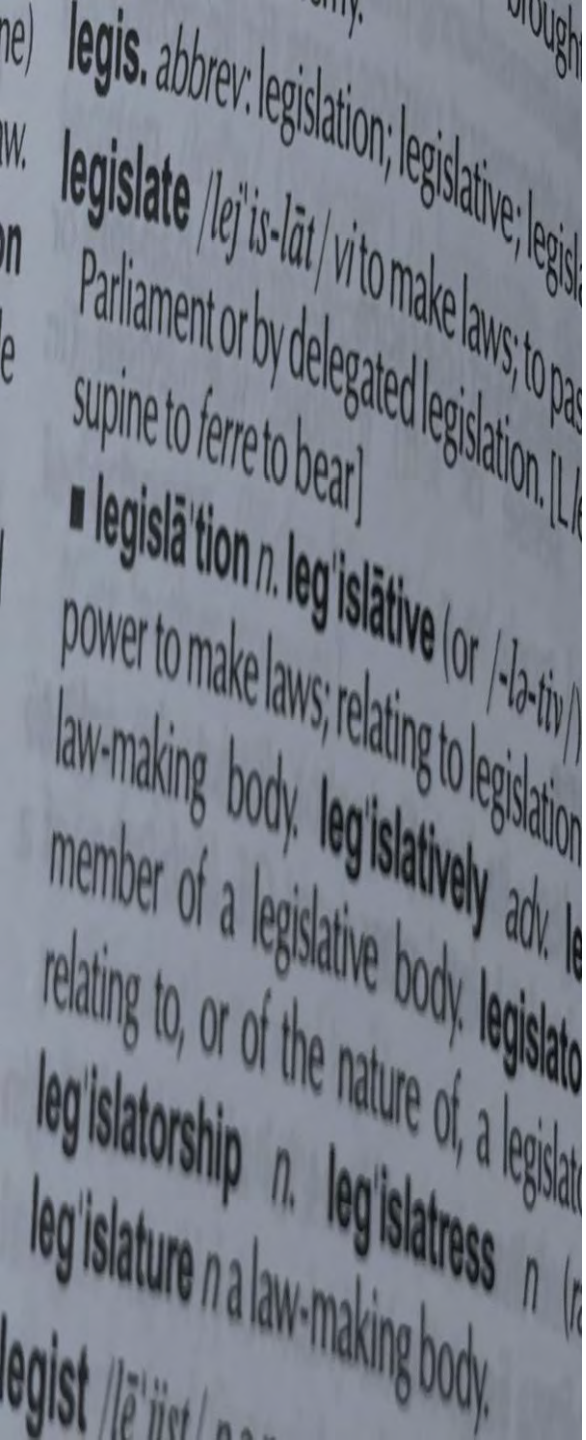
Copyright

Intellectual Property

- Copyright – not registrable
- Patents - registrable
- Trademarks - registrable
- Designs – registered and unregistered
- Confidential information/Trade secrets

- Copyright is only one part of the Intellectual Property umbrella that offers legal cover to the fixed expressions of ideas
- The other aspects are no less important and please be aware that there is often overlap with a “work” potentially being protected by more than one of the IP components





Appropriate UK legislation

For the purposes of this resource, the appropriate legislation is –

The Copyright, Designs and Patents Act (1988) as amended (and it's been amended quite a few times!)

The act will be referred to as the CDPA in this resource

Let’s start with my favourite copyright quotation – it comes from an unexpected source!

"The fact that our system of communication, teaching and entertainment does not grind to a standstill is in large part due to the fact that in most cases infringement of copyright has, historically, been ignored"

Mr Justice Laddie, 1996



It's a free-for-all, then? That's what the judge was implying?

Sadly not – what he says, and he was one of the most respected IP judges, is not to be taken too literally

When you are working in a public environment, either as a creator and/or a consumer of content that can be protected by copyright, you must still be aware of risks

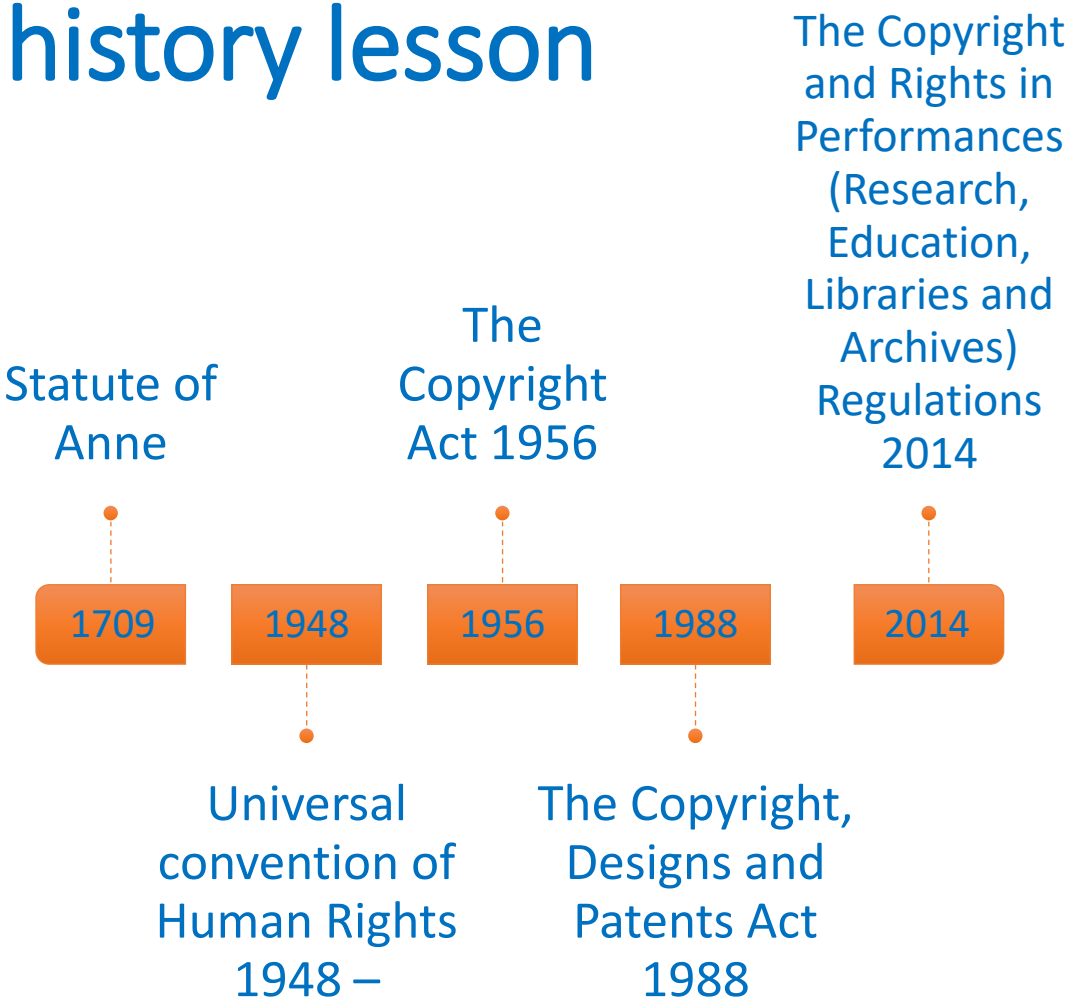
Risks are very important in the digital age – while you can trace your own work, at the same time, you're under scrutiny of other creators and rights holders, making sure that you're not "borrowing" from them

It’s the Law!

- The single point of legislative reference throughout this resource is the Copyright, Patents and Designs Act, 1988 (as amended) (CDPA)
- Copyright is just one aspect of the overall concept of Intellectual Property (IP) and this is legislated in the UK Government. IP is not a delegated responsibility.
- The Scottish courts can rule on IP matters, and if they do, it is usually more to do with the law of contract, rather than any detail of the 1988 Act.



Copyright – a short history lesson



Liking or not liking copyright doesn't matter – being aware of it does

- Copyright isn't everyone's cup of tea – largely due to ignorance? Or fear?
- In our digital world there is a copy culture relating to videos, music, games, streaming, downloading, cut and paste, sharing, social media, e-mail (attachments such as images, sound files etc could be someone's copyright)
- Copying is second nature to so many people, thanks to technology and a lack of copyright awareness.
- BUT copyright is covered by UK law, just as Health and Safety, Employment law, consumer protection, equality, diversity, equal rights etc etc and the penalties for infringement can be severe – both for the individual and organisation
- Your opinion of copyright may be determined by your position – creator or consumer.
- In education, we have little choice – we must be seen to be doing the right thing. We can't afford to be sued by rights holders for infringing their content, nor can we encourage our learners to ignore copyright – it's increasingly likely that they will leave FE and become involved with businesses that rely on Intellectual Property.

Liking or not liking copyright doesn't matter – being aware of it does

- The construction workers that train in colleges don't go to workplaces without a full knowledge of Health and Safety
- The care staff don't leave without knowledge of first aid, risk assessments, moving and handling
- The hairdressers study chemistry of hair and the likely reactions on their clients of all the products that are available
- The chefs need to know everything there is to know about food hygiene – their work could literally be a case of life or death!
- The electricians are fully trained in all he relevant statutory regulations adept at wiring.
- So why shouldn't the artists, graphic designers, journalists, illustrators, photographers, programmers, videographers, actors, dancers, fashion designers get the full information about copyright?

What is Copyright?

What is Copyright?

- Simple
- Complex
- Confusing
- Frustrating
- Enabling
- Relevant
- Expensive
- Profiteering
- Fair





What is Copyright? (2)

- Yes, it is all those things, and it's very important to teaching and learning in all educational sectors
- Our teaching and learning resources are either created by College staff, or they are bought in from specialist publishers, or we use legislation to develop them without cost to the College.
- Whichever way the resources are created, they are subject to copyright
- Copyright is determined by legislation and managed by licensing
- Lack of attention to copyright can result in both financial and reputational loss to a College
- We can add "essential" to the previous list

What is Copyright (3)?

Copyright law, as part of the larger umbrella of Intellectual Property Law, is the legal protection of original, fixed, creative work in the form of literary, dramatic, musical or artistic works, sound recordings, films, broadcasts, and databases

In other words – “other people’s stuff”



Expressions, not ideas, are copyright –

- Text
- Photographs
- Cartoons
- Sculpture
- Fine art
- Illustrations
- Music notation
- Sound recordings
- Moving images



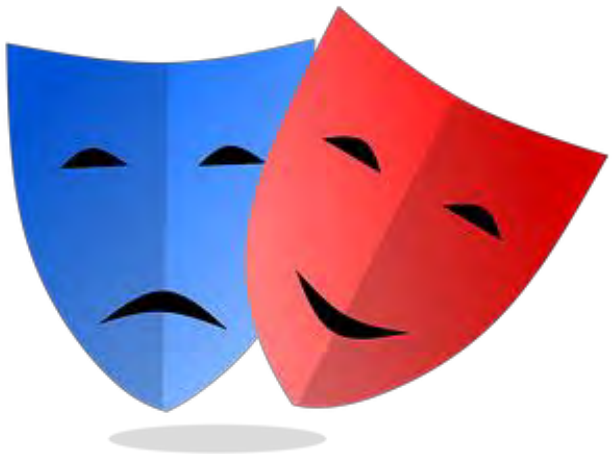
Let’s start with the basics – copyright is applied to “works” – creations that fall into various categories

- Literary
- Dramatic
- Musical
- Artistic
- Sound Recordings
- Films
- Broadcasts
- Databases
- Published Editions

Literary works

Books	Newspapers	Journals	Magazines
Instructions	Song lyrics	Blogs	Advertising copy
Poems	Lesson plans	Powerpoint presentations	Resource materials

Dramatic works



- Plays - directions and actions
- Screenplays for films
- Scripts for plays and musicals
- Choreographic notation
- Choreographic shows
- Scenarios for a film (but not the film itself).
- **Any work that is intended to be performed dramatically is a dramatic work.**

Musical works

- A ‘musical work’ is a 'work consisting of musical notation, and does not include any words or action intended to be sung, spoken or performed with the music’. The “words” and ”actions” are covered by “literary” and “dramatic” works
- For a work to attract musical copyright protection, there are three essential ingredients:
- The work must consist of 'music'. Music is distinguished from 'mere noise' as being a combination of sounds for listening to and which produces effects of some kind on the listener's emotions and intellect. A musical work also comprises all those 'elements that make some contribution to the sound of the music when performed, such as performing indications, tempo and performance practice indicators’
- The Work must be 'original'. An original work is a work which expresses the intellectual creation of an author
- The Work must be 'recorded' in some form (this might be a recording on something like a laptop or even a smart phone—it doesn’t need to be done by a professional).



Artistic works

- Photographs
- Illustrations
- Paintings
- Cartoons
- Visualisations
- Paintings
- Drawings*
- Diagrams
- Maps
- Charts
- Plans
- Engravings
- Woodcuts
- Works of Artistic Craftmanship**

Sound Recordings

Recordings of speech and/or music can be recorded as -

- Analogue or digital
- Vinyl, CD
- Podcasts
- Audio Books
- Sound files

Note:

The sound track of a film for the purposes of copyright is not a sound recording but is regarded as an integral part of the film



Films

A “film” means a recording on any medium from which a moving image may by any means be reproduced



Broadcasts

- Broadcasts are defined as “an electronic transmission of visual images, sounds or other information
- Note that internet transmissions are not broadcasts unless they are being transmitted at the same time as a ”conventional” broadcast from an organisation such as ITV, BBC, C4
- Internet transmissions – also known as ‘streaming’





Database Rights

“a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means."



Published editions

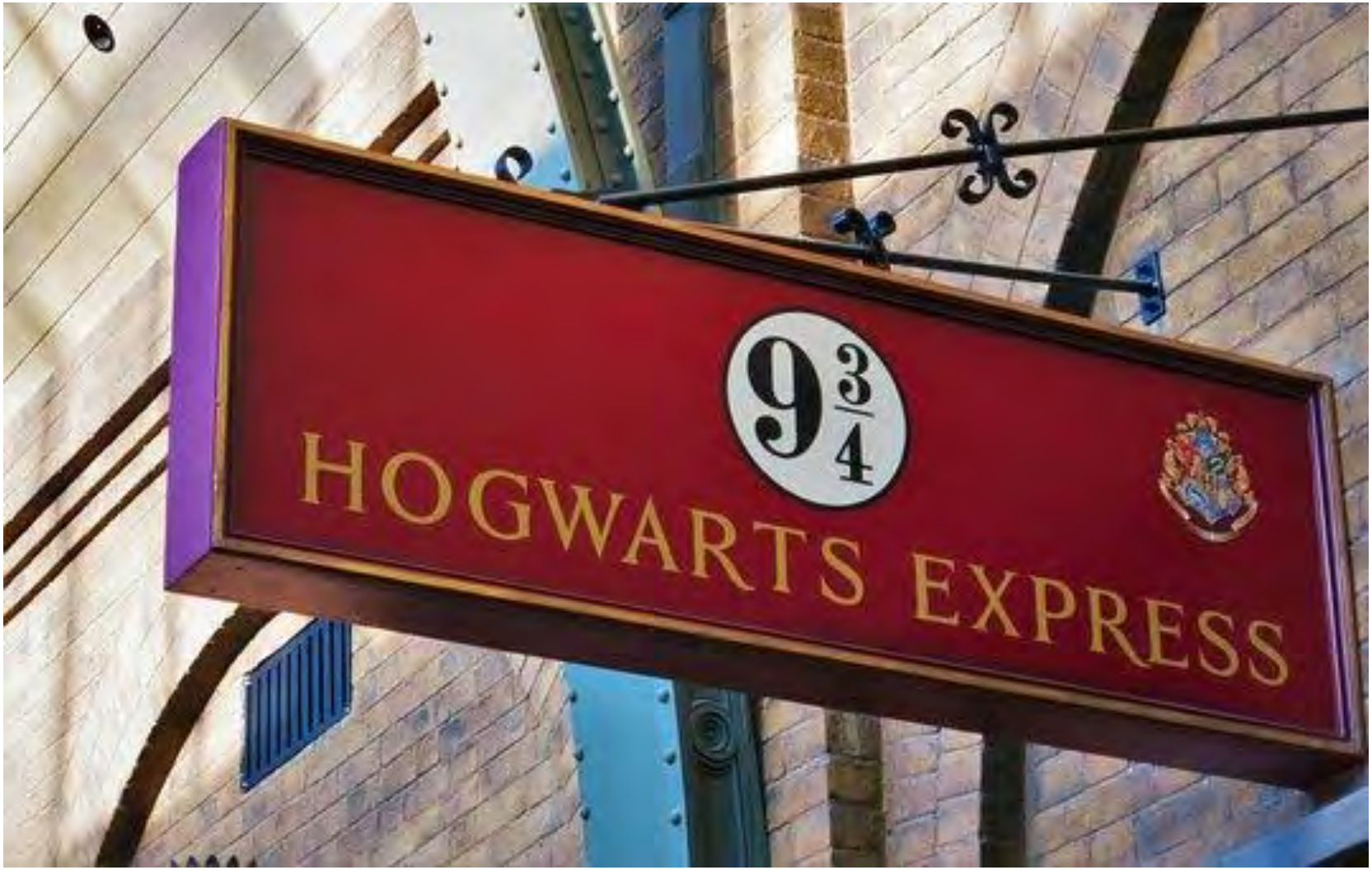
- This is a specific right exploited by publishers who have a copyright to the way in which a text is laid out

- Margins
- Fonts
- Pagination
- Margins
- Are all included in this right

- This means that although an author may be out of copyright, the layout of a text written by them is still in copyright for 25 years. If you want to copy with impunity, find a book edition that is more than 25 years old and is written by an author who died at least 70 years ago.

Testing

testing


9 3/4
HOGWARTS EXPRESS

How many works protected by copyright exist in any or all of the Harry Potter films?

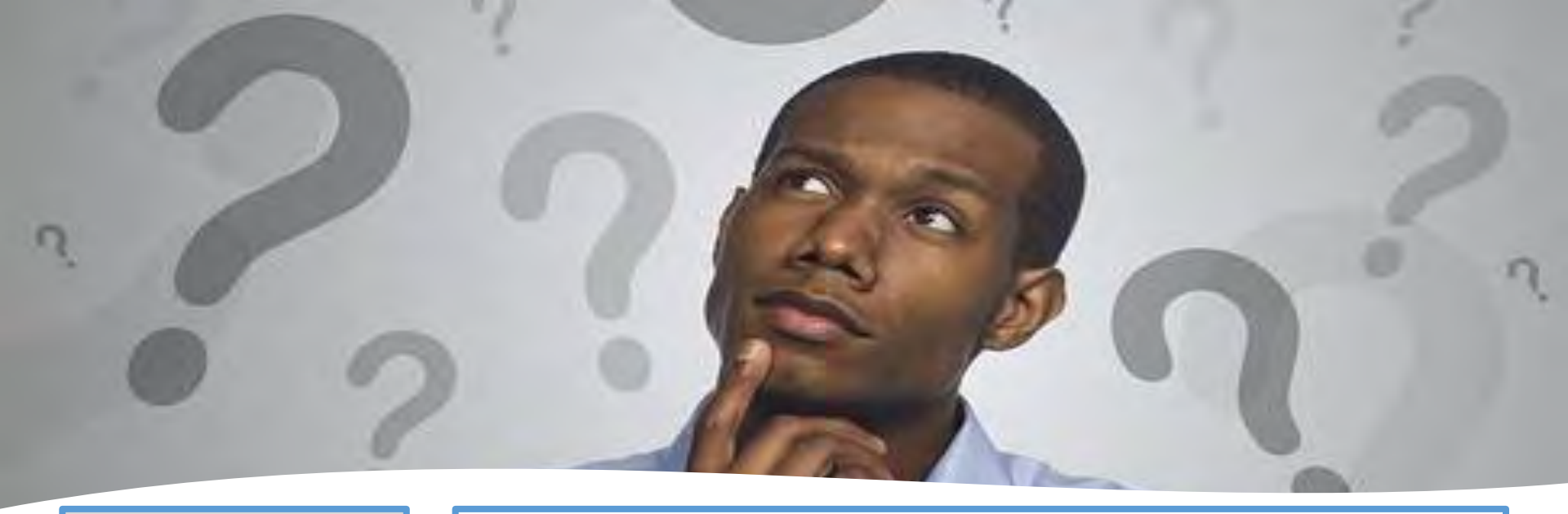
Basic rights	Secondary rights	Merchandise
Original text	Video/DVD	Books
Screenplay	Soundtrack	Video games
Script	Merchandise	Board games
Artwork	TV	Bedding
Music	Cable	Toys
Lyrics	Satellite	Stationery
Costumes	Translations	Crockery
Scenery	Streaming	And the list goes on ……
	Spin off projects	



Have we got an answer to the question yet?

What is copyright?





Still thinking about the answer?

- Copyright is a legal concept to protect creators and their creations from wholesale **infringement** by others.
- You could be one of those “others”. Colleges devise learning programmes for students – those programmes require content – text, images, video, sound – all covered, as we have seen, by the various categories of ”works” protected by copyright
- That content can be created entirely within the college – or more likely, there will be a combination of content created by the staff (and students) and content either commissioned or licensed from third parties.
- That content may come with no cost – it may not
- Commissions for original work and licences will usually be paid for, but we now have licensing, called “Creative Commons” – more about CC later in this module.



Back up a moment!

what's infringement?

What do you do to deserve a red card?

The red card is displayed, when, without the creator's permission, one or more of the following happens –

A work is copied without permission from the creator

Copies of the work are distributed to the public

The copies of the work are rented or lent out to the public

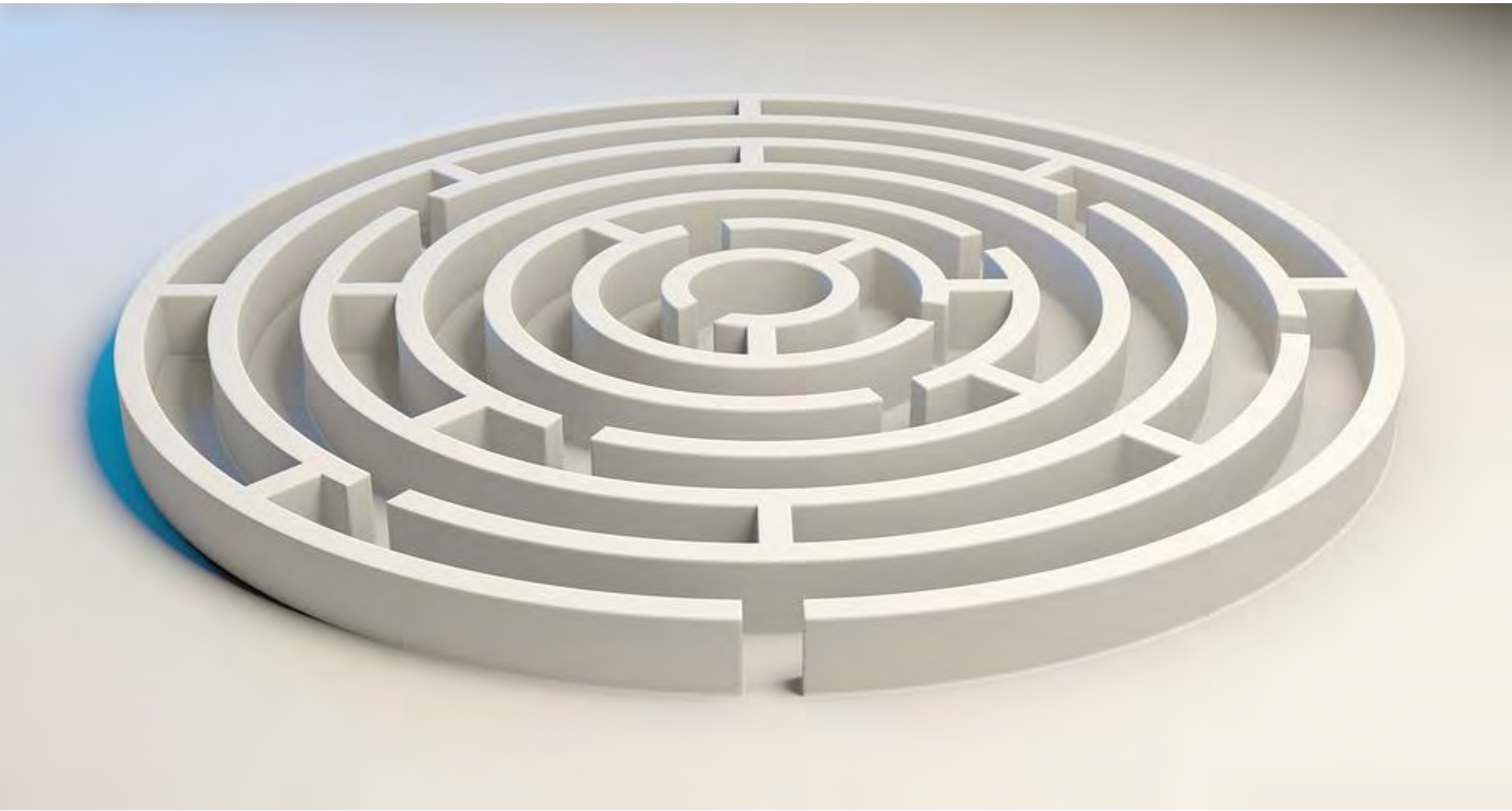
The work is performed, shown or played in public

The work is communicated to the public (ie posted on the internet – web, social media etc)

The work is adapted in some way (eg translated, made into a film etc)

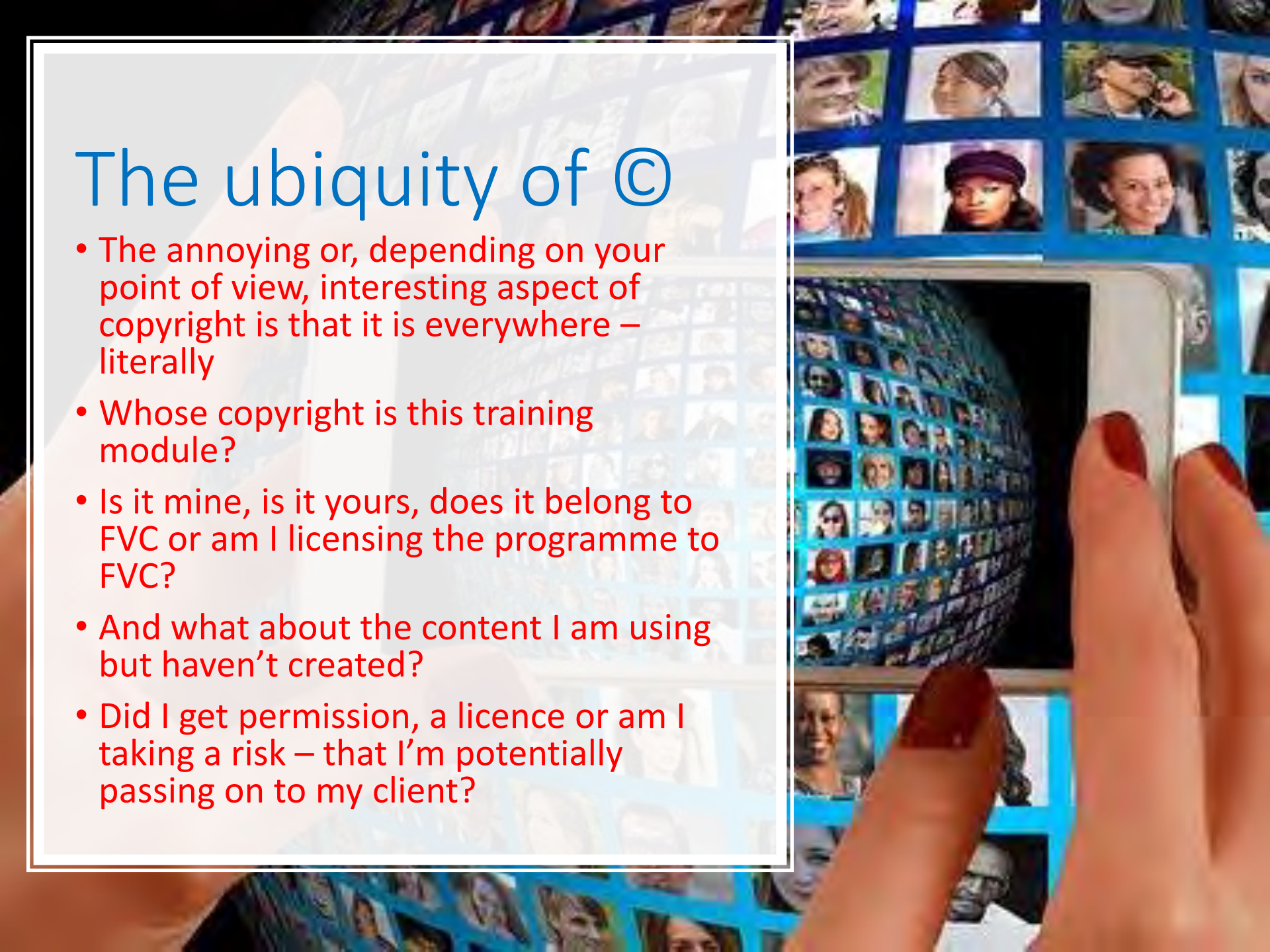
Where is copyright?

We think we might know a little more about © - where do we find it?

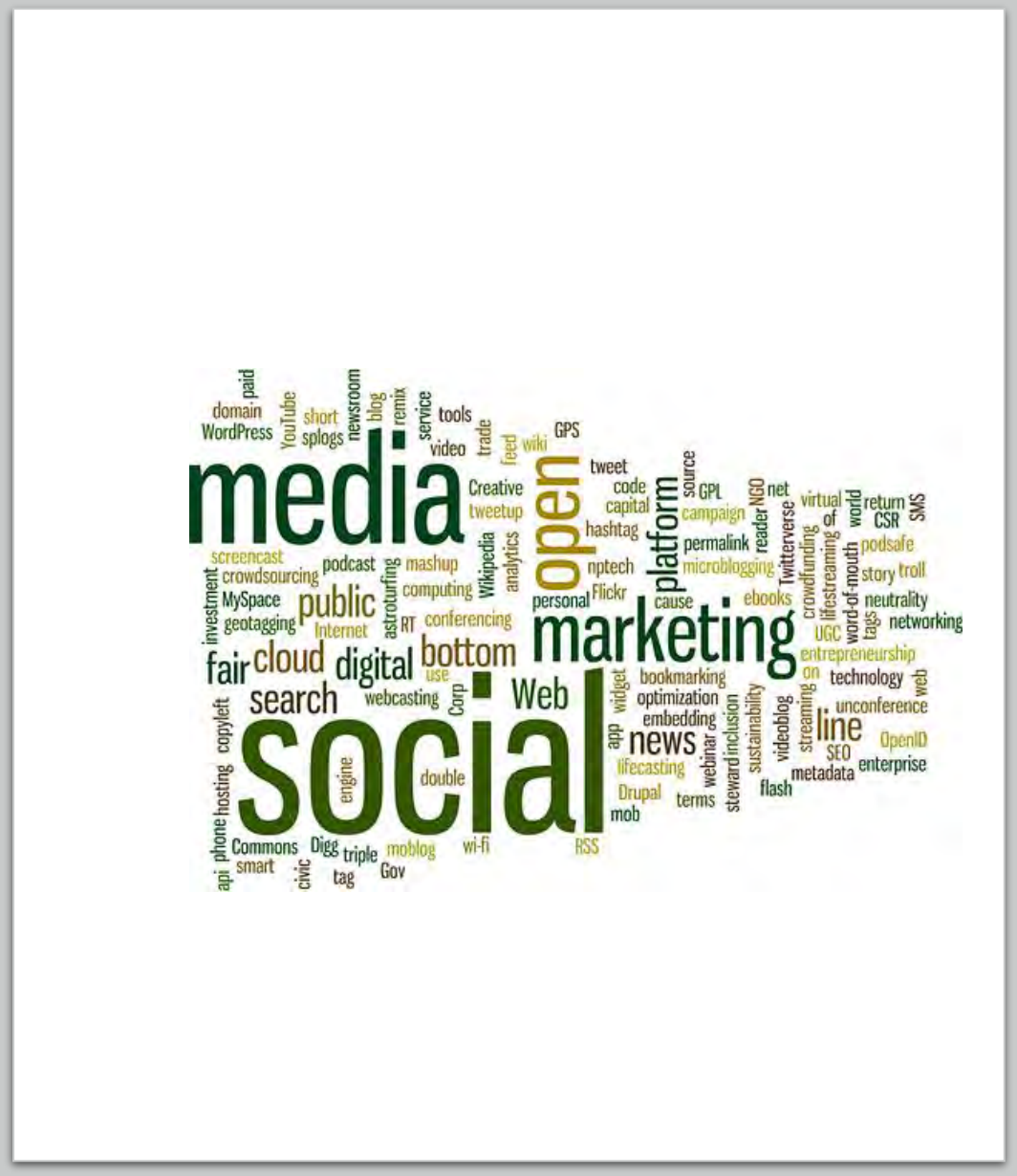


The ubiquity of ©

- The annoying or, depending on your point of view, interesting aspect of copyright is that it is everywhere – literally
- Whose copyright is this training module?
- Is it mine, is it yours, does it belong to FVC or am I licensing the programme to FVC?
- And what about the content I am using but haven't created?
- Did I get permission, a licence or am I taking a risk – that I'm potentially passing on to my client?



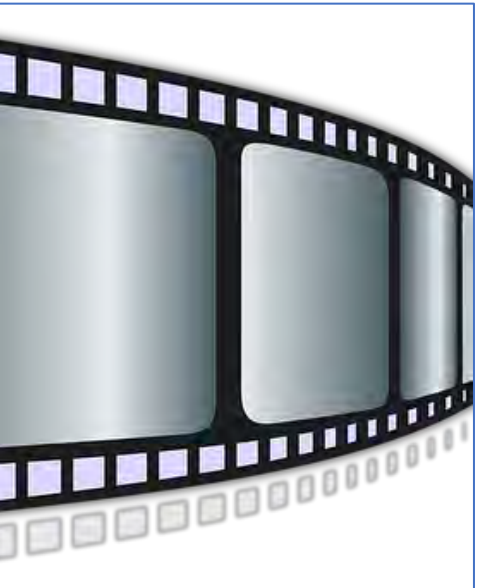
- From the moment we wake up, we are assailed with copyright. Thankfully, most of it passes us by and we come to live with it …….
- ……. until it begins to impact directly on our lives.
- In the case of a college, there will be content that is created in-house and may need to be protected from infringement by others in the education sector, for example
- There will also be the content that isn't created in-house. What happens then? Is it just "lifted" or "borrowed" – both actions are very easy in the digital world – but the digital world is watching!
- Putting aside any criminal intent, the external content will most certainly require permission, payment and/or a licence
- Or it could be covered by an exception in the 1988 Copyright Act – more on this later
- What content might you/your college require that you don't create yourselves?













Other people's content for education

- Text – books, journals, newspapers
- Images – photographs, illustrations, cartoons, artwork,
- Broadcasts – Terrestrial TV, Cable TV, Streamed TV, radio, podcasts
- Music – composition, recordings, CD, streaming
- Moving Images – movies, social media content
- Sounds – music, spoken word, sound effects
- Apps – I think that of all the changes in the digital world, apps epitomise the need for copyright – all their content and the way the app is designed/programmed is protected by copyright.













Other people's content every day

- Radio = music, speech, broadcast
- TV = music, text, speech, images, broadcast
- Newspapers = text, images, adverts, layout
- Phones – video, podcasts, images, movies, apps
- Billboards – text, images, design
- Cereal box – images, text, logos

There's more

- Just before we move into copyright in a little more detail, please note that copyright is not the only aspect of the wider term "Intellectual Property"
- As the use of "property" suggests, the elements of IP can be considered assets of an organisation. The separate elements can be valued, bought, sold, and licensed. They can also form part of a personal estate to be bequeathed – there are a number of wealthy people in the world who have continuing royalties from books, music, movies etc as part of their inheritance– nice work if you can get it!££$$
- Anyway, jealousy apart, IP is becoming increasingly important as the world becomes more service oriented rather than physical product oriented.
- A significant number of global companies don't make anything – they rely on content ownership, rights to that content and the revenue they earn from licensing the content. Think publishers!!
- Here are some examples – and these are only music publishers – they're not the ones that actually manufacture anything – they just hold the rights to the music and/or lyrics

Neil Diamond's song catalogue including hit “Sweet Caroline” bought by Universal Music Group

Bob Dylan sells entire publishing catalogue to Universal Music

Sting sells back catalogue to Universal Music in deal worth up to $300m – February 2022

Bruce Springsteen Sells Music Catalog in Massive Deal with Sony







Sony and Universal? Yes! Hipgnosis? - Never heard of them!

In addition to acquiring songs and songwriter catalogues, the company **manages the playlist, cover, interpolation, and synchronization revenues of its IP**. Hipgnosis Songs Fund has raised £1.052 billion to fund acquisitions since it was established in 2018.



There's still more!

The elements of IP are -

- Patents
- Copyright
- Trademarks
- Registered designs
- Unregistered designs
- Trade secrets

- The distinctions of the elements are that patents, trademarks and registered designs can all be registered
- Copyright, unregistered designs and trade secrets cannot be registered
- Registration of Trademarks, patents and designs is managed in the UK by the Intellectual Property Office
- Note – IP is not a delegated power

The importance of copyright



Why is copyright important?

Unless you create your own works, you'll be using other peoples' content and other people, while maybe happy to have their content used, may look to have some recognition either in the form of payment or acknowledgment, or both, usually by means of a contract

Why is copyright important?

- It could be your livelihood
- Working for an organisation that relies on Intellectual Property – copyright, patents, trademarks, designs
- You might become a photographer
- You might become an illustrator
- You might become a graphic designer
- You might become an author
- You might become a journalist
- You might become a hairdresser (do you know about music copyright?)
- OR – you might be educating people to become any of the above

The Business(es) of Copyright


NON SOLUS
ELSEVIER




THE
Sun


PEARSON
Education


Disney


BBC


WARNER BROS. PICTURES


THE TIMES


The Herald


theguardian

Copyright Businesses



gettyimages



BARRATT HOMES

endemol





HiT entertainment

Copyright Businesses













Is it all about rights?

Even companies that make physical goods, rather than provide services, will still have Intellectual Property assets

Designs – fabric, structures

Formulae – chemicals, paints, cleaning materials

Recipes - food

Images – used for marketing, packaging

Text – instructions, marketing, advertising

Logos – used for registered trademarks

Patents – how their inventions work

Confidential agreements with suppliers and customers



Is it all about the rights?

Just what rights are we talking about?

When a work is created, rights are immediately attached to that work and creators can allow -

- Copying of their work
- Issuing of copies of their work
- Renting and/or lending the work to the public
- The work to be performed, shown, or played in public
- The work to be communicated to the public (this tends to be interpreted as the work being shown on the internet)
- Adaptations to be made of the work

Educational Licensing

Let's start with Collective Management Organisations (CMOs)

- Copyright Licensing Agency (CLA)
- Educational Recording Agency (ERA)
- NLA Media Access
- PRS for Music
- Phonographic Performance Limited (PPL)

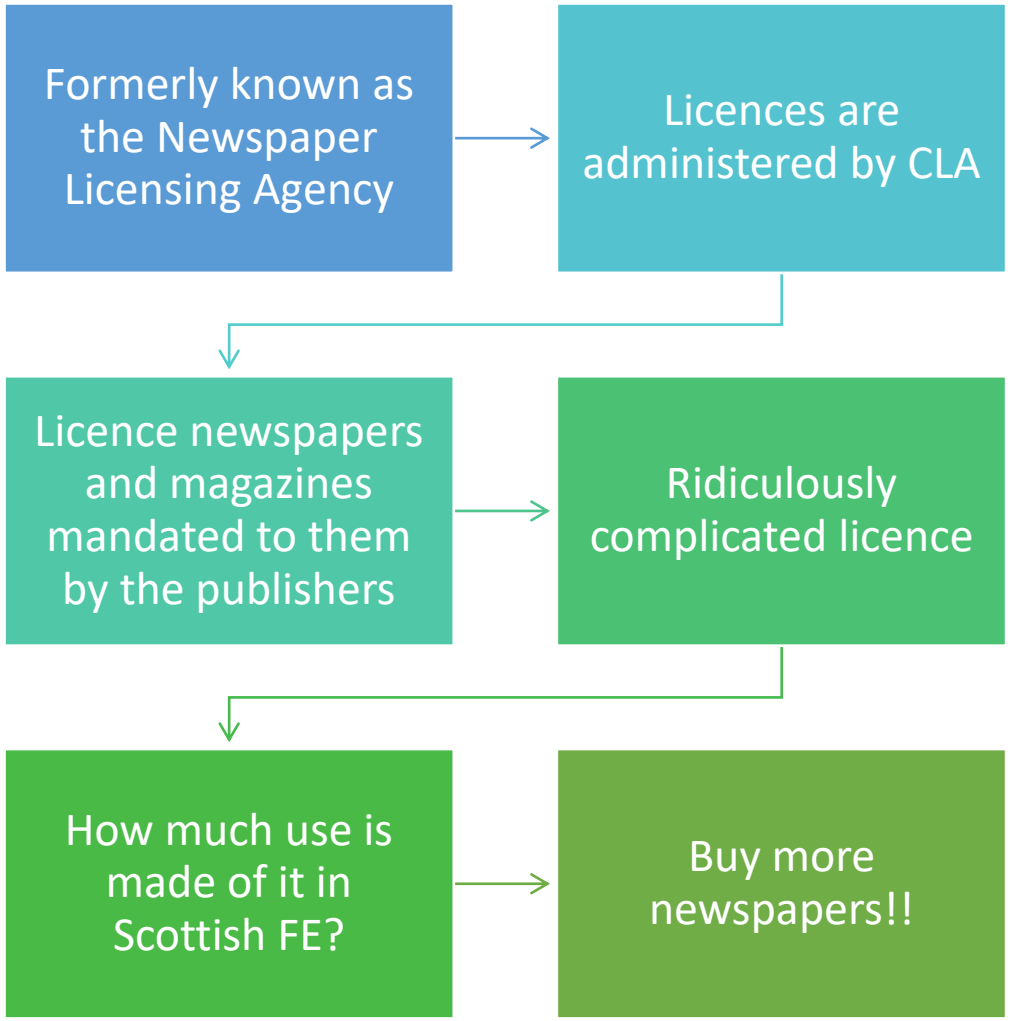
CLA Copyright Licensing Agency

- Licence, on behalf of Publishers Licensing Services (PLS) and Authors Licensing and Collecting Society (ALCS) who are CLA's two stakeholders
- Licence photocopying and scanning of books, journals etc mandated to them by the authors and publishers
- Claim to licence some e-works and web sites
- Are paid approx £750,000 by Scottish FE annually
- Operate different licences for primary, secondary, FE, HE, pharmas and business sectors

ERA Educational Recording Agency

- Licence the recording and storage of television programmes mandated to them by their stakeholders – BBC, ITV, C4, C5, PRS, PPL, MCPS, Musicians Union, Equity, DACS
- Now working in collaboration with Box of Broadcasts (BoB), Clickview and Planet e-stream – if you use one of these services, you must have an ERA licence
- Have moved well with the times, moving from analogue to digital
- Have new projects collating programmes to courses
- Are unsure how to deal with YouTube and other similar streaming services
- Receive in the region of £200,000 from Scottish FE

NLA Media Access



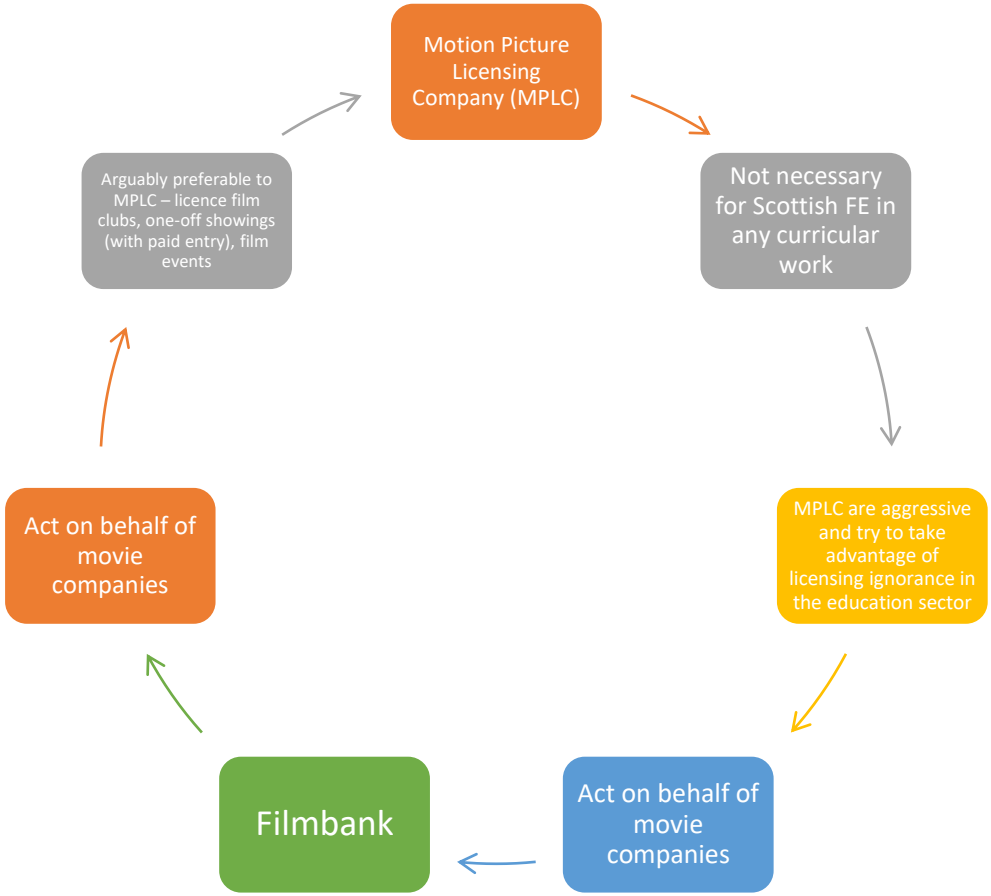
PRS for Music and PPL

- These agencies licence the playing of music on behalf of publishers, songwriters and composers (PRS)…. and -
- Licence the playing of recorded music on behalf of musicians and record companies (PPL)
- Is either licence actually required in a college?
- Only if music licensed by singers, songwriters, musicians, record companies is used for non-curricular purposes
- Otherwise, the college, if only playing music for curricular purposes, can rely on s34 of the CDPA 1988
- There are grey areas – training restaurants, hair and beauty training salons
- Currently in discussion with both agencies to attempt a simplified and joint licence
- Scottish FE pays approx £100,000 jointly to PRS and PPL

PRS for Music – formerly known as the Performing Rights Society

PPL – Phonographic Performance Limited

Other licencing organisations




TERMS
& CONDITIONS

Licensing – what you need to know

- Licensing is key to copyright.
- The owner of the work(s) has the rights to licence all or part of the copyright to third parties for a variety of uses
- Each licence should be in writing, signed by both creator and user, and have the terms and conditions that apply to the use being made
- Licence to allow multiple copies of a book to be printed
- Licence to allow a script to become a screenplay for a movie
- Licence to allow music (lyrics and/or notation) to be recorded
- Licence to allow those recordings to be copied and distributed
- Licence to allow music (lyrics and/or notation) to become a soundtrack
- Licence to allow characters to be merchandised

Other forms of licensing

- College to College – within a consortium, perhaps
- College to a third party – educational publisher?
- Third party to you – Netflix, Disney, Amazon etc
- Exclusive/Non-Exclusive – for one or many licensees
- Assignation – signing over all rights and giving up claims to ownership

Educational Exceptions



I cannot emphasise enough the need for all creators and users of content to familiarise themselves with the “exceptions” in the CDPA – they are very helpful to educational establishments in the creation and delivery of teaching and learning resources.

Exceptions are not a justification for wholesale copyright infringement by excessive copying, scanning, posting and printing, but, applied carefully, they can make the creation of those resources more effective.

And they are a way of easing the reliance on and cost of collective licences such as CLA and PRS/PPL in particular

Knowledge of Exceptions is very useful - your attention is requested

"To every rule, there is an exception" (anon)

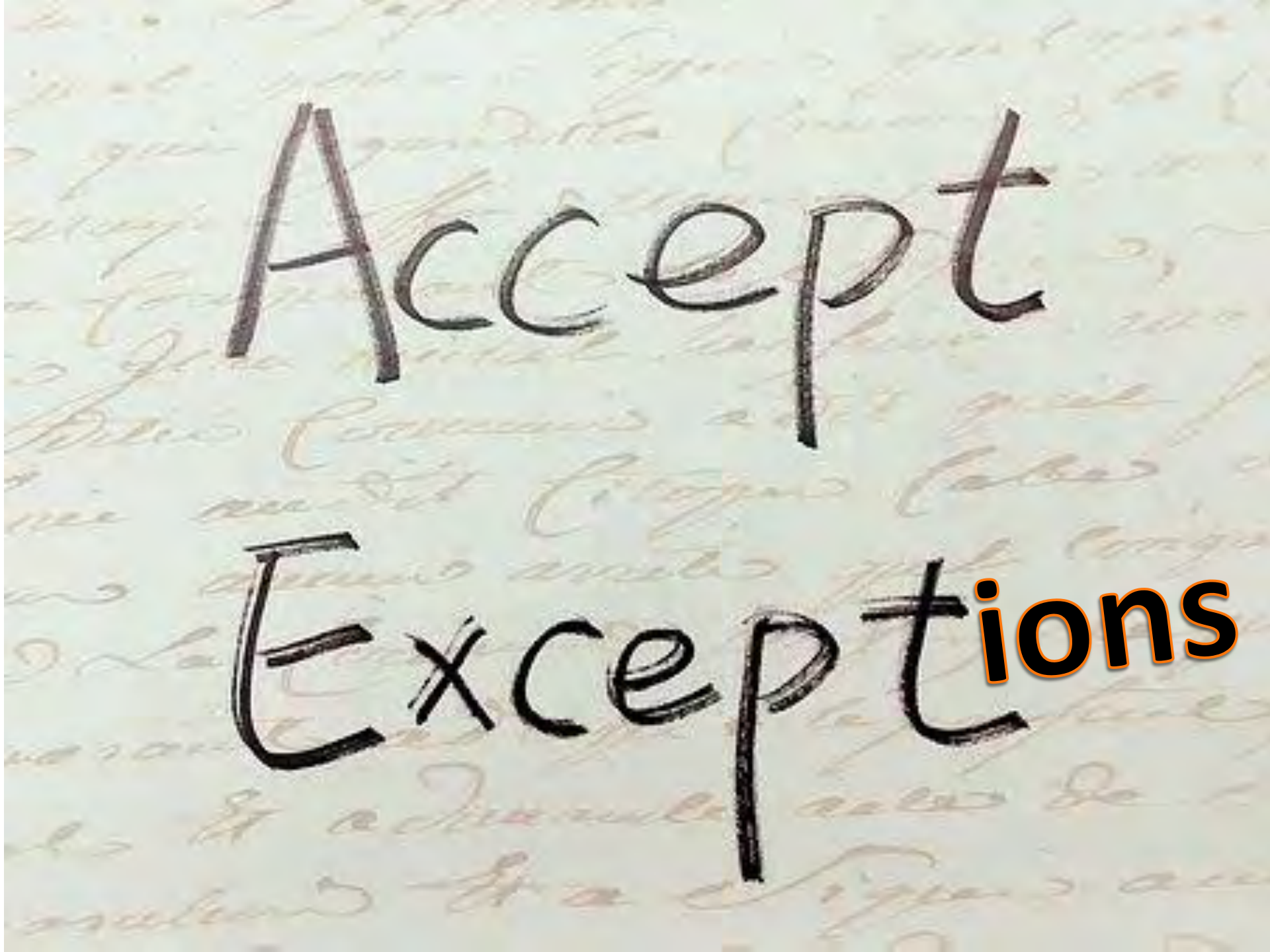
The quote may be anonymous, but it is still true. The CDPA, as with other legislation, is explicit in how copyright is to be dealt with – but there are exceptions, and they allow us to be more flexible with our use of third-party content.

If your college is to raise levels of copyright awareness, it is very helpful that all who create new content by re-purposing other's content, are well versed in the general and education exceptions.

There is no mention of the word "exception" in the CDPA. The official wording is "Acts permitted in Relation to Copyright Works"

Please read on

"Next slide please"


Accept
Exceptions

Accept Exceptions

In the following slide, you'll see the IPO Impact Assessment, the pre-cursor to amendments to the CDPA implemented in 2014.

Please use the exceptions – they are listed and explained in the following slides.

I can't advocate infringement, but the lack of examples, illustrations, interpretations and opinions in the amended exceptions, allows us, in my opinion, to exercise those aspects highlighted in the next slide

- No undue restriction
- Widening current exceptions
- Apply to more types of creative works
- Make it easier to use copyright works in education

"To amend copyright exceptions for education, so that copyright does not unduly restrict education and teaching, without undermining incentives to creators. This means widening the current exceptions, applying them to more types of creative works, and more kinds of technology. The aim is to make it easier to use copyright works in education, particularly with modern technology, in order to enrich and enhance the learning environment. This will also provide administrative and other savings to educational establishments, and reduce the risks associated with using copyright materials when delivering education

IPO Impact Assessment 2012

The all important numbers

Sections 29, 29A, 30, 30A, 32, 34, 35 and 36 of the CDPA make it true



And what they represent

29 Research and private study

29A Analyse text and data

30 Criticise, Review, quote and report news

30A Caricature, parody and pastiche

31 - making and supply of accessible copies by authorised bodies

32 Illustration for instruction

34 Perform, play show works

35 Record broadcasts

36 Copy and use extracts of works

Section 29



Research and private study

s29 – Research and Private Study

- Since there is no precise guidance on how exceptions are to be interpreted and with the IPO Impact Assessment in mind, this is a useful exception to "circumvent" multiple copying for students.
- In the digital world, considerable use is made of links.
- If a student receives a link to content for studying or researching, it is the student's decision either to view, bookmark or print the content.
- Since the CLA licence deals with "multiple" copying (ie, more than one copy) s29 might be worth considering. It is a "fair dealing" exception, but the text of the Act gives no indication of how much can be copied
- I leave you to come to your own conclusions



Section 29(A)



Data Analysis (mining)

Section 30





A picture is worth a thousand words



Criticism, review, quotation and news reporting







Section 30A

Caricature,
Parody,
Pastiche

Section 32

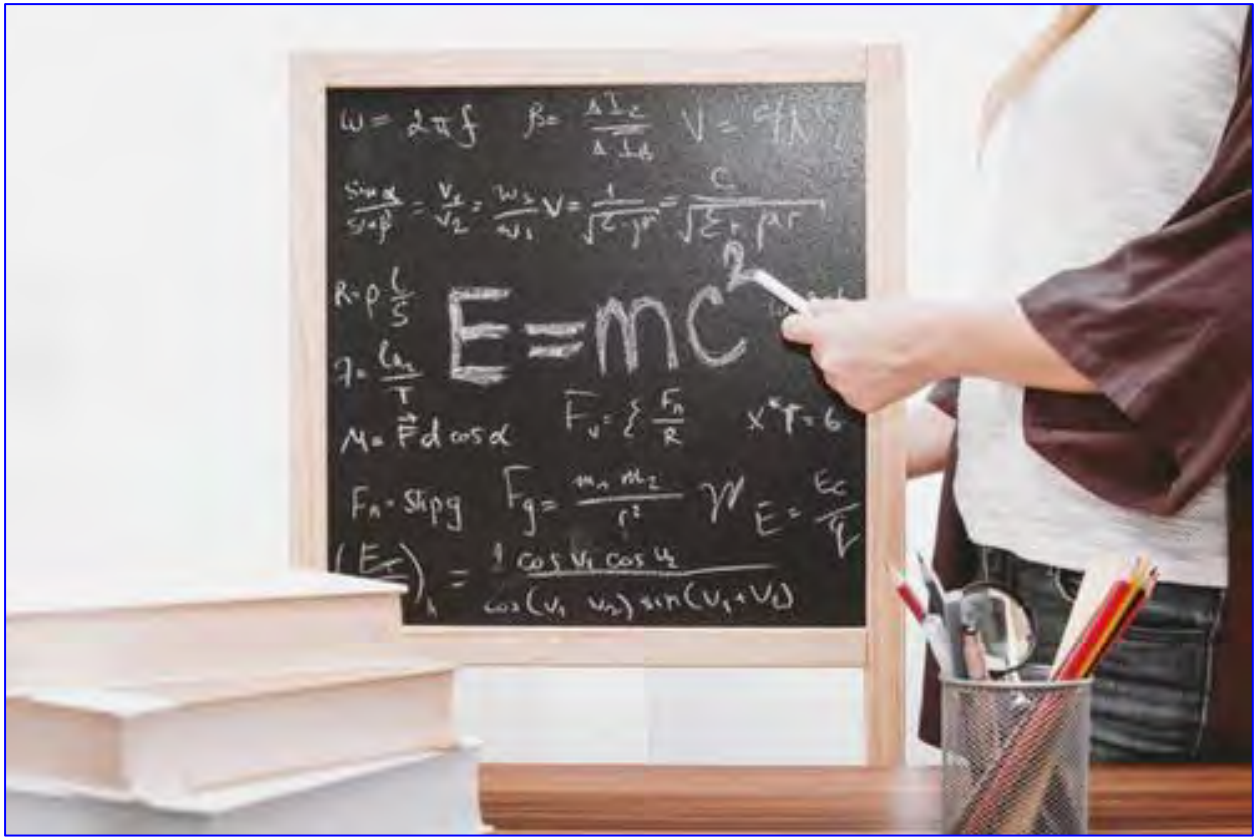


Illustration for Instruction



And our lucky number is ……. 32!!

S32 Illustration for instruction -

(1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work, provided that the dealing (use) is –

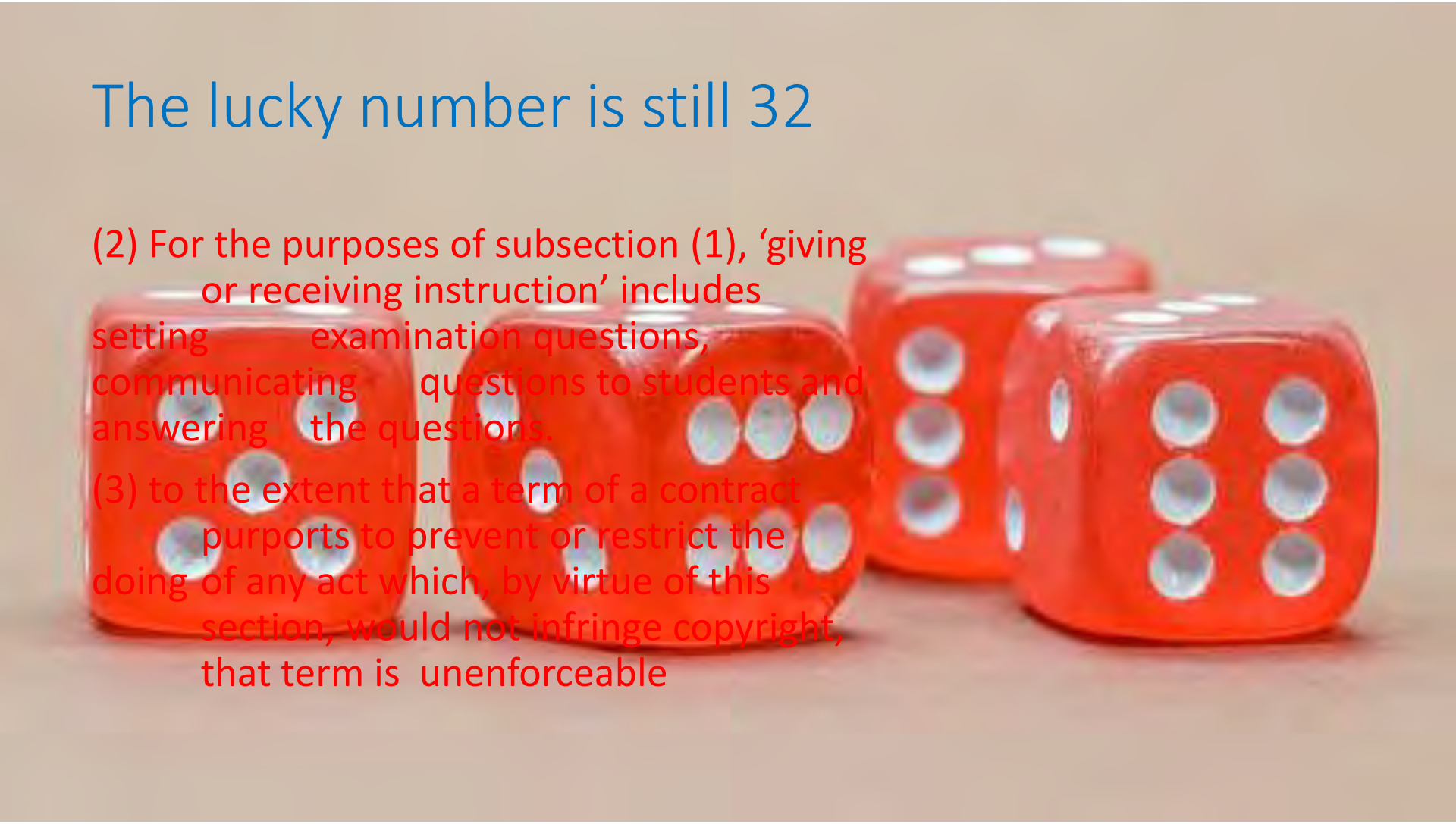
(2) (a) for a non-commercial purpose

(b) by a person giving or receiving instruction (or preparing for giving or receiving instruction),

and

(c) Accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

The lucky number is still 32



(2) For the purposes of subsection (1), 'giving or receiving instruction' includes setting examination questions, communicating questions to students and answering the questions.

(3) to the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable



Still putting my money on 32

- No definitions
- No interpretations
- No examples
- Since introduction of s32 in 2014, no case law

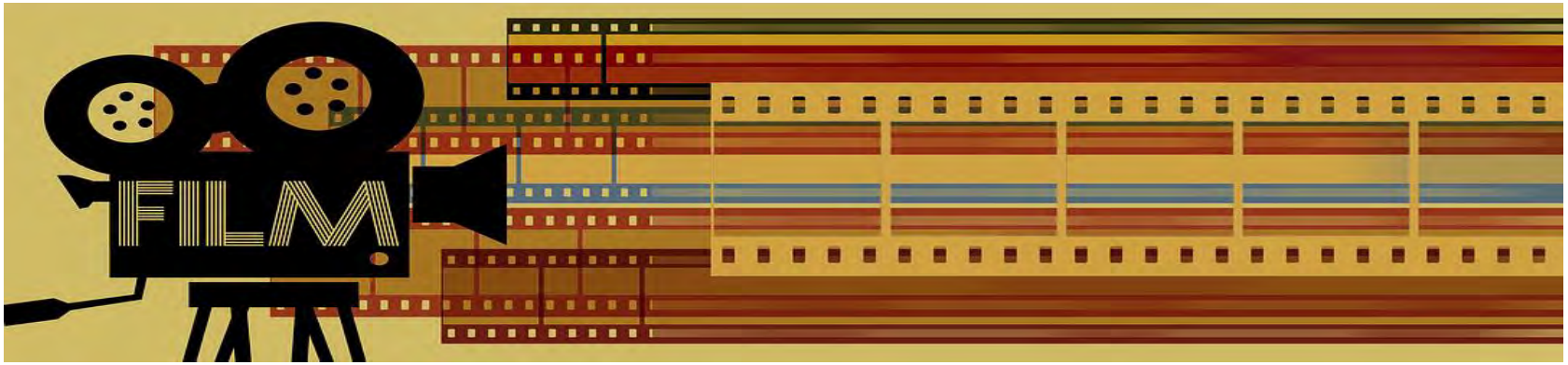
- Copy track(s) from a CD
- Copy from a DVD
- Copy images from texts and the web
- Copy resources with CC licence(s)
- Copy podcasts
- Copy YouTube videos
- Link, Link, Link, Link



Section 34







Performing, playing, showing

Section 35



Recording broadcasts in education

Section 36



Copying extracts of works

Playing by the numbers




Too good to be true??
Shift





Any use of the exceptions must be carried out under the term “fair dealing”

For “dealing” to be considered “fair”, any use must comply with these aspects

- Non-commercial
- Authorised person
- Acknowledgement

The challenge is to determine what is “commercial” or “non-commercial”. In the author’s opinion, if learners are registered in the college and are included in the FTE count, then any learning they do can be defined as “non-commercial”. My reasoning is that the licensing agencies – CLA, ERA, PRS for Music, all use FTEs as the basis of their metric on which they base their fees.





Fair Dealing (UK) – not Fair use (USA)!

In education, fair dealing is determined by -

- Non-commercial use
- Prepared by teacher or learner
- Acknowledged, where practical
- Sections 29, 29A, 30, 30A, 31, 32, 34, 35 and 36 of the CDPA are relevant

Risks

Copyright – risk or reward?



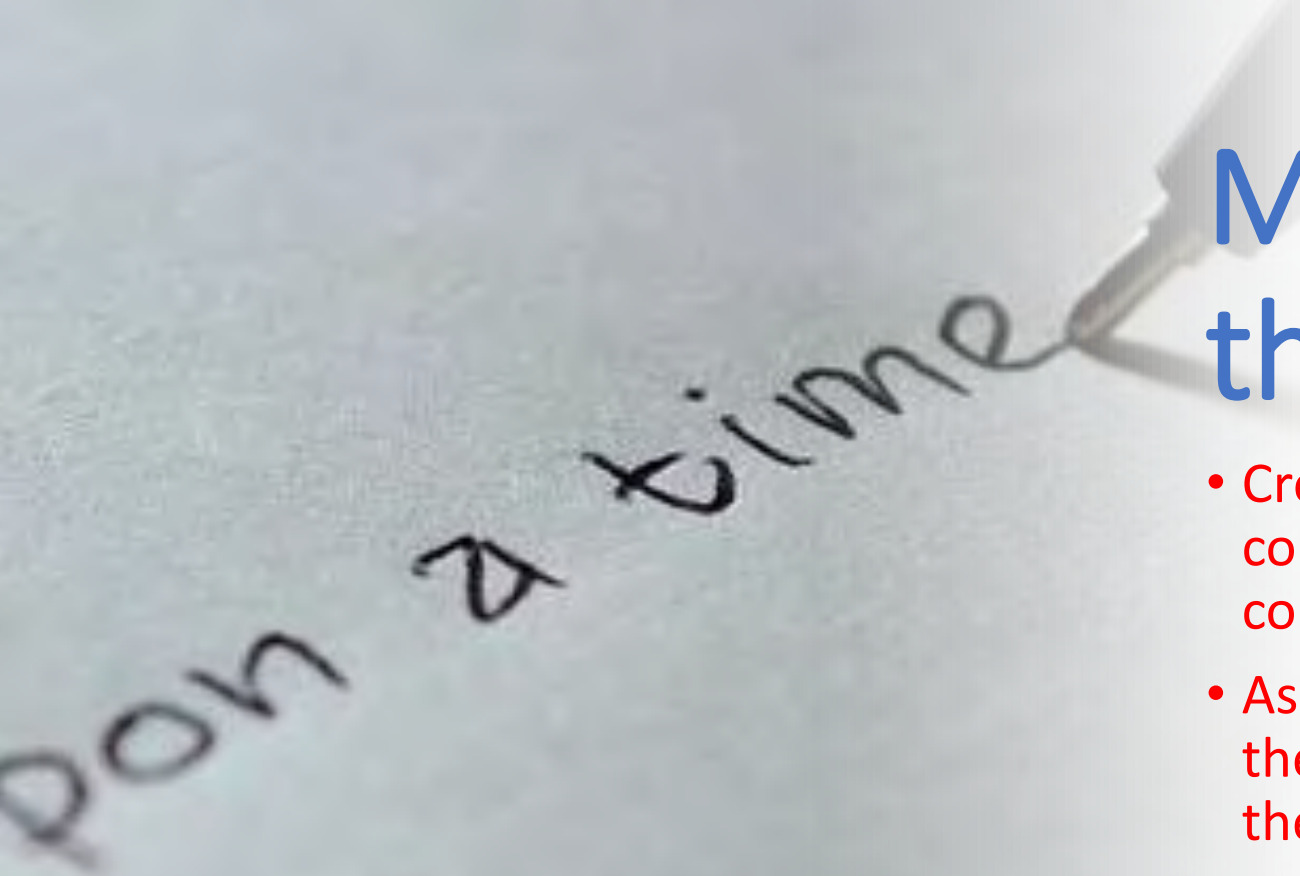
Are you, and/or

your organisation

risk averse

or

risk aware?



Mitigate the Risks

- Create your own content and own the copyright
- Ask permission from the content owner or their representative
- Buy a licence from a collecting society
- Rely on the legislated copyright exceptions in the CDPA
- Look for alternative sources of content

Create and own the rights



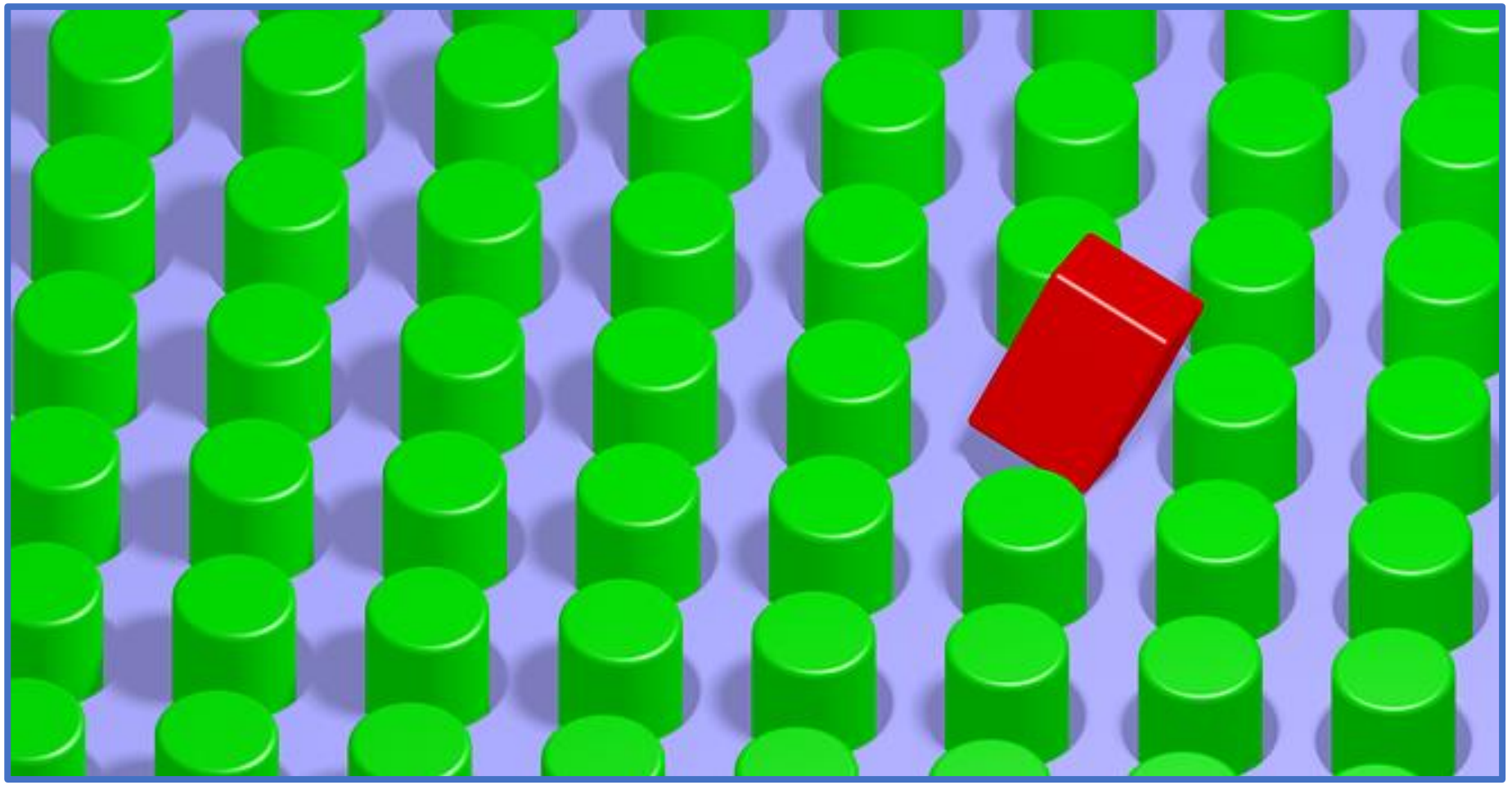
Ask permission



Buy a licence from a collecting society



Use the Exceptions



Look for Alternatives











OpenLearn



Khan Academy









More Mitigation



- Copyright policy
- Copyright guidelines
- Copyright CPD
- Copyright advice
- Social Media policy
- Decision making
- Copyright strategy
- Helpdesk
- Alan Rae!!

No mitigation?

- Potential financial loss
- Potential reputational loss
- Organisational fear of "other people's stuff"
- Who takes the blame? This is where a policy can help considerably – not to name and shame, but to show responsibility

Ownership of copyright

Going back to the basics of Copyright – Can you prove your content is protected?



Unlike Trademarks, designs and patents, Copyright cannot be registered in the UK



For content to be worthy of copyright protection, the work must be expressed – ie it must be written down in some form or another



There is no copyright in ideas – never has been, never will be



Text, drawings, plans, designs, musical notation, lyrics, programs – everything that can be protected by copyright, must be expressed



This can be in writing, it can be a recording, it can be a sketchbook of drafts, it can be a series of images created when a shutter is pressed, (you own the copyright to the photos you take on your phone) it can be on a scrap of paper, it can be on a computer file



The creation must be expressed, not an idea carried around in your head

Determining who owns the copyright of works that are to be used in your creating teaching and learning resources, is a key aspect of the copyright strategy of the college.

Generally, the college owns the copyright of resources created by staff in the course of their employment at the college.

Section 11 of the CDPA 1988

The author of a work, is the first owner of any copyright in it, subject to the following –

Where a literary, dramatic, musical or artistic work, or a film is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work, subject to any agreement to the contrary

Potential copyright ownership issues

The college may have to deal with -

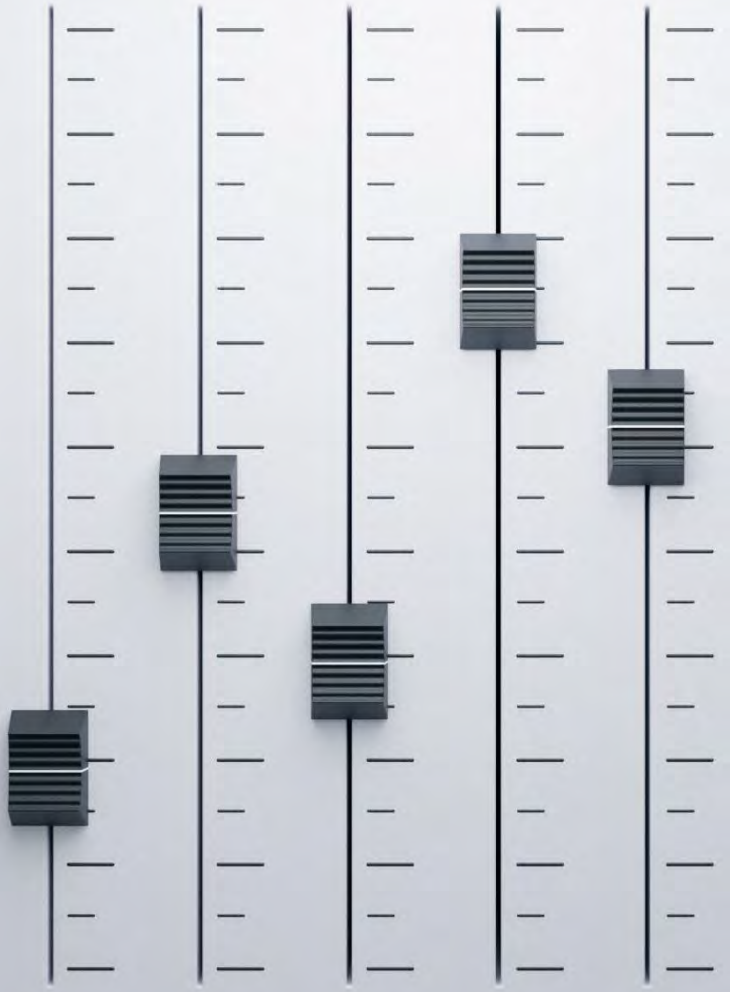
- Works created by staff during a former employment
- Works created by staff during ”their own time”
- Works created by staff collaborating with others who are not colleagues in the same college
- In the event of any issues, it is important to note the part of s11 - ”subject to any agreement to the contrary”
- Is there any mention of ownership in a contract of employment or does the college rely solely on all works being the copyright of the college?



Who owns the rights to the works you want to use?



- You?
- Your employer?
- Your funder?
- You alone?
- You in partnership?
- You as a contractor
- Do you licence your work(s)?
- Do you assign your work(s)?



Categories of work that can be owned

- Music – literary and notation
- Graphics - artistic
- Photography - artistic
- Fashion - artistic
- Designs - artistic
- Publishing – literary, music, artistic, typographical layout
- Broadcasting – drama, music, literary, sound recordings
- Moving image – literary, artistic, drama, sound recordings



Ownership – get it right, at the start

- Establish that content you would like to create is going to belong to you
- If not you, then who?
- Your employer, a funder, a third part commissioner, a charity?
- Agree, if possible, who is going to provide what – who's writing the words, who's illustrating the text?
- In music, lyrics and music composition are often shared – if the work is shared equally, are the royalties also shared equally?



Ownership – get it right, at the start

- Just because more than one person is involved, it doesn't therefore follow that the remuneration shares are equal.
- Be business like – write down a business agreement and have it witnessed. You'll be glad you did when the first disagreement comes along.
- Be as sure as you can, what you want and don't want your content to be used for.
- Will you be happy for your work, a song, for example, to be used by commercial companies for media advertising?
- And if you are happy for that to happen, are your collaborators in agreement?
- And what do you do if they're not?

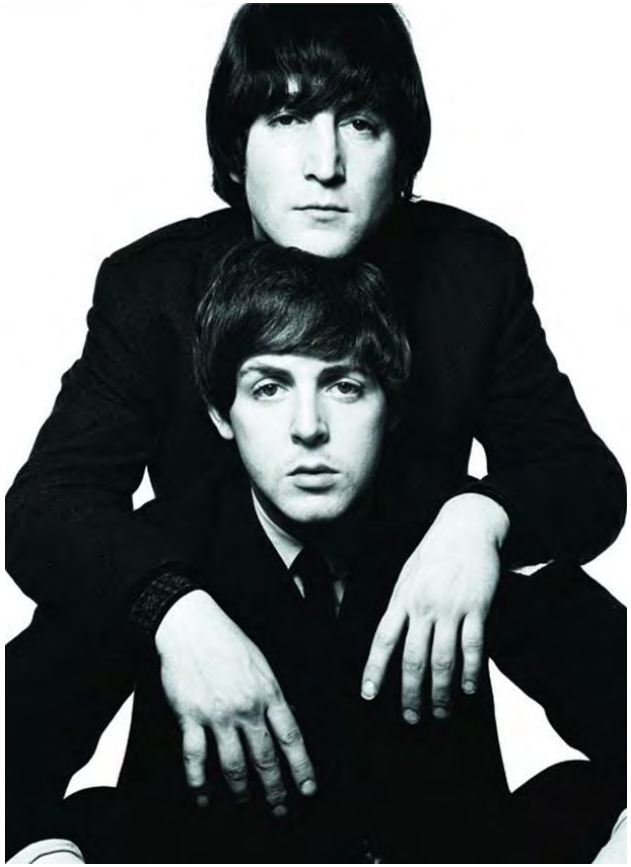
Ownership – learn from the mistakes

- A relevant, and recent case relating to joint authorship can be found at https://ipharbour.com/blog/ip/copyright-and-joint-ownership-in-florence-foster-jenkins/
- This is the salutary tale of the screenplay of the movie “Florence Foster Jenkins” starring Meryl Streep and Hugh Grant.
- Joint authorship is defined in the 1988 UK Copyright Act as – “a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors”
- If you are a creator – writer, musician, lyricist, illustrator etc, please try to ensure, as early as possible in any jointly authored project that all parties are clear about what their inputs are going to be and then what their share of remuneration might be (sadly, not all creative projects are successful/profitable)



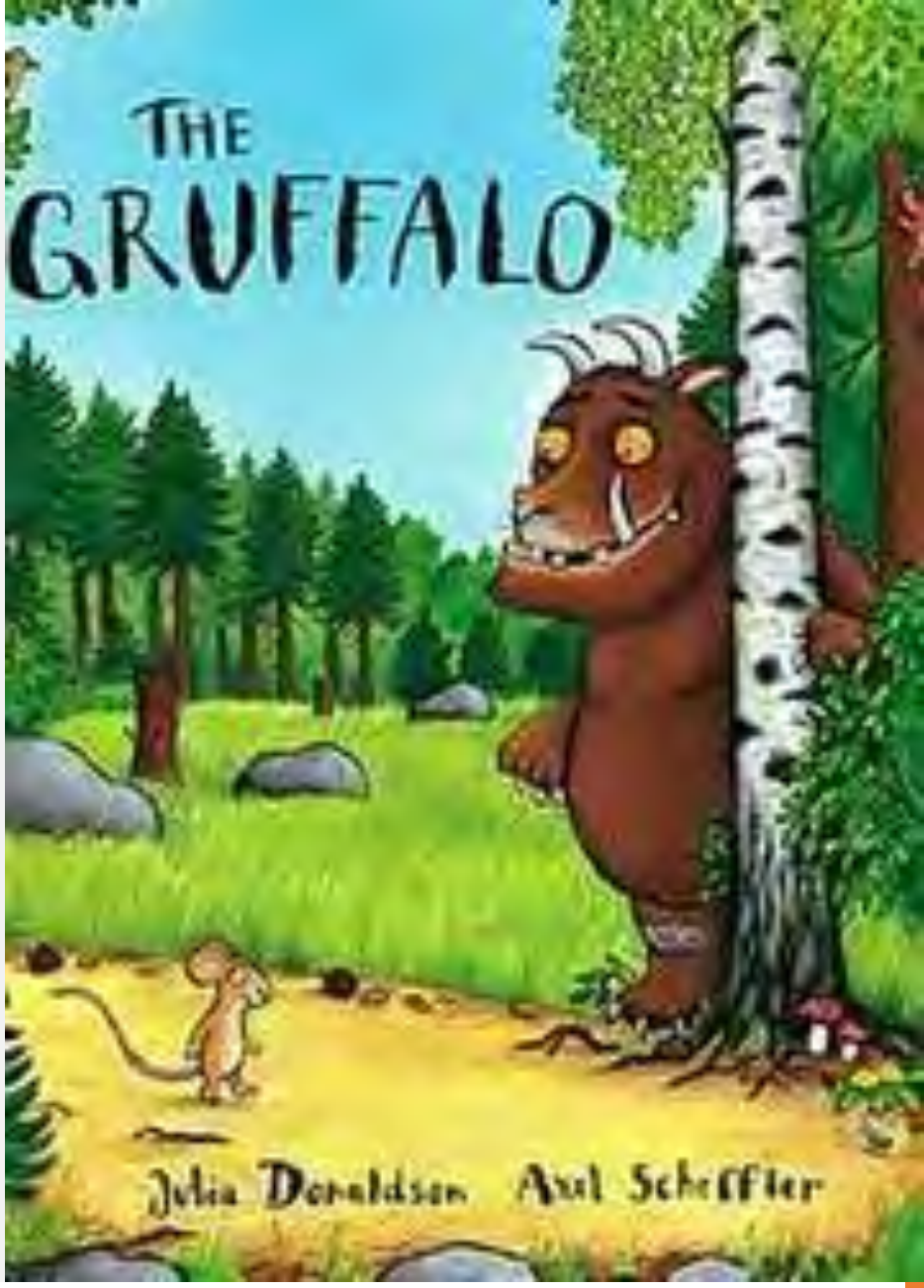
Ownership – co-authorship

- ”co-authorship” is defined in the 1988 UK Copyright Act as – “a work produced by the collaboration of the author of a musical work (the notes etc) and the author of a literary work (lyrics) where the two works are created to be used together
- This is illustrated by the songwriting partnerships – Lennon/McCartney, Jagger/Richards, Elton John/Bernie Taupin, Holland/Dozier/Holland, Rodgers and Hammerstein, etc
- The more modern trend is for songs to have a considerable number of contributors. For example – Calvin Harris and The Weeknd were listed as the featured artists on a song “Over Now” – but there were 10 songwriters credited for the music and lyrics!
- So along with the 8 other writers, Mr Harris and Mr Weeknd also pick up royalties for performing and producing the song
- And someone, somewhere, in a music publishing organisation drew up a contract for all contributors, in their various guises, to determine what share each of them got from the revenue generated from sales of the song – and that’s after the record company took its cut!



Ownership – co-authorship

- Co-ownership is not restricted to musical works.
- Literary works can also be co-authored – as in the continuing partnership of Julia Donaldson and Axel Scheffler.
- Ms Donaldson writes the words, and Mr Scheffler illustrates
- They each make a separate contribution to the finished product – two “works” are involved – Literary and Artistic



Put it in writing!!

- Agreements/contracts can be relatively simple
- All authors/creators/contributors are protected if a contract is agreed and signed
- Agreements are often ignored in the first excitement of creating a new work with someone else – music, illustrations, text, video game, software, art work, cartoons – the list goes on
- Try not to ignore the agreement, however – it can prevent misunderstanding, annoyance and disappointment later on



© for Creative People

© for ©reative people

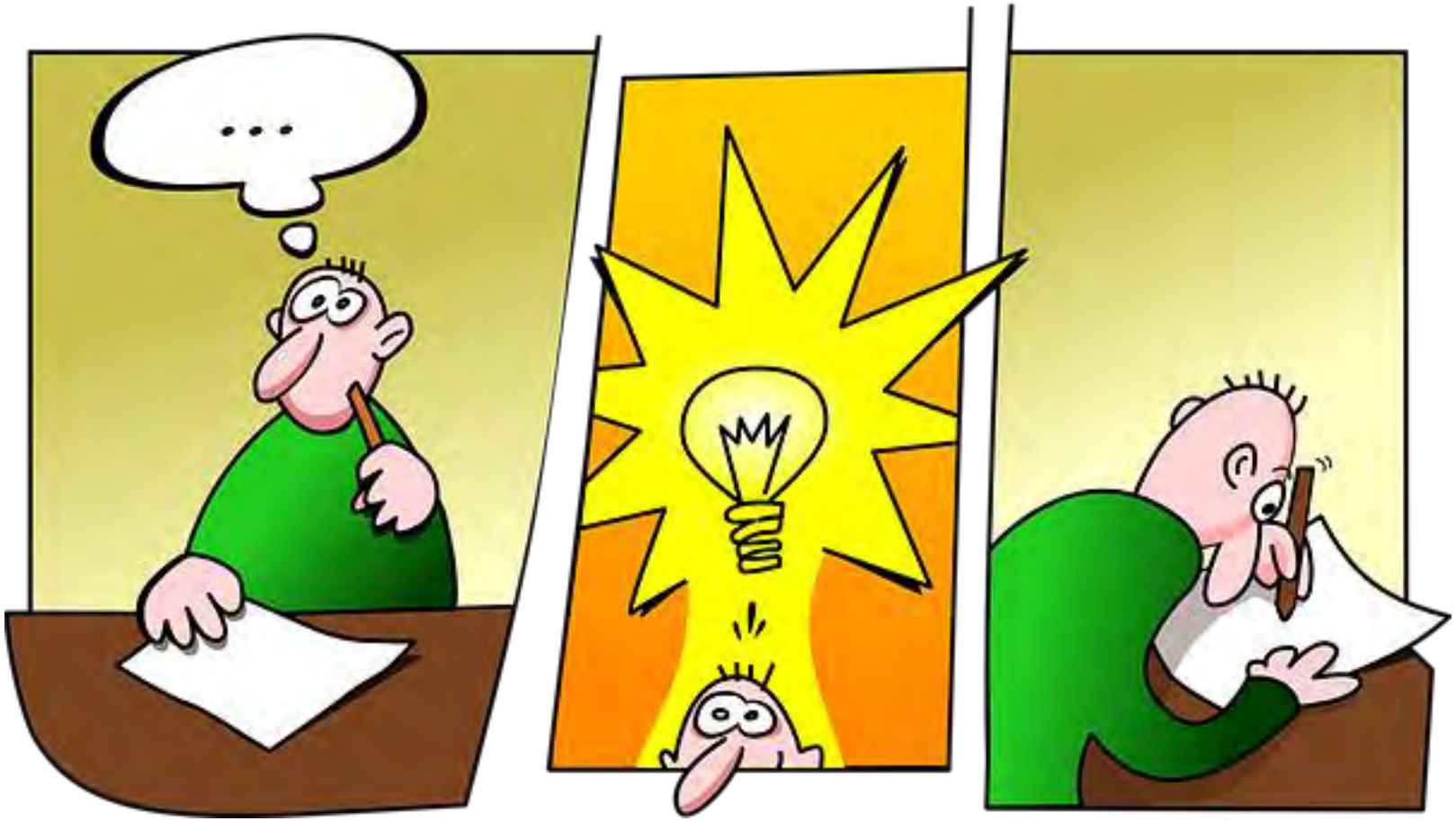


© for ©reative people

- Protecting your work
- Ownership
- Proving ownership
- Economic Rights
- Moral Rights
- Copyright exceptions
- Types of work



© for ©reative people



Idea/Expression

© for ©reative people

© protects the expression, not the idea

© for ©reative people





Boy meets girl – boy's family doesn't get on with girl's family. Bloodshed ensues, untimely deaths, everlasting love – who owns the copyright? – how many times has this story been told? Similar ideas, different expression – write your own boy meets girl story

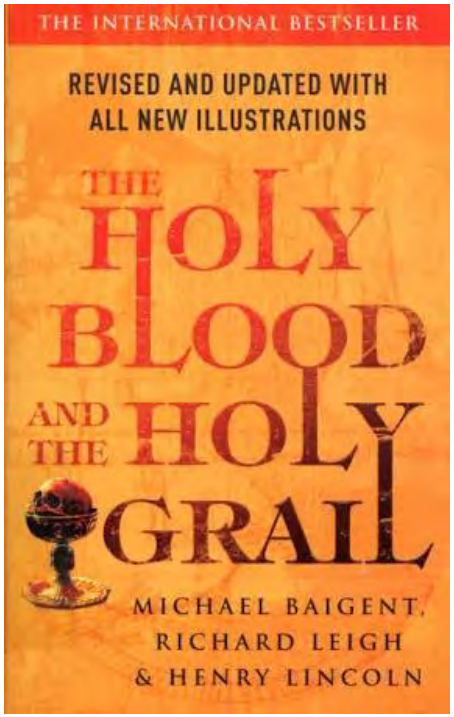
© for ©reative people

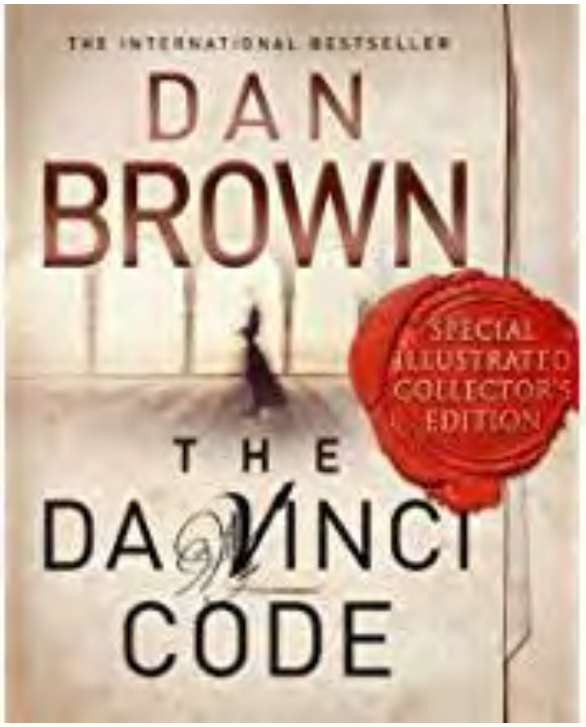




Take your pick – Harry the Wizard or Willy the Wizard? J K Rowling admits that Harry Potter isn't the first boy wizard – nor will he be the last. No reason for anyone else to write a book about boy wizards – just depends on how the story is expressed.

© for ©reative people





Well, was it copyright infringement or plagiarism – or both? This court case ran and ran with the winner being Dan Brown – was that a fair decision?

© for ©reative people



claimant



defendant

This case may have passed you by, but it caused ructions in the copyright world.
The defendant's image was found to have infringed the claimant's. The copyright world was aghast – how many similar images have been taken (and edited to make the bus stand out) over the years, with not a single complaint. The majority view was that the images are of "commonplace" items – Houses of Parliament, red bus, Westminster Bridge, grey sky etc and as such it would be very difficult to claim copyright infringement. The judge found in favour of the Claimant, however, and the defendant, who had used the image of caddies of tea, had to find another image – this case showed not only the vagaries of copyright but also the vagaries, and subjectivity of the person on the bench

© for ©reative people

For “works” to be protected by ©, they need to be original and fixed

© for ©reative people

A “work”, to be protected by © must reflect “skill, labour, judgement and effort”

© for ©reative people

Copyright challenges – proving ownership

- Don't give all your work away by posting online - especially images - unless you are feeling very generous
- If your work is original and fixed, then it is automatically covered by copyright
- Use the © symbol as often as you can
- Self-registration only proves that the work existed at a particular time – it doesn't prove originality
- Computer time stamps are as good as self-registration
- You can lodge your work with a bank or solicitor - or post a copy to yourself, but it only proves the work existed at a particular time
- Consider using the "poor man's copyright" - https://www.wipo.int/wipoproof/en

© for ©reative people

Text Images Designs Fashion Music
Lyrics Cartoons Illustrations Web
Social Media Marketing Promotion
Advertising Programming Gaming
Drama Choreography Photographs
Fabrics Pottery Jewellery Metalwork
Carpentry Architecture Plans Maps
Video Audio

Works

© for ©reative people

Reproduction

Communication to the public

Performance

Rental and lending

Distribution

Adaptation

Economic rights

© for ©reative people

Merchandising Rights

Synchronising Rights

Film Rights Licensing & Contracts

DVD, TV, Netflix, Spotify

© for ©reative people

Ownership

Single, Joint, Corporate

Licensing

Assignation

College/Student

Contractor

Who owns the work(s)?

© for ©reative people

Moral rights (1)

- Right to be acknowledged as the creator (attribution)
- Right not to receive derogatory treatment (integrity)
- Right not to be falsely attributed
- Right of privacy for certain images and films

© for ©reative people

Moral rights (2)

- Attribution and integrity rights have to be asserted
- Moral rights cannot be sold or licensed
- Moral rights last as long as the economic rights
- They can be waived – but try to keep them

© for ©reative people

Exceptions to copyright

- Quotation
- News reporting
- Education
- Research and private study
- Archives and preservation

© for ©reative people

YouTube (and Vevo and Vimeo)

- The enigma that is YouTube
- Not licensed or licensable
- Not specifically for educational use
- Full of risks
- Unmoderated
- Transient
- Yet one of the most popular resources in all sectors of education today

© for ©reative people



Christ of St John of the Cross

- Painted by Salvador Dali
- Purchased by Glasgow City Council in 1952 for £8,500 (catalogue price - £12,000)
- ***The price included the copyright! Assigned by Dali to Glasgow City Council***.
- Salvador Dali died in 1989, so he is in copyright until 2059 – still a few years for the copyright owners to exploit the work.
- What is its current value?
- £80,000,000 – in 2006

© Culture and Sport Glasgow (Museums)

Image copyright

What’s a Picture worth?

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A thousand words?



Or £1000?

How can images be sourced?

1. Take them yourself
2. Commission a creator
3. Copy from the Internet
4. Use an image gallery
5. “Free” images
6. Use Creative Commons

1 -Take them yourself

- They are your copyright
- You can licence them
- You can sell them
- You can assign them
- You can share them
- You can copy them
- You can upload them



Here's one I took earlier!
© Alan Rae 2019

(and pretty much wave them bye-bye)

- Remember to consider model release for images

Model Release

- Is there a model release form with the image?
- If taking the image yourself, do you need permission? Eg, artworks.
- If you have commissioned the images, did you agree ownership? - Contract
- Have you agreed which uses you can make of the image? - Contract
- Contract law can affect the use of images as much as copyright law



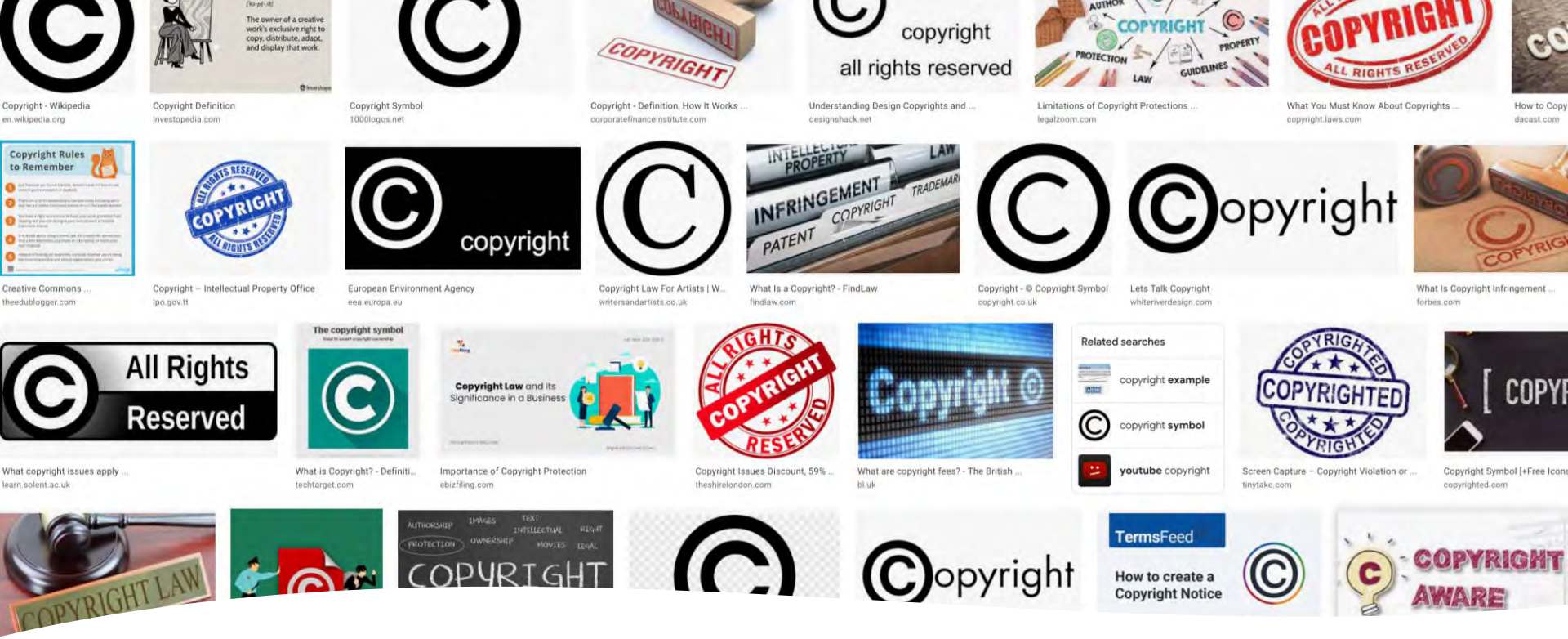
2 - Commission

- Who owns the copyright?
- How long can you use the image for?
- What uses can you make of the image?
- Are you paying a royalty?
- Are you paying a once only fee?
- Will you own the image?
- Can you share the image?
- Get it all in writing!!!
- See the ©autious case study at the end of this section



3 – copy from the Internet





Google images and copyright

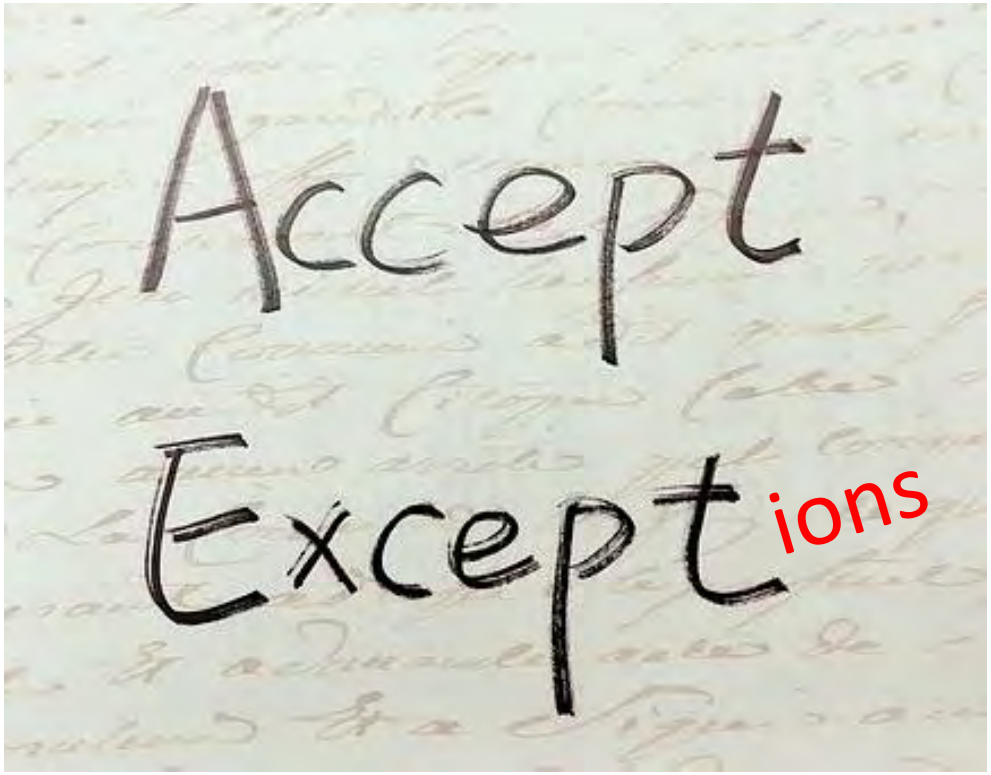
Is there copyright in Google images?

Yes – in the majority of cases

Unless you have either received express permission from the copyright holder or are using public domain images or images that hold the necessary Creative Commons license, **using Google images for your website is violating copyright law and you could be prosecuted**

14 June 2021

But remember the Exceptions



Does s32 allow copying of images from the Internet?

The section is entitled "illustration for instruction"

The only caveat for the section is that copying is carried out under the concept of "Fair Dealing" -

- Non-commercial
- Copied by someone giving, receiving, preparing resources
- Accompanied by a sufficient acknowledgement

4 - The major stock image galleries

















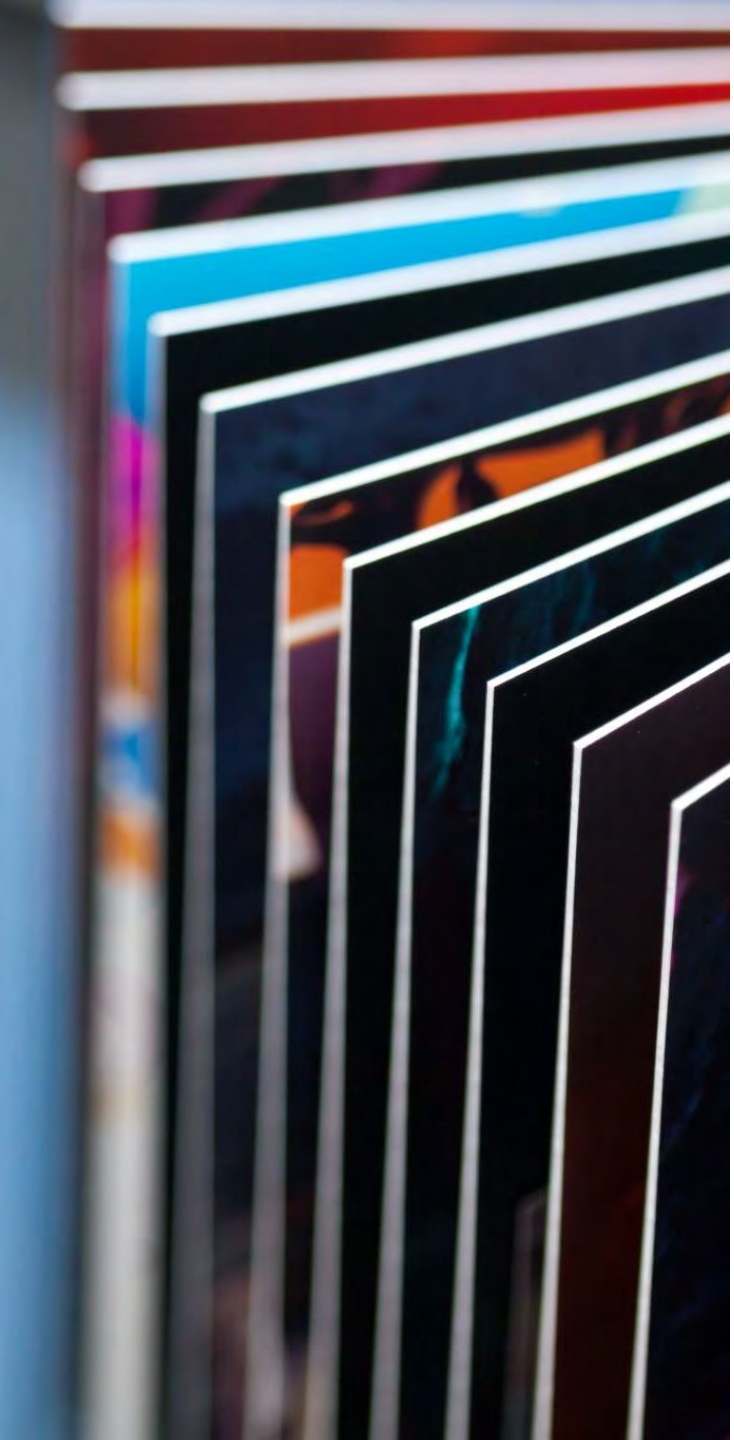


Image Galleries – how do they work?

- They effectively hire out images
- For all purposes – design, advertising, marketing, making presentations, branding
- Can be an economic alternative to commissioning work or taking your own images
- Image Galleries retain the © of the image – either on their own behalf, or on behalf of the photographer who has licensed their images to the gallery – and receives royalties for usage

Different forms of image ©

- Royalty Free – pay once, no royalty, © stays with the rights owner – "all rights reserved"
- Managed rights – pay for each use – usually better quality images - © stays with rights owner
- Public Domain – proper definition!! Only when the © term (usually70 years after the death of the author) has lapsed, does the work enter the "public domain". The internet is NOT the Public Domain – just because works are displayed on the internet does not mean that they are free to copy
- Fair Dealing – possible © exception according to the 1988 UK Copyright Act – not to be confused with "fair use" = American term
- Creative Commons – some rights reserved - © stays with the rights owner, but there's a willingness to share. "Some rights reserved"

Categories of image hire

- Rights managed – for editorial use
- Rights managed – for commercial use
- Royalty free – for editorial use
- Royalty free – for commercial use
- Editorial tends to be less expensive
- Commercial tends to be more expensive
- Royalty free tends to be less expensive
- Shop around!!

Categories of Image Hire – (no such thing as a "free lunch"!)

- Please don't be fooled into thinking that "royalty free" means no payment.
- "Royalty free" can mean a one-off payment for unlimited use of the image(s)
- Or it can mean an annual charge for unlimited use
- "rights managed" can mean payment for each use – but there is usually a much better selection of images at high resolution



A letter from Betty

Dear Principal

It has come to our notice that your college is using one of our images on your website. Since we can find no record of having sold you a licence for this purpose, we demand that you remove the image immediately, cease and desist from any further use, and immediately pay the attached penalty notice for £5000 being due and fair compensation for this unlicensed use.

Yours sincerely

Betty Images





What do you do?

- Panic?
- Pay?
- Declare bankruptcy?
- Go to your solicitor?
- Ignore the letter?
- Write a very aggressive letter in reply?
- Ask Alan Rae!

You Don’t Panic

- You take down the image(s) concerned from the website/social media at once
- You don’t pay the accompanying invoice
- Don’t ignore the letter – if you don’t respond, others will follow, usually with an increasing penalty
- Use an image reverse search (next slide) to confirm that the image gallery is actually the owner of the image – it’s not unknown for galleries (no names) to “Hoover” up images from the web, load them into their own galleries and claim copyright – just another of the crimes committed in the Wild West of the Internet!
- Write a response, saying
- You were unaware that the image should have been licensed
- Indicate that the image(s) have been removed
- If the gallery does own the image, look at their licencing tariff, work out how much it would have cost to licence the image legally, and then offer them that amount in payment – it will be considerably less than the penalty
- Ask them politely for proof that they are the legitimate owners/licensees of the image

Reverse Image search engines

- Google
- Copytrack - https://www.copytrack.com/
- Picscout - https://picscout.com/
- Tineye - https://www.tineye.com/
- Duplichecker - https://www.duplichecker.com/
- Bing Image Search - https://www.bing.com/
- Iphone app - Veracity

Recent copyright infringement cases

- http://tinyurl.com/y5d3nfbb - **Aberdeen FC**
- http://tinyurl.com/yy6gqpkj - **The Vessel, New York**
- http://tinyurl.com/y39gjzsk - **New copyright book**
- http://tinyurl.com/y6fmbwah - **Narnia - fan fiction**
- https://tinyurl.com/y6qu7ub3 - **Marc Jacobs v Nirvana**
- https://tinyurl.com/y6xmfsnj - **Premier League = jail!!**
- http://tinyurl.com/yclxbttr - **Instragram bites back**
- http://tinyurl.com/y76rmcov - **illegal ebooks??**

5 – “Free Images”

Bearing in mind that there is no such thing as a free lunch, and that images always belong to someone or some organisation and could be subject to terms and conditions of a licence, here is a suggested list of locations for images that should not cost you anything

https://www.pexels.com/ - don’t confuse the “free” images with the “royalty-free” images – there is still a payment for “royalty-free”

https://unsplash.com/

https://pixabay.com/

https://commons.wikimedia.org/

https://www.loc.gov/free-to-use/ - Library of Congress

https://www.si.edu/openaccess - Smithsonian Institute

https://www.nga.gov/open-access-images.html - National Gallery of Art

https://www.artic.edu/open-access/open-access-images - Art Institute of Chicago

https://www.nypl.org/research/collections/digital-collections/public-domain - New York Public Library

https://wordpress.org/openverse/ - collaboration between WordPress and Creative Commons

6 – Creative Commons images

- Creative Commons images can now be found on a variety of image galleries and platforms across the Web
- The images come with a request that a CC licence accompany the image so that they can be reused, mixed, adapted and shared according to the terms of the CC licence
- There is also now the CC0 licence which is the closest to a ”free use” of images as we are likely to get.
- Pixabay and Unsplash, among others, are now offering CC0 images
- As with everything else on the Web, you’ll find yourself going down various rabbit holes in searches for images – but the results can be well worth the effort and time.
- Just please be careful about “royalty free” images – they are not “free” in the true sense of the word. They require an initial or even regular payment for use, but are free of any further royalties until the next payment.

Possible issues when Using images

1 ownership/ licence

- Who owns the image?
- Don’t just use it – you stand the risk of infringing
- Is the image available for licence?
- Which licence? Royalty free? Rights managed? Creative Commons? CLA?
- Does the image contain further material which may need licencing?



2
read the terms and conditions

- “Since Pixabay does not require a written Model Release for each Image or Video that shows identifiable people, we cannot guarantee that you will be able to use the Content for any purpose you like.
- Certain Images or Videos may be subject to additional copyrights, property rights, trademarks etc. and may require the consent of a third party or the license of these rights. Pixabay does not represent or make any warranties that it owns or licenses any of the mentioned, nor does it grant them.”

Pixabay terms and conditions



3 no permission?

- If you don't have permission, why use the image?
- What are the risks?
- Cease and desist at least
- Financial penalty at best
- Loss of reputation at worst

BUT -

- Can the accuser prove ownership?

©autious Case Study



A ©autious case study

The case of the missing agreement!

- **The creator gets copyright by default**
- Copyright does not require any action on the creator's part. It's enough just to be the author or creator of a creative work — copyright is attributed to the creator/author by default. This means that you can decide who gets to copy the work, and under what conditions.
- Because of unilateral treaties, most countries in the world will recognise a creator's copyright. Of course, the inverse is true as well: if you wish to make use of the work of someone else, you can assume they have copyright – unless they died more than 70 years ago. Copyright lasts a long time!

"Copy this Book"
Eric Schrijver et al.

Creations are protected, their style is not

- Most forms of work protected by copyright are sensitive to fashion and trends. While specific works are copyrighted, the building blocks that make up their style are not. If a creator has designed a piece of furniture, a retailer can't start commercialising the design without the creator's approval. *(sadly, experience shows that not all manufacturers, irrespective of size, display this integrity!)*
- However, the retailer can copy elements of the creator's approach, such as the use of materials and colours. Other creators are free to appropriate most parts of the original creator's visual language. If the creator feels like others are imitating their style, the most rational approach is for the creator to take it as a compliment and to work hard to make sure that their work is accessible and visible, so they can get the credit for being ahead of the curve.
- This aspect of others being "inspired" by a creator's works plagues the whole concept of copyright and that's why it's often left to the legal system to decide on alleged infringement.
- A creator must do all they can to protect their work, and at the same time, take care that they themselves are not being overly "inspired" by someone else's work

©autious Case Study (1)

The client/commissioner does not get copyright automatically

- This can be counter-intuitive, especially for clients: when paid to create a design, photograph, video, the copyright stays with the creator unless they sign it over in writing. The client can use the design only in the context it was commissioned for.
- For example, let's say a college commissions a photographer to create images for an online prospectus. The images are created to the college's satisfaction, and everything seems to be fine and dandy.
- The college's marketing department then decides, without reference to the creator, to use the images for other purposes – including billboards, bus shelters, TV advertising and social media promotion.
- The creator, on seeing this additional use, isn't happy and complains to the college that their images can only be used for their initial purpose – that of the online prospectus which is found on the college's website.

©autious Case Study (2)

- The photographer is upset that in the secondary use of the images, they have been cropped, adapted, re-sized and in their opinion, no longer reflect the professionalism exhibited in the originals that were used for the website.
- The photographer is sufficiently annoyed that they go to a solicitor and ask about remedies for alleged breach of contract.

Where did it all go wrong?

- There was nothing in writing!! Nothing at all. The college had worked with the photographer on a number of occasions – without any issues, so both sides assumed that the same would apply to the new commission.



©autious Case Study (3)

- Legally savvy clients know this and will want you to sign over copyright. This can be useful leverage when negotiating your offer: it's good practice to bill both for labour and copyright. With smaller clients who have smaller budgets, you can instead opt to keep your copyright, explaining to them that you would prefer to be involved as a creator on subsequent projects.
- Whatever you do, discuss this with the client at the start of your relationship. You won't make any friends if you barge in with legal threats years later!



©autious Case Study (4)

What should have happened?

- There should have been a written agreement/contract including the following – (this is not an exhaustive list)
- A design brief – where are the images to be used? (website, social media, outdoor advertising, TV advertising
- In which file format will the images be presented? (for the college IT team)
- A timescale – for drafts, first sight of images, time to edit and amend
- A final date for delivery of images
- An agreement on the price to be charged by the photographer
- An agreement on the copyright of the images
- Is the photographer being asked to assign the copyright? This means that the photographer has no further right to the images – the rights belong exclusively to the college (if this is the case, the college should expect a higher fee)
- Is the photographer being asked to licence the images to the college? This could be for an agreed time – two years, for example – until the next time the college refreshes its website, social media, advertising, branding

©autious Case Study (5)

- During the two years, the college would have exclusive access to the images – or
- During the two years, the photographer would be able to use the images for other clients – this is a non-exclusive clause in the agreement – and would reduce the fee charged by the photographer
- There could be a clause to say that the photographer's permission would be required if the college wished to use the images in any other way or format in the duration of the agreement.
- The photographer could ask that every time one of their images was used, that the college acknowledged them
- The photographer may be allowed to use the images on their own website as exemplars of their work – and acknowledgement given by the photographer to the college with a link back to the college website.



©autious Case Study (6)

If a creator is copied, they have leverage

- Some creators don't see their work reproduced directly, because their work is specific to a context and a client. If the creator is an illustrator, for example, the situation is different. Like with photographs, once illustrations circulate, chances are they get repurposed in graphic designs, on clothing or re-used in new editorial contexts or find their way on the internet on websites and social media.
- The creator, as the copyright holder, gets to decide whether they want to do something about these copies. If the creators are aware of their rights, they may not need a lawyer — they can contact the client, come to an understanding, and ultimately get compensated. Particularly if the infringing party is a larger business, they will most likely know that the creator is in the right—and that it's not to their advantage to have it come to a law suit that could cost them loss of time, money and reputation

©autious Case Study (7)

If you are a creator, your client may expect you to educate them

- Creators, and graphic designers in particular, work with a complicated selection of rights: a visual identity might involve the copyrights of graphic designers, type designers, photographers and copywriters. It is part of the designer's job to understand the ways in which these rights work together.
- Even if the client is the one signing licensing agreements, and is legally responsible for any copyright infringement, they could still pursue the creator for negligence if they feel that the creator has failed to alert them to any potential copyright risks.
- The client might not know that a typeface license for the desktop is not the same as one licensed for web use, or that the photographs licensed for the internal newsletter can't be published on the company blog. The creator can help their clients figure out the licensing and the potential for infringement and educate them when necessary.





©autious Case Study (8)

Conclusion

- The protagonists of this case study, the photographer and the college, reached an agreed settlement – which was put in writing.
- The college acknowledged that it should have asked the photographer for permission to use the images for other purposes.
- The parties agreed to remuneration to the photographer for the extra use
- The photographer acknowledged that they could have been more open with the college during the initial conversations
- Both parties agreed that any future commissions would be subject to a written agreement
- The college did not have to remove any of the images from the extra locations.

©autious
case study (9)

When reusing images, you can't trick copyright



- No blurring
- No pixelating
- No distorting
- No stylising
- These are adaptations and only allowed by the © owner

NB – remember that adaptations is one of the reserved rights for owners of works protected by copyright – along with reproduction, issuing copies to the public, renting, lending, performing, showing, playing and communicating the work

Copyright Issues

Copyright Issues – putting the pieces together

- Infringement
- Originality
- Legal action
- Compensation
- Duration of Copyright
- Creative Commons
- Harmony
- Fonts
- Registration
- NO copyright



Copyright issues – infringement



- Publication
- Copying
- Distribution
- Making available (internet)
- Renting
- Lending
- Performing
- Adaptation

Copyright issues – originality



- low threshold
- fixed, not an idea – must be expressed in some physical form
- Originate from the author
- Not be a duplication of an existing work
- Not required that the work is ”novel”
- Shows “labour, skill and judgement
- Must be the author’s own intellectual creation

Copyright issues – to sue or not to sue



- To sue, you need proof of infringement
- proof that the infringed work belongs to you
- That you created it or have licensed it from a third party
- evidence of financial and/or reputational damage

Copyright issues – compensation

- Depends on severity of infringement
- Seizure of infringing copies
- Damages for loss of business
- Damages for loss of reputation
- Compulsory licence
- Cease and desist
- Copyright Tribunal
- Or use the stocks for public humiliation!



Copyright issues – Duration of ©

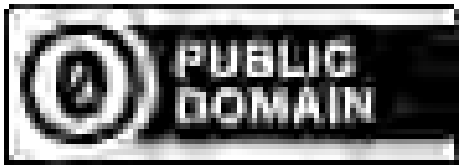
- Still variable, unfortunately, and still likely to change
- General rule of thumb is life of creator and 70 years after death – could be a long time!!
- Proper definition of public domain – the place where works which have satisfied the life+70 years now reside – Shakespeare!!
- The Public Domain is not the internet!!



Copyright issues – Creative Commons

- A move from “all rights reserved” to “some rights reserved”
- Still the original creator’s copyright
- Move towards more open licences and sharing
- Many images now available with a CC licence
- How easy is it to wean people off Google images (most of which are subject to copyright)?
- Look for CC0 licences – minimum fuss





CC0
“No Rights Reserved”

CC0 enables scientists, educators, artists and other creators and owners of copyright - or database-protected content to waive those interests in their works and thereby place them as completely as possible in the public domain, so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright or database law.

In contrast to CC’s licenses that allow copyright holders to choose from a range of permissions while retaining their copyright, CC0 empowers yet another choice altogether – the choice to opt out of copyright and database protection, and the exclusive rights automatically granted to creators – the “no rights reserved” alternative to our licenses.



Copyright issues – copyright abroad

- Most countries are signatories to the Berne Convention which grants basic common rights to creators' work, but not unexpectedly, there are variations between countries.
- Europe has been trying to "harmonise" for a number of years – not there yet!!
- Brexit may cause further disharmony!



Copyright Issues - fonts

- Unless you design a font, you only ever licence them from other designers/creators
- The detail is in the contract
- Fonts are subject to intellectual property, just the same as images, text, sound, artistic works and films.
- You are not supposed to exchange fonts with others, unless they have the same licence.
- FUN FACT – apparently it is acceptable to download the Ferrari logo (Ferro Rosso) for free commercial use – the font, not the logo!

Copyright Issues – Registration – Yes or No?



- There is no copyright registration in the United Kingdom
- The lack of registration complicates any litigation
- It is possible to have proof of ownership at a specific time, but this may not guarantee originality
- However, The World Intellectual Property Organisation (WIPO) has introduced WIPO PROOF -
- https://www.wipo.int/wipoproof/en/



Copyright issues – there is NO © for -

- Your work if you are an employee. Works created during employment is usually owned by the employer (see section 11 of the CDPA – quoted on the next slide
- Unoriginal works
- Trivia
- Incidental works
- Ideas

© &

VLE

© & VLE

The fact that our system of communication, teaching and entertainment does not grind to a standstill is in large part due to the fact that in many cases infringement of copyright has, historically been ignored" (Justice Hugh Laddie 1996)

No apologies for a second use of this quotation!

© & VLE

To amend copyright exceptions for education, ***so that copyright does not unduly restrict education and teaching***, without undermining incentives to creators. This means ***widening the current exceptions, applying them to more types of creative works, and more kinds of technology.*** The aim is ***to make it easier to use copyright works in education, particularly with modern technology, in order to enrich and enhance the learning environment.*** This will also provide administrative and other savings to educational establishments, and ***reduce the risks associated with using copyright materials when delivering education" (IPO Impact Assessment 2013)***

© & VLE

The VLE must be secure and password protected, preferably by a two-step process



© & VLE

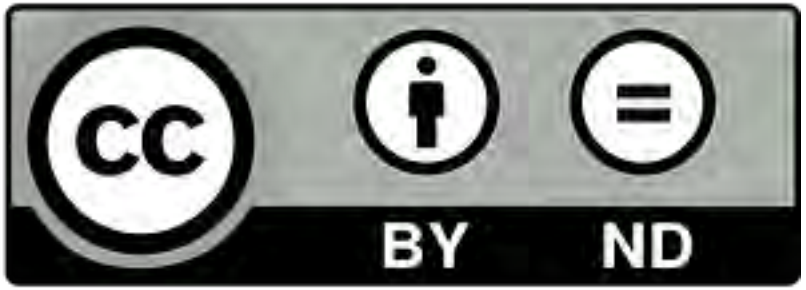


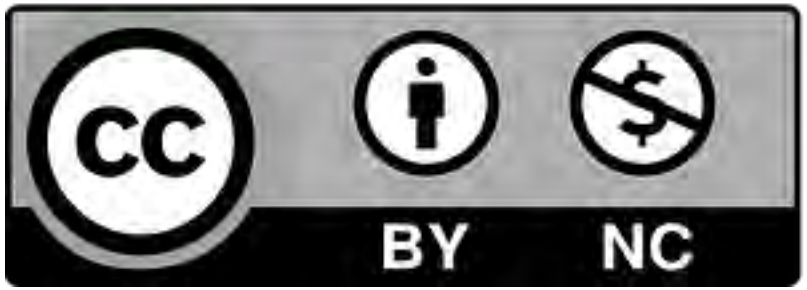
© & VLE













© & VLE



Exceptions!

© & VLE

- Copy track(s) from a CD
- Copy excerpts from a DVD
- Copy images from texts and the web
- Copy resources with CC licence(s)
- Copy podcasts
- Copy YouTube videos

© & VLE



Not if you remember the all important numbers

Sections 29, 29A, 30, 30A, 32, 34, 35 and 36 of the CDPA make it true



© & VLE

- Research and private study
- Analyse text and data
- Criticise, Review, quote and report news
- Caricature, parody and pastiche
- Illustrate for instruction
- Perform, play show works
- Record broadcasts
- Copy and use extracts of works

© & VLE

Fair Dealing





A reminder about Fair Dealing

- The “dealing” (ie “use”) must be for a **Non-commercial** purpose – but also remember that “commercial” and “non-commercial” are open to interpretation
- The use of a work under an exception, must be **carried out by an authorised person** – effectively any member of staff or student.
- Where practicable, an **appropriate acknowledgement,** that clearly defines the work/author/publisher/date of the work being used under the terms of the exceptions

Alternative Copyright Landscape

The alternative copyright landscape

- Are there alternatives to collective licences? Such as CLA, ERA, NLA Media Access, PRS for Music and Phonographic Performance Limited?
- Yes – if the college is prepared to review the resources required for teaching and learning, find out more about copyright and apply an innovative approach to resource development it is possible to reconsider the value of the licences and if they are fit for purpose
- There is no legal requirement to have any of the above licences. Not one of them is mentioned by name in any legislation. There are alternatives -

The alternative copyright landscape

- Open Educational Resources (OER)
- Creative Commons licensed materials
- Copyright cleared materials – image libraries
- Exceptions, exceptions, exceptions exceptions!











OpenLearn



Khan Academy









YouTube

YouTube

- The enigma that is YouTube
- Not licensed or licensable
- Not for educational use
- Full of risks
- Unmoderated
- Transient
- Yet one of the most popular resources in all sectors of education today

YouTube

- Has all third party content been cleared?
- Does the content satisfy learning outcomes?
- Does your college block YouTube?
- How much use are you making of YouTube?
- Has YouTube legitimised itself in recent years?
- Do you upload to YouTube?
- Have you cleared all content?
- You do realise you are giving YouTube a worldwide non-exclusive right to display and distribute your work?

© Puzzles, teasers, questions, inconsistencies

Copy or inspiration?

Copyright protects the expression of ideas, not the ideas themselves



© E Dunbar 2018



© Jack Vettriano 1992

I'm not aware of any copyright issue relating to these works – I just wanted to point out that there are no copyrights in umbrellas, couples holding each other and moody backgrounds – but was E Dunbar inspired by J Vettriano or is it an attempt at copying?

The Borrowers



This is an inflated “installation” work created by US multimedia artist, Jeff Koons. Mr Koons is no stranger to allegations of copyright infringement. This work was originally entitled “inspired by a doll found at a factory” but later acknowledged as “knowing of the work” – a porcelain piece by Oksana Zhnikrup, showing in the next slide. Mr Koons claims ”fair use” (US term) because his work, according to him, and a number of judges over the years, as “transformative”

The Borrowers



Here's an image of the original work, which Mr Koons at first denied ever having seen. Interestingly Ms Zhnikrup licensed the image to Mr Koons – but we don't know for how much.Figurine by Oksana Zhnikrup – licensed to Jeff Koons. Is it a direct copy, or was the judge correct in allowing "transformative" work as a solution??



Copying, inspiration, transformation, appropriation, theft?

Appropriated by Richard Prince, from original work by Patrick Cariou. Does this type of work now legitimise drawing moustaches etc, on a variety of art works? Mr Cariou wasn't best pleased when a judge ruled that the work, although appropriated by Mr Prince, was also not infringing due to "transformation"



What are the chances? Simultaneous shots?

The answer is on the next slide



Catch 22?

"…If the subject matter is not itself a copyright work, in principle two different photographers can take separate photographs of the same subject without either copying the other…two works created from a common source do not by reason of that fact involve copying one of the other, however similar they are… “



Since the lighthouse isn't a "copyright work", both photographers can claim copyright on the image. They could quibble about aperture, depth of field etc, but no judge would uphold one claim over another. This is the reason that you can take a photograph of, let's say the Wallace Monument, print it out as a postcard and sell it commercially. To ward off competitors, you can include a detail in your photograph – a sprig of white heather, for example, and that gives your image a stronger claim for copyright.

Who took the images?

Creation Records v News Group Newspapers 1997



News Group



Creation Records

Copyright keeps throwing up bizarre cases. In this one, Oasis had set up the elements for the right hand image. The other image was taken by a freelande photographer and was published in the Sun. Oasis weren't happy and sued for copyright infringement or breach of confidence since the photo shoot was supposed to be secure, for the official photographers only. Security, however, was not secure – it was lax and others managed to capture the image. The judge saw nothing in the setup that warranted copyright protection but did rule that confidence had been breached

Appropriation or Inspiration?





That man Koons again!

Read the full story here - https://www.artsy.net/article/artsy-editorial-jeff-koons-8-puppies-lawsuit-changed-artists-copy - spoiler alert - Mr Koons lost this one!

Copyright infringement – yes or no?





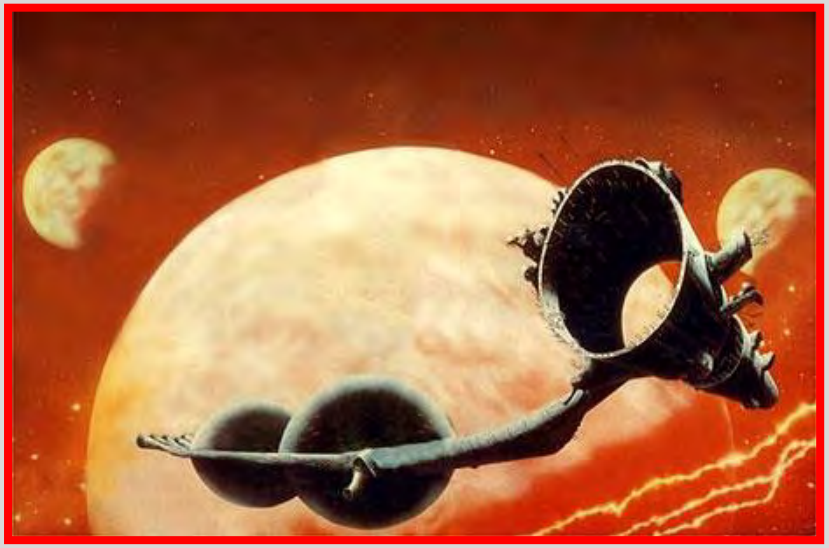
Photo by Manny Garcia, poster by Shephard Fairey

This case ended as a draw. Manny Garcia had taken a photograph for Associated Press, who were less than impressed when Shephard Fairey produced the “Hope” poster from the original photo – it all got very messy – if you’re interested, here’s the full story - http://www.ethicsingraphicdesign.org/was-shepard-faireys-use-fair/

Original or copy?



The Loves of Shepherds 2000 - Glenn Brown – Turner Prize nomination



Robert A Heinlein's Double Star – illustration by Tony Roberts 1956

"Glenn Brown has frequently used the work of other artists in developing his own work, but that is true of Picasso, who borrowed from Rembrandt ... this is not new. "He uses other artists' work, but that doesn't mean to say you could possibly mistake his work for theirs... he takes the image, he transforms it, he gives it a completely different scale."

I have copied these images under the legal defence of "fair dealing" citing criticism and review



Mickalene Thomas, Racquel: Come to Me, 2016. Mixed media, 108 x 84 in. Mickalene Thomas



Rhianna by Juergen Teller – Vogue Magazine July 2018

The Borrowers

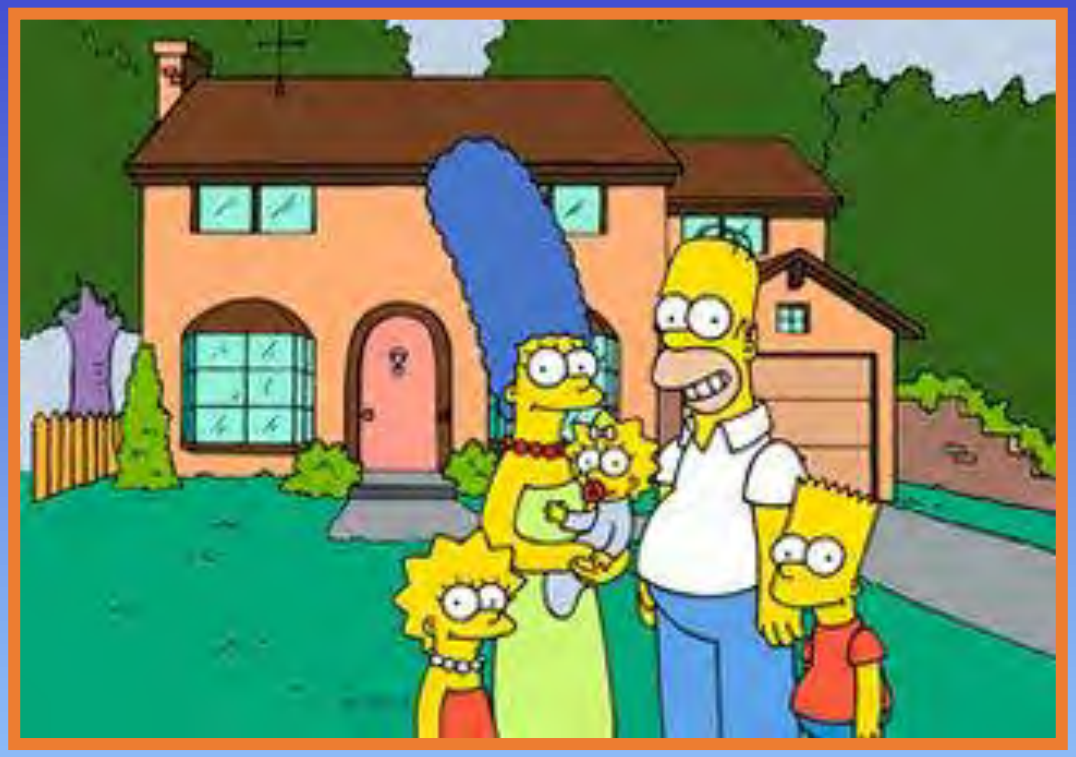
https://hyperallergic.com/452631/rihanna-vogue-paris-juergen-teller-mickalene-thomas/

Legal or illegal?



Could be legal – under the parody exception

Legal or illegal?



Reproduced from The "Simpsons" Handbook (The "Simpsons") by Matt Groening (Hardcover - 11 Jun 2007) and copied under the terms and conditions of a CLA licence

Who wants to be a Millionaire?


WHO WANTS TO BE A
MILLIONAIRE
WHO WANTS TO BE A

For £500 - you want to cut and paste a photograph from the internet into the VLE for a media studies unit



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by NLA

A and B – citing S32 of the Copyright Act – "illustration for instruction"

For £1000 – can you digitise an image from Flickr and include it in a learning unit on your VLE?



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by CLA

C – unless it is Creative Commons

For £2000 - You are commissioned to do corporate work – you use existing material – was the copying you did to create that material commercial or non-commercial?



A – Commercial

B – Non-commercial

C – don't know

D – don't care

B

For £5000 - An HEI wants to use an image from a student's graphic portfolio on the HEI website



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by DACS

C

For £10,000 - you want to use images from the Simpsons, found on the web, to illustrate aspects of a unit on the VLE



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by CLA

A and B – s32 of the Act

For £20,000 - you want to use a clip of a BBC1 programme in a Powerpoint presentation



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by ERA

D

For £50,000 - you want to use a clip of a BBC1 programme in a Powerpoint presentation you are making on a full cost recovery course



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by ERA

C

For £100,000 - you want to use a royalty free image in a presentation you are making for a full cost recovery course



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by s32

A – if you have bought the image

For £250,000 - you want to digitise a collection of rights managed images, to place in an digital repository operated by a consortium of HEIs



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by DACS

C

For £500,000 - you want to use an image of Homer Simpson, contained in a book, in your VLE



A – Yes, no problem

B – Yes, with full acknowledgment

C – No – you don't have a licence

D – covered by CLA

D

For £1,000,000 - have I been infringing Chris Tarrant's copyright?



A – Yes

B – Maybe

C – No

D – covered by CLA

C - since when did he have the copyright on multiple choice questions?

For £2,000,000 - which UK comedian sold his rights in the company making "Millionaire" for millions?



A – Ronnie Corbett

B – Jasper Carrot

C – Ronnie Barker

D – Lenny Henry

B – Jasper Carrot – copyright is funny and rewarding!!

Images used in this presentation

- Unless otherwise stated, the images used in this presentation have been acquired through Pixabay (https://pixabay.com/) under a Creative Commons CC0 licence.
- Many other image libraries, also using CC0 licences for their images are available, - but always exercise caution. Images, unless assigned by the creator, remain the creator's copyright – while the CC0 licence appears to offer complete freedom of use, both commercial and non-commercial, they do not carry warrants or indemnities. The user still takes the risk – CC0 just offers a much lower threshold of risk.



And goodbye from me

- Alan Rae
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- 07779632722

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Thank you

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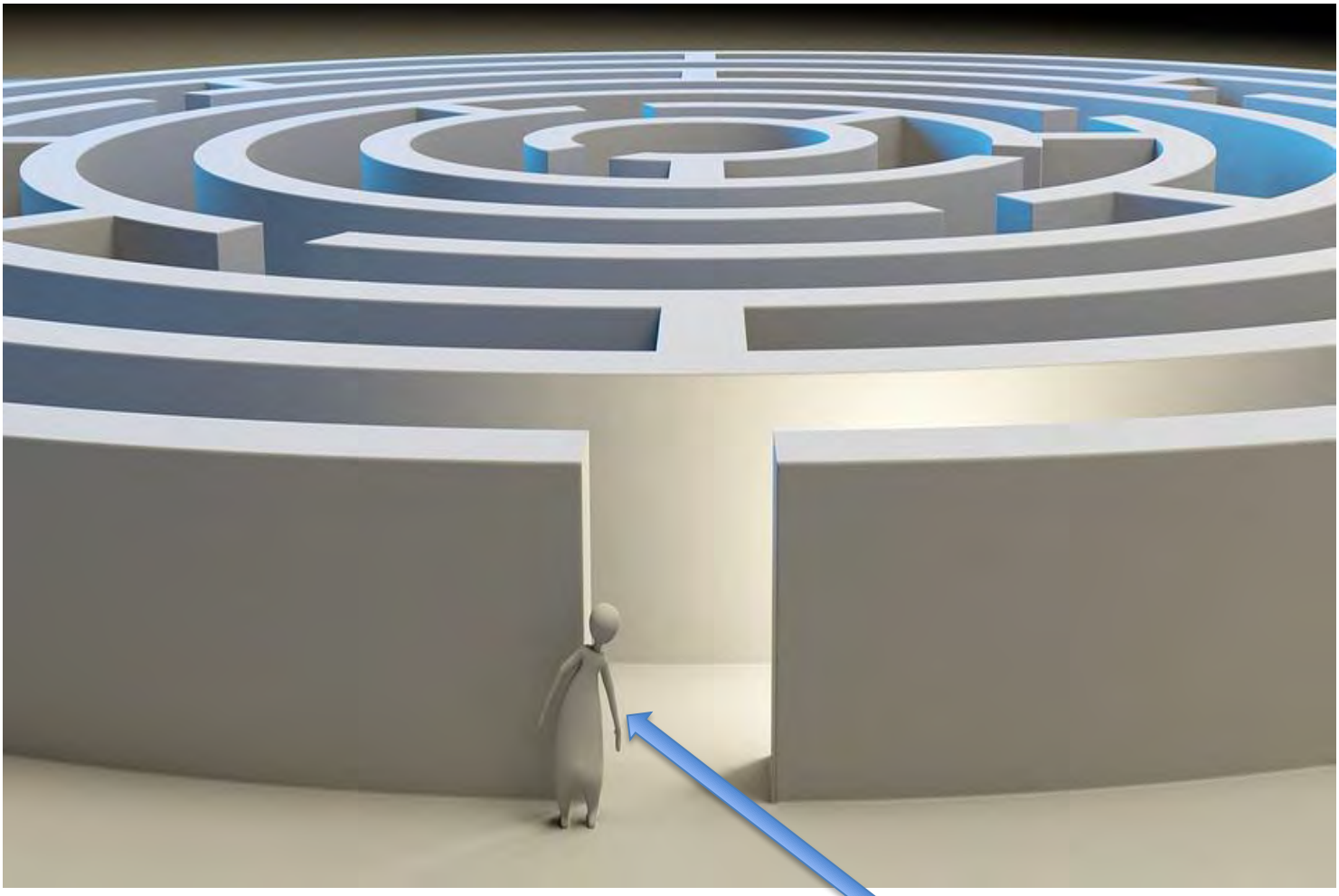
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Glasgow Kelvin College

Copyright Guidelines

October 2022

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Welcome to the © Maze

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Introduction

Relevant legislation

The context for these guidelines is the Copyright Designs and Patents Act 1988 (as amended) 1988 (CDPA)

Any references in the guidelines to sections of legislation, relate to this Act, passed by Parliament in Westminster. Intellectual Property, the title covering Patents, Trademarks, Copyright and Designs is not a devolved responsibility.

Still with the legislation, it is the author's contention that particular sections of the Act are very important to education. These sections are called "exceptions" and can be beneficial to the work of a college when considering the use of third party content in teaching and learning resources.

Purpose of the guidelines

These guidelines have been written to support the College's Copyright Policy and the process of raising Copyright Literacy in a modern College. They are also intended to support the College's copyright training module available on the VLE.

As with any subject, there are countless other resources and copyright is no exception. It is a subject that some find unapproachable due to perceived complexity, not helped by technical language.

The intention of these guidelines is to make them approachable with an absolute minimum of jargon. I worked in Scottish Further Education for 34 years with the last 20 of them carrying a substantial responsibility for copyright matters. I have continued that interest and have been managing my copyright consultancy business for 20 years

Knowledge and awareness of the concept of copyright is essential to all staff and students in the College.

For staff using third party materials, there is a requirement to know what is and isn't acceptable practice when using other people's content.

Teaching and learning practices have undergone significant development in recent years, principally due to the introduction of the digital age that has brought with it various aspects such as the Web, social media platforms, interactive resources, remote learning and, given the right capacity, the ability to cut and paste and distribute just about any content, in no time at all.

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Gone are the days of substantial photocopying and a strong reliance on physical print in texts, newspapers and magazines. The resources may be evolving from analogue to digital, but the copyright law remains the same – trying to stay neutral in the wake of exceptional technological change.

Learners now think nothing of using their own devices, either in college, or remotely, to access their learning resources – text, images, video, audio and software, but just as with handouts, copyright still has to be considered – we are all still using third party material, and, without appropriate systems, digital infringement of copyright is considerably easier to trace than analogue infringement.

Staff, for example, have software that can now report plagiarism in student work – and plagiarism can be described as copyright infringement.

Just as copyright literacy is a necessity for college staff, so increasingly, students require, at the very least, a basic understanding of copyright to assist them with their studying.

As learners, their copying, to an extent, can be managed by reference to one of the exceptions in current legislation (CDPA) – s29 of the Act is entitled "research and private study" and allows learners to make single copies for their own studies. It is useful for lecturers to remember that s29 exists. Perhaps there isn't a need for multiple copying when the student, directed to a resource through a reading list, or a hyperlink, can choose how to access the nominated content.

Students must also be aware of copyright for their future careers, either in their own businesses, or working for organisations that are heavily affected by Intellectual Property – either creating, protecting and licensing their own IP (patents, designs, copyright, trademarks and confidential information) or licensing such aspects from others.

Software houses, games studios, media organisations – all rely entirely on Intellectual Property to ensure their development and success.

Copyright is important – failure to comply with appropriate legislation and licensing could have economic and reputational impacts on the College.

Copyright deserves your attention.

These guidelines will introduce you to the legal and licensing aspects of copyright in colleges, and explain in a straightforward manner, how to interact with copyright and use it as an enabler, not a hurdle.

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How to use the guidelines

Firstly, there is an element of duplication in the guidelines in that each of the College Faculties is given its own guidance. Rather than having to work through a very large amount of information that doesn't relate to you, please refer to the contents page and you will find your College Faculty.

The guidelines deal with

- Text
- Still images
- Video and film (including broadcasts)
- Music
- Audio

- They also highlight the licences and legislation that deal with copyright in the UK (copyright is not a devolved responsibility)
- There are references to the principal Collective Management Organisations (CMOs) that have been created by stakeholders and content providers to represent their interests and to allow permission for their works to be copied in an educational context.

The CMOs referred to are –

- Copyright Licensing Agency (CLA)
- Educational Recording Agency (ERA)
- NLA Media Access (NLA)
- PRS for Music (PRS)
- Phonographic Performance Limited (PPL)

The copyright legislation in the UK is the responsibility of the Intellectual Property Office (IPO), part of the Department for Business, Energy & Industrial Strategy. The IPO is responsible for those aspects of IP that can be registered – patents, trademarks and designs. Unfortunately, copyright does not have to be registered in the UK. The mere fact that content exists, is original and created by an EU national is sufficient for the work to be deemed as copyright.

This process may appear to be simple, but it is balanced by the challenges of proving ownership of content at a particular time to refute the potential complaints of others claiming to be the legitimate rightsholders. The myriad disputes keep the legal community very busy!

Writing guidelines in a plain English, light and potentially entertaining manner is an interesting exercise! There is a mixture of narrative and FAQs throughout the guidelines, along with a few suggested links to take the inquisitive reader a step or too further.

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While there is a standard approach to each College faculty for copyright in text, images and moving images, films and broadcasts, some schools have additional explanations to deal with particular topics.

Examples of these are found in STEM, performing arts and sports.

It may well be the case that you only ever need to refer to the section in the guidelines that refer specifically to your department. That's absolutely fine, but for those who may want to develop their copyright literacy, there are other articles to give you further insight.

Disclaimer

The Author, while qualified in UK, US and European copyright at post graduate level, is not a qualified solicitor. All information and opinions expressed in these guidelines cannot be used as legal advice

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Business & Creative Industries Faculty

- Creative and visual arts
- Performing arts, computing, upskilling
- Business and Sound





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- Fashion, Jewellery and TV
- Computing, ICT and Servicing
- Music Business, Gaelic and Sound Production
- Art, Design and Photography
- Performing Arts
- Business and Music Performance

Copyright in your faculty affects many of the resources that you are using in your teaching and learning. All the content listed below could be subject to copyright. Please note, this is not an exclusive list

- The scripts of plays
- The annotation of music
- The lyrics of music
- The recordings of music
- The playing of music from CDs, streaming and downloading
- Choreographic sequences
- Animations such as cartoons
- The videos made in the training salons, the theatre, the recording studios, the dance studio
- The movies of plays and cinema productions used to teach/learn narrative, composition, structure, editing, cinematography
- Third party images of fashion and jewellery
- Software coding
- Language translation
- All images created and viewed in photography
- In art teaching and learning, there are many areas that require attention to copyright – every artistic creation is subject to copyright. Do students own their copyright in their own creations? (yes)

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- YouTube videos used in teaching and learning (other streaming platforms are available)

- There is a lot of content listed above in the suggested resources – and it's all subject to copyright – the College's, the students', perhaps the lecturers and almost certainly third parties such as songwriters, record companies, playwrights, lyricists, translators, designers, choreographers, cinema producers, musicians, actors, jewellers, software programmers and photographers.

- Your faculty is no different from the others – you have the potential to use many sources of copyright works in the process of teaching and learning. This is absolutely fine – it could be argued that reusing third party is the essence of teaching and learning – just be conscious of what you are doing and don't be hesitant to ask questions about any potential risks you think may attach to your copying and reuse requirements

Categorising the content into

- Text
- Photographs/Images
- Moving images, video and broadcasts
- Music and Audio

here are some questions and suggested answers that will help you find your way through the copyright maze.

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Text



The principal licensing agencies dealing with text from books, e-books journals, newspapers and magazines are –

Relevant Licences

- Copyright Licensing Agency (CLA)
- NLA Media Access (NLA)

Here are some questions and answers about the use of third-party text material in teaching and learning resources, both digital and analogue, in your section.

Question – Without the CLA licence, is it still possible to make multiple copies of text for learners?

Answer 1 – yes – if the texts are not covered by the CLA licence. The licence does have extensive coverage, but not all texts are included in the licence

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Answer 2 – yes - it may be that the College subscribes to an e-version of the text, in which case, the content will be available to learners through the College VLE, and subject to the terms and conditions of the e-book contract, it may be possible to make multiple copies, if required.

Answer 3 – yes – if the text is included in the Jisc FE books collection, then, again, subject to the terms and conditions of the licence accompanying this project, it may be possible to make multiple copies, if required.

Answer 4 – yes – you may be able to find the required text elsewhere. It may be contained in an Open Educational Resource (OER) which is managed by a Creative Commons (CC) licence (please see Appendix C for further information)

Answer 5 – yes – if you make use of the "exceptions" available to you under the 1988 Copyright Designs and Patents Act. There are a number of exceptions available to you under the concept of "fair dealing". The exceptions and "fair dealing" are further explained in Appendix A

Q – Can I make multiple copies, for class use, of relevant text and images from content not covered by either the CLA or NLA licence?

Answer 1 – Yes, if you ask permission from the rightsholder and they agree. When asking any content provider for permission, always give as much information as possible about the content you wish to copy

- Title of publication
- Date of publication
- Number of pages
- Number of copies required
- The purpose of the copying – educational or commercial?
- Paper or digital copying – upload to the VLE, for example
- Indicate whether the copying will be black and white or full colour
- The course of study
- ISBN/ISSN identifiers (if applicable)
- An assurance that, if granted, the copies will be full acknowledged and only used for and by the learners on the course
- An assurance that the permission, if granted, will not be shared with any other organisation

Answer 2 – Yes, if you upload the content to the College's VLE and direct the learners to the content – and leave them to view and print off their own copies as they see fit to help their learning.

This copying would be allowed under s29 of the Copyright Patents and Design Act 1988. S29 is what is called an "exception". Further information on exceptions and examples of when to use them can be found in Appendix A

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Answer 3 – Perhaps. The rightsholder may prefer to provide you with sufficient copies of content for each learner to have a copy. It's always worth asking the question.

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Photographs/Images



Relevant licences

Both CLA and NLA licences allow the copying of images that are within the context of the content that is copied from the licensed publications.

There is another licensing agency, specifically for photographers, called The Design and Artists Copyright Society (DACS). For educational purposes, they are affiliated to the CLA licence and receive a share of royalties from CLA to distribute to their photographer and designer members.

Other licences that a college may encounter with images are those issued by image galleries and individual photographers who may be commissioned by the college to create content specifically for advertising, marketing and resource creation purposes.

Images, and all the licence technicalities that are attached to them, are contentious aspects of copyright, given that in the digital age, they are readily available for cutting and pasting, irrespective of where they are found on the Web.

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The ease of copying does not negate the fact that virtually all images on the Web are subject to someone's copyright. As with so many other forms of content on the Web, just because something is free to view, doesn't make it free to use.

It is very difficult to be precise about this, but it's likely that a very high percentage of infringing uses of images is ignored by the holders of the image's copyright.

However, there is still a risk of detection. Each digital image, created by a smartphone, digital camera, tablet, laptop or computer, carries with it metadata – a digital fingerprint that can provide information about the image – location, exposure, date and time.

This metadata can be tracked, and images identified by or on behalf of the copyright holder.

Care must be taken when using images that may be licensed by digital image galleries, who either sell or licence images for publishing, newspapers, catalogues, marketing, educational purposes etc as their business model.

Examples are Getty, Shutterstock and Bridgeman Art Gallery. They use sophisticated web-based software to police the use of their images and have gained a notoriety for identifying infringing images licensed by them, and sending cease and desist letters, often accompanied by a penalty invoice, to suspected infringers.

Your college does not want to receive one of these letters. The penalty is usually inflated, but if there is any "discussion" about an alleged infringement, there is always the potential of reputational damage, which can be much more hurtful to an organisation than a financial penalty.

Don't despair – use image galleries such as Pixabay and Unsplash (more information on image galleries, and the use of CC0 licensed images can be found in Appendices C (Image Galleries) and D (Creative Commons licences)

There is an unfortunate tendency for creators to reach immediately for Google Images given the vast number of images that are contained in that gallery. However, Google appear to "harvest" images from many other image suppliers, apparently without permission, and aggregate them on their own platform.

Closer inspection of all images on Google will show that "images are subject to someone's copyright". With a few more clicks, it is possible to see who those image copyright owners are and, using Google's advance search, it is possible to locate images that while subject to copyright, may be used without royalties.

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Here are FAQs relating to the use of images in education

Q - Do you create the images yourself?

A - if yes, and you do this as part of your contract with Glasgow Kelvin College, then the copyright of your images belongs to the College, as your employer

A - If yes, and you take the images outwith your contracted hours at the College, you may be asked to licence the photos to the College for inclusion in any learning resources that you create

A - If yes, the images are your copyright. It is advisable to consult with your section head, or Human Resources regarding this copyright to ensure that both parties agree about the use of the images, full acknowledgement where necessary and any remuneration for the use of the images.

Q - Do you copy/scan the images from other sources – textbooks, journals, manufacturers' publications, the Internet?

A - If so, do you have permission, or a licence or are you eligible to copy/scan through an exception that is contained in the Copyright Patents And Designs Act of 1988? (For more information on exceptions, please refer to Appendix A)

A – are you aware of image galleries such as Pixabay and Unsplash? If not, please try them and use a variety of search words to discover the extent of the images. These image galleries are completely free to use – you don't even have to acknowledge their source (all images in these guidelines are from either Pixabay or Unsplash)

A – sites such as Pixabay and Unsplash allow the images to be used under the terms of a Creative Commons (CC) licence. Increasingly, creators of all types of resources are making their works available under a CC licence. The essence of this licence, in comparison to the more traditional form is that "Some rights are reserved" not "all rights" as in the traditional form.

This allows users to make copies of images, texts, videos and sound as long as they comply with the particular CC licence. Please see Appendix D for further information on Creative Commons.

BUT – please be careful of other image sites. There are many on the web that claim to offer "free" images, but they are usually "royalty free" not "copyright free". "Royalty free" or "rights managed" images do involve either a one-off fee or a recurring fee based on usage.

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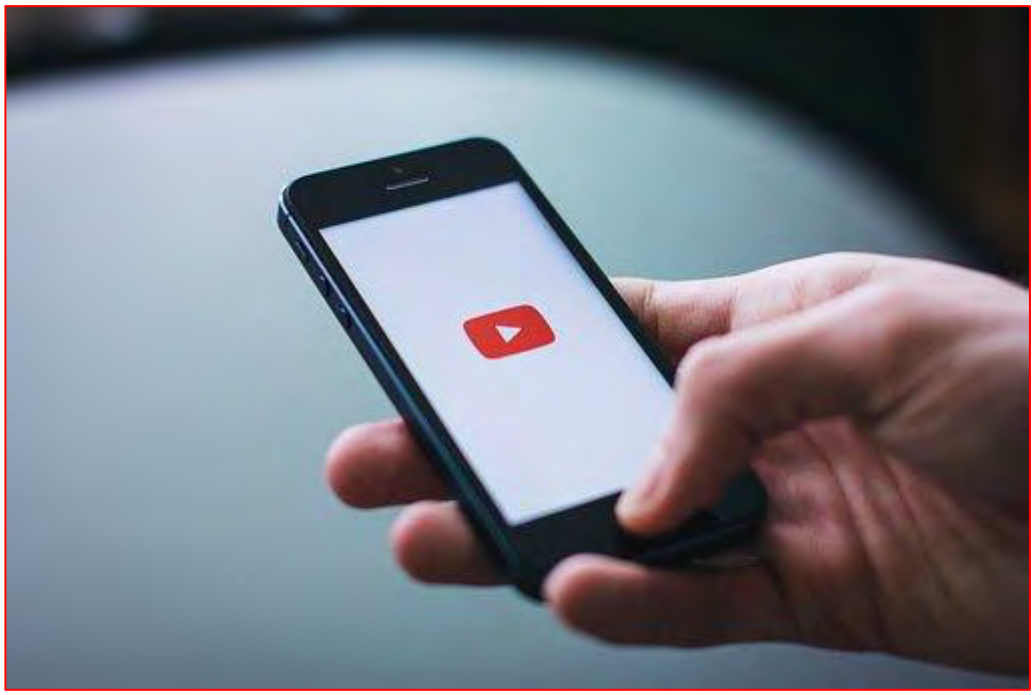
Q - Do you commission images from other people?

A – if you do, and although it seems like a pain, make very sure that you have an agreement (preferably written) with the photographer spelling out precisely what will happen with the images and what each party's expectations are for the images that are being commissioned.

- Will the photographer be paid a fee?
- Will you/the college be allowed to crop/adapt the images?
- Will you be allowed unlimited use of the images?
- Or will you be restricted to web site use only, or text reproduction only?
- Will you be allowed to use them for educational purposes as well as for advertising and marketing purposes?
- How long will the agreement last?
- Will the photographer assign the copyright of the images to you so that you can treat them as if they were your own?
- Or will the photographer grant a licence for your/the College's use and retain the copyright themselves?

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Moving images, video and broadcasts



Relevant Licences

The principal licence relating to this content is the Educational Recording Agency (ERA) agreement.

Two others that may need consideration are those issued by Filmbank and the Motion Picture Licensing Company (MPLC). Without wishing to be sued, I suggest that care is exercised in any dealings with MPLC – I'm sure they have a legitimate place in the overall movie licencing industry – I'm just not convinced that they have any place in education

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Q – Where do you source your moving images?

A – If you are sourcing your moving images from broadcast television, then you are perfectly entitled to ask for programmes to be recorded and stored, under the provisions of the Educational Recording Agency that your college has.

This licence allows the recording and storage of programmes from BBC, ITV, Channel 4, and Channel 5 as broadcasters, along with the rights attached to these programmes from stakeholders shown in this graphic.



Q – Is the college allowed to record and view programmes broadcast on “catch-up” channels?

A – Yes

Q – Which activities does the ERA licence allow?

A – all licensed programmes can be recorded, stored, copied and distributed. Programmes can be stored as DVDs, on a hard drive and loaded to the college VLE. This process is helped by the College’s membership of Clickview, a commercial organisation who can carry out all the necessary recording, storing and monitoring of the uses being made of the broadcasts

Q – Do recorded programmes have to be used in full, or can extracts and clips be made?

A – Clips and extracts are allowed, if there is no adaptation. Clips can be edited into teaching units and uploaded to the College VLE.

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Adaptation may be possible if video production students, for example, use a licensed programme to try out editing and effects software. Such work should not be saved nor uploaded to the VLE or to a website.

Q – Can clips and extracts from licensed broadcasts, be uploaded to the College VLE?

A – Yes they can

Q – Can clips and extracts from licensed broadcasts, be embedded into Powerpoint presentations?

A – Yes they can

Q – Do the recordings of licensed broadcasts have to be viewed in the College?

A – No – they can be accessed by learners on their own computers through the VLE at another location. The only learners who are not allowed to do this are those who are studying abroad at a Scottish College's affiliate or partner college

Q – can ERA recordings be copied?

A – if the use of the copies comply with the terms of the licence. It would be possible to make multiple copies for distribution to different departments and campuses – unless the recordings are stored and distributed digitally through a server/VLE

Q – Does the ERA licence allow commercially produced DVDs and CDs to be copied?

A – No, but the exceptions s30 and s32 could be used to copy relevant tracks and excerpts. There are no guidelines accompanying the exceptions in the Copyright Act of 1988, so how much content a person would like to copy is open to interpretation.

The law does state that copying under these exceptions (30 and 32) that they must be done under the concept of "fair dealing"

Important distinction – it is essential that you understand that "fair dealing" and "fair use" are different. "Fair use" is an American term in US copyright law and is generally regarded as being much more flexible than the UK term "Fair dealing". In fact, it is unlikely that guidelines such as these would be required in the US education system – there is considerably more leeway there in copyright's relation to education uses. Please see Appendix A for further information on "fair dealing"

In the case of moving images, there is no clear guidance on what is "fair" when copying tracks, clips and excerpts.

Prior to the changes in the exceptions in 2014, the amount that could be copied was limited to a much greater extent than now. There are no guidelines on precise

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percentages, numbers of tracks etc that can be copied now. The amount copied and the purposes for the copies, is dependent on the teacher's decision and their ability, if ever challenged, to justify that the amount copied was necessary to achieve a particular learning outcome.

Q – Can recordings of ERA licensed materials be adapted?

A – the licence says "no" but ERA has a view that the use of digital technology in video recording, editing and special effects in teaching film education is likely to create adaptations to the recordings made under the licence. The request from ERA is that students use such software in a responsible manner and do not upload any adapted content to any public-facing website.

This is another area where students would do well to be instructed in the concept of copyright and how it affects this aspect of the creative industries.

Q – Does the ERA licence cover YouTube?

A – No it doesn't. And here lies one of the main dilemmas in copyright, current resources, licensing, legislation and education.

No one has come up with an acceptable policy of using YouTube. There is much agonising on the risks associated with a platform that does not conform to the traditionally held views that all educational resources should be peer-reviewed, edited, proofed, have acceptable provenance and fulfil the purpose of assisting teachers and learners to achieve prescribed learning outcomes.

There is an extensive article on the use of YouTube in Appendix F of these guidelines

For the moment, depending on your college's policy for accessing YouTube, you must exercise care. Preview all the content you want to use and try to determine, as best you can, that the content comes from a reputable source, is not offensive in any way (although it must be very tempting to use YouTube and other social media platforms to illustrate various aspects of modern communication and sociology) and will support the achievement of an outcome.

An irony of YouTube and the lack of licensing is that many of the ERA's stakeholders either post on YouTube themselves or tacitly approve of third parties using their content on their own YouTube channels.

Are we in the Wild West of copyright when we consider YouTube? Quite possibly!

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Music and Audio



The relevant licensing agencies associated with music are –

- PRS for Music – representing songwriters, composers and publishers
- Phonographic Performance Limited – representing record companies and performers
- MCPS – Mechanical Copyright Protection Society – writers, musicians

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Of all the content that is contained in teaching and learning and that is also subject to copyright, music is most likely to cause complications.

And yet, for a college, it could be remarkably simple – thanks to another exception in the CDPA (1988). This time it's s34 (2) that states -

"The playing or showing of a sound recording, film or broadcast before such an audience (teachers, learners, staff) at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright".

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The author of these guidelines interprets this section as allowing the playing of music for all curricular purposes in -

- Dance
- Drama
- TV and film studies
- Music performance
- Sound recording
- Communications
- PE classes where students are being taught how to take exercise classes where music is played

The complication with playing music in a college arises, however, when trying to determine what is curricular and non-curricular.

Playing music in the classes listed above is fine. The issues arise with

- Music played in "public" places in the college
    - Reception areas
    - Refectories
    - Student and staff lounges
    - Training restaurant
    - Training salons – hair and beauty

At the time of writing these guidelines (October 2022) discussions are being held with the music licensors, PRS for Music and Phonographic Performance Limited (PPL) regarding the above music locations. The current situation is that if a college doesn't play any music outside the curriculum, it doesn't need a licence from either of the licensors. If, however, music is played in "public" places, a licence may be required.

Q – who are the music licensors?

A – PRS for Music (PRS). They licence the "playing" of music.

A - Phonographic Performance Limited (PPL). They licence the playing of "recorded" music.

A - Mechanical Copyright Protection Society (MCPS) licence the physical recording of music from master tapes to other media. MCPS members are writers and musicians. PRS and MCPS formed an alliance in 2009 and rebranded as PRS for Music

NB, for the purposes of these guidelines, the emphasis is on PRS and PPL. MCPS still retain their brand, in association with PRS and actually offer a very useful Limited Manufacture Licence that may be of benefit to Colleges. It should also be noted that MCPS, although working in partnership with PRS, is owned by the Music Publishers Association (MPA) – more about them shortly.

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And the author of these guidelines takes no responsibility for the complex nature of music licensing – the whole industry built on rights of composers, publishers, musicians, record companies and all others involve is variously described as "impenetrable", "incomprehensible" and "inexplicable"

Q – why am I still confused?

A – in a retail outlet, for example, if music is being played, both (PRS and PPL) licences are required. Music is being played, and capable of being heard, so PRS for Music is required and because the music is coming from a recorded source, a PPL licence is also needed

Q – are there any occasions when only one licence is required?

A – when the music is live, only the PRS licence is needed. If, for example, your College showcased musicians and performers playing live in the main reception area, only PRS is needed, since there is no recorded source. Once that recorded source is added, then PPL is also needed.

Unfortunately, many people don't realise this and when they start a business and have music playing either as a feature or background, then the business requires two licences.

PRS and PPL have realised that this situation is not ideal and have formed a Joint Venture called "TheMusicLicence". Although only one payment is required, the licences are still operating with individual tariffs based on numbers of listeners, number of seats (in restaurants and salons) a measured area, or based on the revenue at the venue.

Q – is it permitted to copy tracks from a CD to the VLE for teaching and learning purposes?

A – Yes – it does help if the College owns the CD but nothing in any case law indicates that it's essential – the author suggests that this is possible under the exception – s32, Illustration for Instruction

Q – is it permitted to use podcasts in our teaching and learning?

A – Yes – any podcasts distributed by stakeholders in the ERA are covered by that licence – along with radio broadcasts. Other podcasts, which can be defined, for legal purposes as "sound recordings" are covered for curricular use in s34 of the Copyright Act and could also be covered by s32

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Q – is it permitted to make copies of sheet music?

A – The general answer to this is still "No", Copying sheet music is fraught with difficulties. These difficulties don't seem to stop copying, however, judging by the number of choirs, for example, that allegedly work from photocopies rather than from original printed copies. Full sets of sheet music for choirs and orchestras can be very expensive.

A recent arrival to the already crowded music licensing market is Printed Music Licence Limited (PMLL) This organisation is wholly owned by The Music Publishers Association (MPA) and, with the mandates from composer and publishing members, offers licences to copy sheet music, either physically or digitally.

At the time of writing (October 2022), there are licences for schools (Schools Printed Music Licence), Amateur Choirs, Music Services, and there's a trial licence for Higher Education.

There appear to be no plans for a Further Education licence to be offered.

There are some allowances from the MPA to copy sheet music which has been damaged, but on the whole, they are very restrictive in what they do allow.

FE may not make as much use of sheet music as do schools and universities, but many colleges do have a music department. There are several computer programs now available that help the scoring and notation of musical works – these programs will come with their own terms and conditions relating to copyright. For further information, please go to www.mpa.org and for free sheet music, the following sites may be of use –

- 8notes. - https://www.8notes.com/
- IMSLP (International Music Score Library Project) - https://imslp.org/wiki/Main_Page
- Pianotte. - http://pianotte.szm.com/
- Mutopia Project. - https://www.mutopiaproject.org/
- ChoralWiki. - https://www.cpdl.org/wiki/
- Making Music Fun. - https://makingmusicfun.net/

The author suggests caution with some of these sites – one or two seem to be aggregators of sheet music and experience suggests that they are not too particular in respecting the copyright of the singers, publishers, composers and lyricists whose music appears on their sites.

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Engineering, Construction & Science Faculty







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- Engineering and Building Services
- Construction and automotive
- Science, Access, Engineering and Maths

- Civil engineering – construction management
- Building Services VQ
- Mechanical engineering, CAD and Building services
- Brickwork and construction
- Plumbing, Electrical Installation and Construction
- Automotive and Joinery
- Electrical Engineering and Maths
- Science and Access

Copyright in your faculty affects many of the resources that you are using in your teaching and learning. All the content listed below could be subject to copyright. Please note, this is not an exclusive list

- Architect plans, building drawings – whether in print or in digital form
- Images of building works, processes, techniques from brochures, websites and from YouTube
- Any recordings from TV relevant to the various subjects taught in this faculty
- Any relevant text from books, industry publications such as brochures and instruction manuals
- Animations for mechanical and electrical engineering, building, and science
- The videos made in workshops, on site, in other organisations' premises
- Third party images
- Software coding
- All images and videos created during the course of study, especially any produced by students.

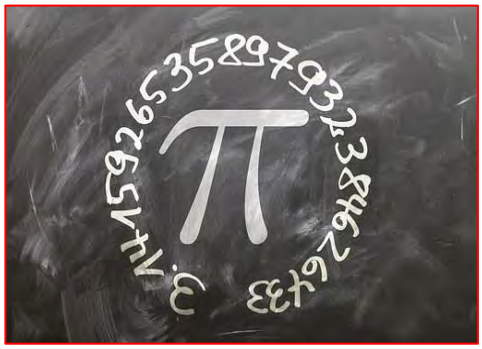
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- Any YouTube videos used for learning and teaching (other streaming platforms are available!)

- There is a lot of content listed above in the suggested resources – and it's all subject to copyright – the College's, the students', perhaps the lecturers and almost certainly third parties such as authors, architects, designers, software programmers and photographers.

- Your faculty is no different from the others – you have the potential to use many sources of copyright works in the process of teaching and learning. This is absolutely fine – it could be argued that reusing third party is the essence of teaching and learning – just be conscious of what you are doing and don't be hesitant to ask questions about any potential risks you think may attach to your copying and reuse requirements

Science, Mathematics and STEM





Please remember that there is no copyright in facts.

Generally, facts and utilitarian language can't receive copyright protection. Facts about the natural world or current and past events may be discovered, but that discovery isn't an act of creativity that is worth protecting in copyright law. This means that even if someone spends a lot of time and mental energy discovering a fact, you can still copy that fact and use it in your own work in any way you want without issue.

This is particularly relevant to the work you are doing in your section. You are dealing with facts, not fiction.

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Where you must be careful, when it comes to copyright, is copying the way someone has perhaps illustrated facts and the images and text forms that they are using in the way of explanation.

For example, if you were to discover an uncharted island, even although no one has visited it before, you don't own the copyright in the fact (knowledge) that this island exists. The copyright that you could own in this instance, could be in the photographs and/or maps, charts that you create to explain the fact that this island exists. Copyright covers creativity, but only when that creativity is fixed. Ideas, along with facts, are not subject to copyright.

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Text



The principal licensing agencies dealing with text from books, e-books journals, newspapers and magazines are –

Relevant Licences

- Copyright Licensing Agency (CLA)
- NLA Media Access (NLA)

Here are some questions and answers about the use of third-party text material in teaching and learning resources, both digital and analogue, in your section.

Question – Without the CLA licence, is it still possible to make multiple copies of text for learners?

Answer 1 – yes – if the texts are not covered by the CLA licence. The licence does have extensive coverage, but not all texts are included in the licence

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Answer 2 – yes - it may be that the College subscribes to an e-version of the text, in which case, the content will be available to learners through the College VLE, and subject to the terms and conditions of the e-book contract, it may be possible to make multiple copies, if required.

Answer 3 – yes – if the text is included in the Jisc FE books collection, then, again, subject to the terms and conditions of the licence accompanying this project, it may be possible to make multiple copies, if required.

Answer 4 – yes – you may be able to find the required text elsewhere. It may be contained in an Open Educational Resource (OER) which is managed by a Creative Commons (CC) licence (please see Appendix C for further information)

Answer 5 – yes – if you make use of the "exceptions" available to you under the 1988 Copyright Designs and Patents Act. There are a number of exceptions available to you under the concept of "fair dealing". The exceptions and "fair dealing" are further explained in Appendix A

Q – Can I make multiple copies, for class use, of relevant text and images from content not covered by either the CLA or NLA licence?

Answer 1 – Yes, if you ask permission from the rightsholder and they agree. When asking any content provider for permission, always give as much information as possible about the content you wish to copy

- Title of publication
- Date of publication
- Number of pages
- Number of copies required
- The purpose of the copying – educational or commercial?
- Paper or digital copying – upload to the VLE, for example
- Indicate whether the copying will be black and white or full colour
- The course of study
- ISBN/ISSN identifiers (if applicable)
- An assurance that, if granted, the copies will be full acknowledged and only used for and by the learners on the course
- An assurance that the permission, if granted, will not be shared with any other organisation

Answer 2 – Yes, if you upload the content to the College's VLE and direct the learners to the content – and leave them to view and print off their own copies as they see fit to help their learning.

This copying would be allowed under s29 of the Copyright Patents and Design Act 1988. S29 is what is called an "exception". Further information on exceptions and examples of when to use them can be found in Appendix A

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Answer 3 – Perhaps. The rightsholder may prefer to provide you with sufficient copies of content for each learner to have a copy. It's always worth asking the question.

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Photographs/Images



Relevant licences

Both CLA and NLA licences allow the copying of images that are within the context of the content that is copied from the licensed publications.

There is another licensing agency, specifically for photographers, called The Design and Artists Copyright Society (DACS). For educational purposes, they are affiliated to the CLA licence and receive a share of royalties from CLA to distribute to their photographer and designer members.

Other licences that a college may encounter with images are those issued by image galleries and individual photographers who may be commissioned by the college to create content specifically for advertising, marketing and resource creation purposes.

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Images, and all the licence technicalities that are attached to them, are contentious aspects of copyright, given that in the digital age, they are readily available for cutting and pasting, irrespective of where they are found on the Web.

The ease of copying does not negate the fact that virtually all images on the Web are subject to someone's copyright. As with so many other forms of content on the Web, just because something is free to view, doesn't make it free to use.

It is very difficult to be precise about this, but it's likely that a very high percentage of infringing uses of images is ignored by the holders of the image's copyright.

However, there is still a risk of detection. Each digital image, created by a smartphone, digital camera, tablet, laptop or computer, carries with it metadata – a digital fingerprint that can provide information about the image – location, exposure, date and time.

This metadata can be tracked, and images identified by or on behalf of the copyright holder.

Care must be taken when using images that may be licensed by digital image galleries, who either sell or licence images for publishing, newspapers, catalogues, marketing, educational purposes etc as their business model.

Examples are Getty, Shutterstock and Bridgeman Art Gallery. They use sophisticated web-based software to police the use of their images and have gained a notoriety for identifying infringing images licensed by them, and sending cease and desist letters, often accompanied by a penalty invoice, to suspected infringers.

Your college does not want to receive one of these letters. The penalty is usually inflated, but if there is any "discussion" about an alleged infringement, there is always the potential of reputational damage, which can be much more hurtful to an organisation than a financial penalty.

Don't despair – use image galleries such as Pixabay and Unsplash (more information on image galleries, and the use of CC0 licensed images can be found in Appendices C (Image Galleries) and D (Creative Commons licences)

There is an unfortunate tendency for creators to reach immediately for Google Images given the vast number of images that are contained in that gallery. However, Google appear to "harvest" images from many other image suppliers, apparently without permission, and aggregate them on their own platform.

Closer inspection of all images on Google will show that "images are subject to someone's copyright". With a few more clicks, it is possible to see who those image copyright owners are and, using Google's advance search, it is possible to locate images that while subject to copyright, may be used without royalties.

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Here are FAQs relating to the use of images in education

Q - Do you create the images yourself?

A - if yes, and you do this as part of your contract with Glasgow Kelvin College, then the copyright of your images belongs to the College, as your employer

A - If yes, and you take the images outwith your contracted hours at the College, you may be asked to licence the photos to the College for inclusion in any learning resources that you create

A - If yes, the images are your copyright. It is advisable to consult with your section head, or Human Resources regarding this copyright to ensure that both parties agree about the use of the images, full acknowledgement where necessary and any remuneration for the use of the images.

Q - Do you copy/scan the images from other sources – textbooks, journals, manufacturers' publications, the Internet?

A - If so, do you have permission, or a licence or are you eligible to copy/scan through an exception that is contained in the Copyright Patents And Designs Act of 1988? (For more information on exceptions, please refer to Appendix A)

A – are you aware of image galleries such as Pixabay and Unsplash? If not, please try them and use a variety of search words to discover the extent of the images. These image galleries are completely free to use – you don't even have to acknowledge their source (all images in these guidelines are from either Pixabay or Unsplash)

A – sites such as Pixabay and Unsplash allow the images to be used under the terms of a Creative Commons (CC) licence. Increasingly, creators of all types of resources are making their works available under a CC licence. The essence of this licence, in comparison to the more traditional form is that "Some rights are reserved" not "all rights" as in the traditional form.

This allows users to make copies of images, texts, videos and sound as long as they comply with the particular CC licence. Please see Appendix D for further information on Creative Commons.

BUT – please be careful of other image sites. There are many on the web that claim to offer "free" images, but they are usually "royalty free" not "copyright free". "Royalty free" or "rights managed" images do involve either a one-off fee or a recurring fee based on usage.

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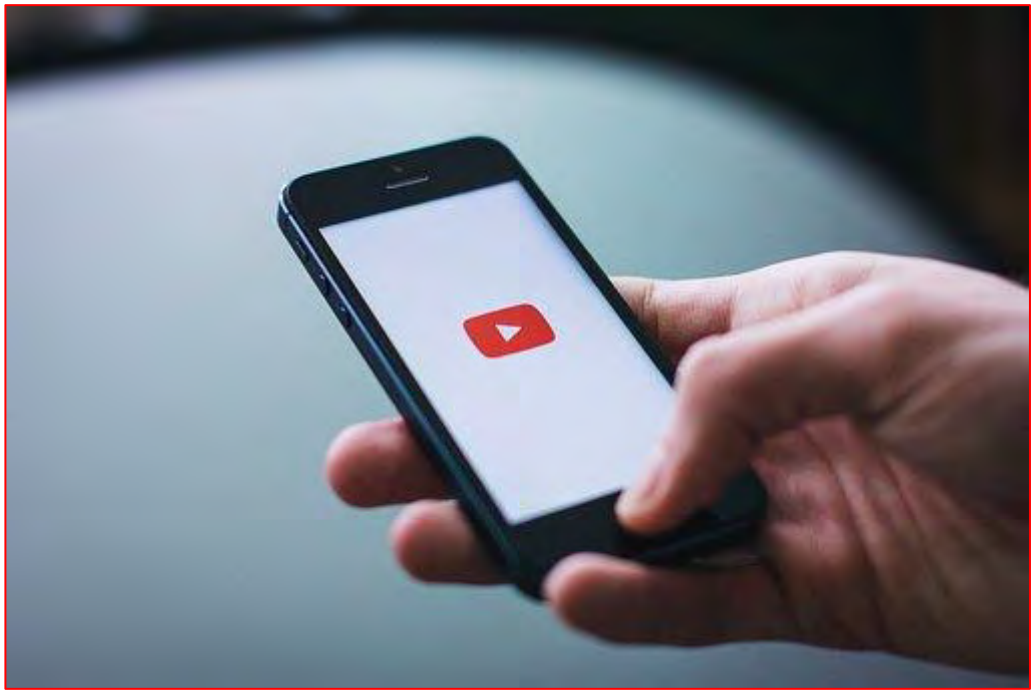
Q - Do you commission images from other people?

A – if you do, and although it seems like a pain, make very sure that you have an agreement (preferably written) with the photographer spelling out precisely what will happen with the images and what each party's expectations are for the images that are being commissioned.

- Will the photographer be paid a fee?
- Will you/the college be allowed to crop/adapt the images?
- Will you be allowed unlimited use of the images?
- Or will you be restricted to web site use only, or text reproduction only?
- Will you be allowed to use them for educational purposes as well as for advertising and marketing purposes?
- How long will the agreement last?
- Will the photographer assign the copyright of the images to you so that you can treat them as if they were your own?
- Or will the photographer grant a licence for your/the College's use and retain the copyright themselves?

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Moving images, video and broadcasts



Relevant Licences

The principal licence relating to this content is the Educational Recording Agency (ERA) agreement.

Two others that may need consideration are those issued by Filmbank and the Motion Picture Licensing Company (MPLC). Without wishing to be sued, I suggest that care is exercised in any dealings with MPLC – I'm sure they have a legitimate place in the overall movie licencing industry – I'm just not convinced that they have any place in education

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Q – Where do you source your moving images?

A – If you are sourcing your moving images from broadcast television, then you are perfectly entitled to ask for programmes to be recorded and stored, under the provisions of the Educational Recording Agency that your college has.

This licence allows the recording and storage of programmes from BBC, ITV, Channel 4, and Channel 5 as broadcasters, along with the rights attached to these programmes from stakeholders shown in this graphic.



Q – Is the college allowed to record and view programmes broadcast on “catch-up” channels?

A – Yes

Q – Which activities does the ERA licence allow?

A – all licensed programmes can be recorded, stored, copied and distributed. Programmes can be stored as DVDs, on a hard drive and loaded to the college VLE. This process is helped by the College’s membership of Clickview, a commercial organisation who can carry out all the necessary recording, storing and monitoring of the uses being made of the broadcasts

Q – Do recorded programmes have to be used in full, or can extracts and clips be made?

A – Clips and extracts are allowed, if there is no adaptation. Clips can be edited into teaching units and uploaded to the College VLE.

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Adaptation may be possible if video production students, for example, use a licensed programme to try out editing and effects software. Such work should not be saved nor uploaded to the VLE or to a website.

Q – Can clips and extracts from licensed broadcasts, be uploaded to the College VLE?

A – Yes they can

Q – Can clips and extracts from licensed broadcasts, be embedded into Powerpoint presentations?

A – Yes they can

Q – Do the recordings of licensed broadcasts have to be viewed in the College?

A – No – they can be accessed by learners on their own computers through the VLE at another location. The only learners who are not allowed to do this are those who are studying abroad at a Scottish College's affiliate or partner college

Q – can ERA recordings be copied?

A – if the use of the copies comply with the terms of the licence. It would be possible to make multiple copies for distribution to different departments and campuses – unless the recordings are stored and distributed digitally through a server/VLE

Q – Does the ERA licence allow commercially produced DVDs and CDs to be copied?

A – No, but the exceptions s30 and s32 could be used to copy relevant tracks and excerpts. There are no guidelines accompanying the exceptions in the Copyright Act of 1988, so how much content a person would like to copy is open to interpretation.

The law does state that copying under these exceptions (30 and 32) that they must be done under the concept of "fair dealing"

Important distinction – it is essential that you understand that "fair dealing" and "fair use" are different. "Fair use" is an American term in US copyright law and is generally regarded as being much more flexible than the UK term "Fair dealing". In fact, it is unlikely that guidelines such as these would be required in the US education system – there is considerably more leeway there in copyright's relation to education uses. Please see Appendix A for further information on "fair dealing"

In the case of moving images, there is no clear guidance on what is "fair" when copying tracks, clips and excerpts.

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Prior to the changes in the exceptions in 2014, the amount that could be copied was limited to a much greater extent than now. There are no guidelines on precise percentages, numbers of tracks etc that can be copied now. The amount copied and the purposes for the copies, is dependent on the teacher's decision and their ability, if ever challenged, to justify that the amount copied was necessary to achieve a particular learning outcome.

Q – Can recordings of ERA licensed materials be adapted?

A – the licence says "no" but ERA has a view that the use of digital technology in video recording, editing and special effects in teaching film education is likely to create adaptations to the recordings made under the licence. The request from ERA is that students use such software in a responsible manner and do not upload any adapted content to any public-facing website.

This is another area where students would do well to be instructed in the concept of copyright and how it affects this aspect of the creative industries.

Q – Does the ERA licence cover YouTube?

A – No it doesn't. And here lies one of the main dilemmas in copyright, current resources, licensing, legislation and education.

No one has come up with an acceptable policy of using YouTube. There is much agonising on the risks associated with a platform that does not conform to the traditionally held views that all educational resources should be peer-reviewed, edited, proofed, have acceptable provenance and fulfil the purpose of assisting teachers and learners to achieve prescribed learning outcomes.

There is an extensive article on the use of YouTube in Appendix F of these guidelines

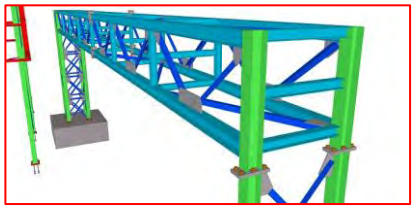
For the moment, depending on your college's policy for accessing YouTube, you must exercise care. Preview all the content you want to use and try to determine, as best you can, that the content comes from a reputable source, is not offensive in any way (although it must be very tempting to use YouTube and other social media platforms to illustrate various aspects of modern communication and sociology) and will support the achievement of an outcome.

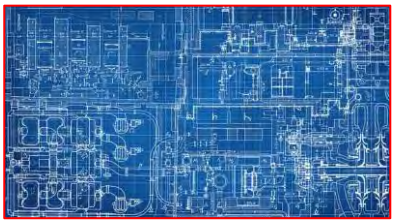
An irony of YouTube and the lack of licensing is that many of the ERA's stakeholders either post on YouTube themselves or tacitly approve of third parties using their content on their own YouTube channels.

Are we in the Wild West of copyright when we consider YouTube? Quite possibly!

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Plans, charts, drawings, designs, 3D visualisations?





Q – Where do you resource the plans, drawings, designs and visualisations?

A – If you are not preparing them yourself, then it may be necessary for you to check that they are available and copyright cleared, for your use. Be particularly careful when using architectural plans, for example. They are subject to copyright just as much as any other image.

A – If you are copying from materials given to you/your section by manufacturers, suppliers, agencies etc, then, at the very least, you should always acknowledge the source of the plan etc that you are using. It would also be a courtesy to ask to use the materials.

In the author's experience, suppliers of materials such as this are usually happy for them to be use as learning resources, but will almost certainly want them to be kept in their published format – eg, they may not be happy about full colour materials being copied or scanned in black and white

Q – do the same points relating to images, also relate to plans etc?

A – yes, pretty much. In particular the ownership of the plan could be yours, the College's or a third party

Q – could that third party be a student?

A – most certainly

Q – but surely the college owns any copyright in a student's work?

A – No – the work belongs to the student. The student is not an employee of the college and as such, is not subject to any Intellectual Property terms and conditions that may be included in an employee's contract of employment.

If a college wishes to use any works created by a student during their course of study – for example, photographs, designs, software, video, then the college must ask the student for permission – just as the college should ask any third party for permission to use materials, unless they are published under a Creative Commons licence.

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If the college feels that they should own the copyright of any student work, then they must make the student aware of this at the time of registration and provide the student with adequate information on copyright to allow the student to make a reasoned decision.

Please be aware that students, if they have been made aware of their copyright status, must give their permission, and be acknowledged, for any of their work to be used as examples of best practice, included in learning materials and used for advertising and/or marketing purposes to be distributed to a wider non-college audience.

The same approach should be adopted with contractors who are employed by the College to carry out specific tasks. If they produce any copyright material as part of that task, then they too, should be made aware of the copyright practice in the college and be asked to assign or licence their work – if they are prepared to do so, but that might be a condition of their contract for the work they are being paid for.

The various aspects of ownership of copyright within a college should be clearly stated in the College's Copyright Policy. Copyright applies to works created by employees, learners, contractors and to any joint work carried out with other stakeholders and funders.

(More information on the ownership of copyright can be accessed in Appendix H)

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Health, Care, Community & Learner Development Faculty

- Service Industries and Sport
- Health, Community and Children
- Language and Supported Learning
- Community Learning and Development

- Sport
- Hair and Beauty
- Catering, Communication and Community
- Childcare
- Social Care
- Healthcare
- Support to Learn
- ESOL
- Community, Learning and Development

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Copyright in your faculty affects many of the resources that you are using in your teaching and learning. All the content listed below could be subject to copyright. Please note, this is not an exclusive list

- Music used for instruction of PE/personal trainers from CDs, streaming and downloading
- Music played in the training salons from CDs, streaming and downloading
- The text in books, magazines, journals, websites
- Translation of teaching and learning resources in ESOL
- Animations and graphics of characters used in childcare
- The videos made in the gymnasia, hair and beauty salons, care workshops, training restaurant
- Any third-party images used in all curricular sections of the faculty
- Photographs of hair styles, hair and beauty products, distributed by manufacturers and suppliers
- YouTube videos of hair styling, beauty treatments and performances of dance, music, drama, exercise programmes
- YouTube videos of travel and tourism

- There is a lot of content listed above in the suggested resources – and it's all subject to copyright – the College's, the students', perhaps the lecturers and almost certainly third parties such as exercise providers (eg Les Mills), hair and beauty product suppliers, authors, illustrators, translators, software programmers and photographers.
- Your faculty is no different from the others – you have the potential to use many sources of copyright works in the process of teaching and learning. This is absolutely fine – it could be argued that reusing third party is the essence of teaching and learning – just be conscious of what you are doing and don't be hesitant to ask questions about any potential risks you think may attach to your copying and reuse requirements

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Categorising the content into

- Text
- Photographs/Images
- Moving images, video and broadcasts
- Music and Audio

here are some questions and suggested answers that will help you find your way through the copyright maze.

Text



The principal licensing agencies dealing with text from books, e-books journals, newspapers and magazines are –

Relevant Licences

- Copyright Licensing Agency (CLA)
- NLA Media Access (NLA)

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Here are some questions and answers about the use of third-party text material in teaching and learning resources, both digital and analogue, in your section.

Question – Without the CLA licence, is it still possible to make multiple copies of text for learners?

Answer 1 – yes – if the texts are not covered by the CLA licence. The licence does have extensive coverage, but not all texts are included in the licence

Answer 2 – yes - it may be that the College subscribes to an e-version of the text, in which case, the content will be available to learners through the College VLE, and subject to the terms and conditions of the e-book contract, it may be possible to make multiple copies, if required.

Answer 3 – yes – if the text is included in the Jisc FE books collection, then, again, subject to the terms and conditions of the licence accompanying this project, it may be possible to make multiple copies, if required.

Answer 4 – yes – you may be able to find the required text elsewhere. It may be contained in an Open Educational Resource (OER) which is managed by a Creative Commons (CC) licence (please see Appendix C for further information)

Answer 5 – yes – if you make use of the "exceptions" available to you under the 1988 Copyright Designs and Patents Act. There are a number of exceptions available to you under the concept of "fair dealing". The exceptions and "fair dealing" are further explained in Appendix A

Q – Can I make multiple copies, for class use, of relevant text and images from content not covered by either the CLA or NLA licence?

Answer 1 – Yes, if you ask permission from the rightsholder and they agree. When asking any content provider for permission, always give as much information as possible about the content you wish to copy

- Title of publication
- Date of publication
- Number of pages
- Number of copies required
- The purpose of the copying – educational or commercial?
- Paper or digital copying – upload to the VLE, for example
- Indicate whether the copying will be black and white or full colour
- The course of study
- ISBN/ISSN identifiers (if applicable)
- An assurance that, if granted, the copies will be full acknowledged and only used for and by the learners on the course

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- An assurance that the permission, if granted, will not be shared with any other organisation

Answer 2 – Yes, if you upload the content to the College's VLE and direct the learners to the content – and leave them to view and print off their own copies as they see fit to help their learning.

This copying would be allowed under s29 of the Copyright Patents and Design Act 1988. S29 is what is called an "exception". Further information on exceptions and examples of when to use them can be found in Appendix A

Answer 3 – Perhaps. The rightsholder may prefer to provide you with sufficient copies of content for each learner to have a copy. It's always worth asking the question.

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Photographs/Images



Relevant licences

Both CLA and NLA licences allow the copying of images that are within the context of the content that is copied from the licensed publications.

There is another licensing agency, specifically for photographers, called The Design and Artists Copyright Society (DACS). For educational purposes, they are affiliated to the CLA licence and receive a share of royalties from CLA to distribute to their photographer and designer members.

Other licences that a college may encounter with images are those issued by image galleries and individual photographers who may be commissioned by the college to create content specifically for advertising, marketing and resource creation purposes.

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Image, and all the licence technicalities that are attached to them, are contentious aspects of copyright, given that in the digital age, they are readily available for cutting and pasting, irrespective of where they are found on the Web.

The ease of copying does not negate the fact that virtually all images on the Web are subject to someone's copyright. As with so many other forms of content on the Web, just because something is free to view, doesn't make it free to use.

It is very difficult to be precise about this, but it's likely that a very high percentage of infringing uses of images is ignored by the holders of the image's copyright.

However, there is still a risk of detection. Each digital image, created by a smartphone, digital camera, tablet, laptop or computer, carries with it metadata – a digital fingerprint that can provide information about the image – location, exposure, date and time.

This metadata can be tracked, and images identified by or on behalf of the copyright holder.

Care must be taken when using images that may be licensed by digital image galleries, who either sell or licence images for publishing, newspapers, catalogues, marketing, educational purposes etc as their business model.

Examples are Getty, Shutterstock and Bridgeman Art Gallery. They use sophisticated web-based software to police the use of their images and have gained a notoriety for identifying infringing images licensed by them, and sending cease and desist letters, often accompanied by a penalty invoice, to suspected infringers.

Your college does not want to receive one of these letters. The penalty is usually inflated, but if there is any "discussion" about an alleged infringement, there is always the potential of reputational damage, which can be much more hurtful to an organisation than a financial penalty.

Don't despair – use image galleries such as Pixabay and Unsplash (more information on image galleries, and the use of CC0 licensed images can be found in Appendices C (Image Galleries) and D (Creative Commons licences)

There is an unfortunate tendency for creators to reach immediately for Google Images given the vast number of images that are contained in that gallery. However, Google appear to "harvest" images from many other image suppliers, apparently without permission, and aggregate them on their own platform.

Closer inspection of all images on Google will show that "images are subject to someone's copyright". With a few more clicks, it is possible to see who those image copyright owners are and, using Google's advance search, it is possible to locate images that while subject to copyright, may be used without royalties.

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Here are FAQs relating to the use of images in education

Q - Do you create the images yourself?

A - if yes, and you do this as part of your contract with Glasgow Kelvin College, then the copyright of your images belongs to the College, as your employer

A - If yes, and you take the images outwith your contracted hours at the College, you may be asked to licence the photos to the College for inclusion in any learning resources that you create

A - If yes, the images are your copyright. It is advisable to consult with your section head, or Human Resources regarding this copyright to ensure that both parties agree about the use of the images, full acknowledgement where necessary and any remuneration for the use of the images.

Q - Do you copy/scan the images from other sources – textbooks, journals, manufacturers' publications, the Internet?

A - If so, do you have permission, or a licence or are you eligible to copy/scan through an exception that is contained in the Copyright Patents And Designs Act of 1988? (For more information on exceptions, please refer to Appendix A)

A – are you aware of image galleries such as Pixabay and Unsplash? If not, please try them and use a variety of search words to discover the extent of the images. These image galleries are completely free to use – you don't even have to acknowledge their source (all images in these guidelines are from either Pixabay or Unsplash)

A – sites such as Pixabay and Unsplash allow the images to be used under the terms of a Creative Commons (CC) licence. Increasingly, creators of all types of resources are making their works available under a CC licence. The essence of this licence, in comparison to the more traditional form is that "Some rights are reserved" not "all rights" as in the traditional form.

This allows users to make copies of images, texts, videos and sound as long as they comply with the particular CC licence. Please see Appendix D for further information on Creative Commons.

BUT – please be careful of other image sites. There are many on the web that claim to offer "free" images, but they are usually "royalty free" not "copyright free". "Royalty free" or "rights managed" images do involve either a one-off fee or a recurring fee based on usage.

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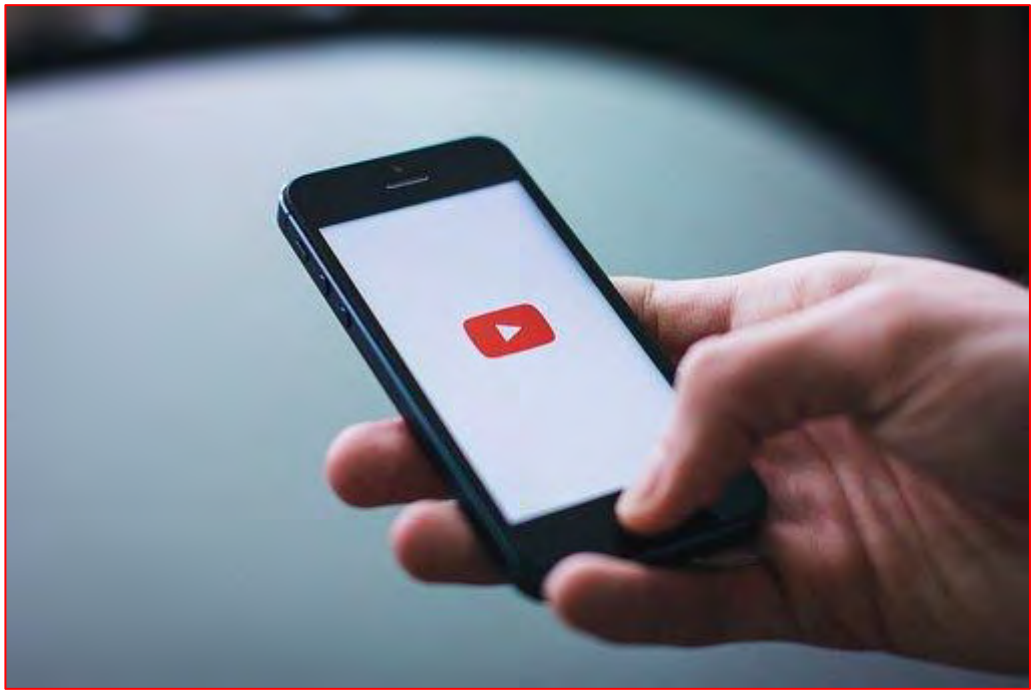
Q - Do you commission images from other people?

A – if you do, and although it seems like a pain, make very sure that you have an agreement (preferably written) with the photographer spelling out precisely what will happen with the images and what each party's expectations are for the images that are being commissioned.

- Will the photographer be paid a fee?
- Will you/the college be allowed to crop/adapt the images?
- Will you be allowed unlimited use of the images?
- Or will you be restricted to web site use only, or text reproduction only?
- Will you be allowed to use them for educational purposes as well as for advertising and marketing purposes?
- How long will the agreement last?
- Will the photographer assign the copyright of the images to you so that you can treat them as if they were your own?
- Or will the photographer grant a licence for your/the College's use and retain the copyright themselves?

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Moving images, video and broadcasts



Relevant Licences

The principal licence relating to this content is the Educational Recording Agency (ERA) agreement.

Two others that may need consideration are those issued by Filmbank and the Motion Picture Licensing Company (MPLC). Without wishing to be sued, I suggest that care is exercised in any dealings with MPLC – I'm sure they have a legitimate place in the overall movie licencing industry – I'm just not convinced that they have any place in education

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Q – Where do you source your moving images?

A – If you are sourcing your moving images from broadcast television, then you are perfectly entitled to ask for programmes to be recorded and stored, under the provisions of the Educational Recording Agency that your college has.

This licence allows the recording and storage of programmes from BBC, ITV, Channel 4, and Channel 5 as broadcasters, along with the rights attached to these programmes from stakeholders shown in this graphic.



Q – Is the college allowed to record and view programmes broadcast on “catch-up” channels?

A – Yes

Q – Which activities does the ERA licence allow?

A – all licensed programmes can be recorded, stored, copied and distributed. Programmes can be stored as DVDs, on a hard drive and loaded to the college VLE. This process is helped by the College’s membership of Clickview, a commercial organisation who can carry out all the necessary recording, storing and monitoring of the uses being made of the broadcasts

Q – Do recorded programmes have to be used in full, or can extracts and clips be made?

A – Clips and extracts are allowed, if there is no adaptation. Clips can be edited into teaching units and uploaded to the College VLE.

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Adaptation may be possible if video production students, for example, use a licensed programme to try out editing and effects software. Such work should not be saved nor uploaded to the VLE or to a website.

Q – Can clips and extracts from licensed broadcasts, be uploaded to the College VLE?

A – Yes they can

Q – Can clips and extracts from licensed broadcasts, be embedded into Powerpoint presentations?

A – Yes they can

Q – Do the recordings of licensed broadcasts have to be viewed in the College?

A – No – they can be accessed by learners on their own computers through the VLE at another location. The only learners who are not allowed to do this are those who are studying abroad at a Scottish College's affiliate or partner college

Q – can ERA recordings be copied?

A – if the use of the copies comply with the terms of the licence. It would be possible to make multiple copies for distribution to different departments and campuses – unless the recordings are stored and distributed digitally through a server/VLE

Q – Does the ERA licence allow commercially produced DVDs and CDs to be copied?

A – No, but the exceptions s30 and s32 could be used to copy relevant tracks and excerpts. There are no guidelines accompanying the exceptions in the Copyright Act of 1988, so how much content a person would like to copy is open to interpretation.

The law does state that copying under these exceptions (30 and 32) that they must be done under the concept of "fair dealing"

Important distinction – it is essential that you understand that "fair dealing" and "fair use" are different. "Fair use" is an American term in US copyright law and is generally regarded as being much more flexible than the UK term "Fair dealing". In fact, it is unlikely that guidelines such as these would be required in the US education system – there is considerably more leeway there in copyright's relation to education uses. Please see Appendix A for further information on "fair dealing"

In the case of moving images, there is no clear guidance on what is "fair" when copying tracks, clips and excerpts.

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Prior to the changes in the exceptions in 2014, the amount that could be copied was limited to a much greater extent than now. There are no guidelines on precise percentages, numbers of tracks etc that can be copied now. The amount copied and the purposes for the copies, is dependent on the teacher's decision and their ability, if ever challenged, to justify that the amount copied was necessary to achieve a particular learning outcome.

Q – Can recordings of ERA licensed materials be adapted?

A – the licence says "no" but ERA has a view that the use of digital technology in video recording, editing and special effects in teaching film education is likely to create adaptations to the recordings made under the licence. The request from ERA is that students use such software in a responsible manner and do not upload any adapted content to any public-facing website.

This is another area where students would do well to be instructed in the concept of copyright and how it affects this aspect of the creative industries.

Q – Does the ERA licence cover YouTube?

A – No it doesn't. And here lies one of the main dilemmas in copyright, current resources, licensing, legislation and education.

No one has come up with an acceptable policy of using YouTube. There is much agonising on the risks associated with a platform that does not conform to the traditionally held views that all educational resources should be peer-reviewed, edited, proofed, have acceptable provenance and fulfil the purpose of assisting teachers and learners to achieve prescribed learning outcomes.

There is an extensive article on the use of YouTube in Appendix F of these guidelines

For the moment, depending on your college's policy for accessing YouTube, you must exercise care. Preview all the content you want to use and try to determine, as best you can, that the content comes from a reputable source, is not offensive in any way (although it must be very tempting to use YouTube and other social media platforms to illustrate various aspects of modern communication and sociology) and will support the achievement of an outcome.

An irony of YouTube and the lack of licensing is that many of the ERA's stakeholders either post on YouTube themselves or tacitly approve of third parties using their content on their own YouTube channels.

Are we in the Wild West of copyright when we consider YouTube? Quite possibly!

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Music and Audio



The relevant licensing agencies associated with music are –

- PRS for Music – representing songwriters, composers and publishers
- Phonographic Performance Limited – representing record companies and performers
- MCPS – Mechanical Copyright Protection Society – writers, musicians

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Of all the content that is contained in teaching and learning and that is also subject to copyright, music is most likely to cause complications.

And yet, for a college, it could be remarkably simple – thanks to another exception in the CDPA (1988). This time it's s34 (2) that states -

"The playing or showing of a sound recording, film or broadcast before such an audience (teachers, learners, staff) at an educational establishment for the purposes

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of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright".

The author of these guidelines interprets this section as allowing the playing of music for all curricular purposes in -

- Dance
- Drama
- TV and film studies
- Music performance
- Sound recording
- Communications
- PE classes where students are being taught how to take exercise classes where music is played

The complication with playing music in a college arises, however, when trying to determine what is curricular and non-curricular.

Playing music in the classes listed above is fine. The issues arise with

- Music played in "public" places in the college
    - Reception areas
    - Refectories
    - Student and staff lounges
    - Training restaurant
    - Training salons – hair and beauty

At the time of writing these guidelines (October 2022) discussions are being held with the music licensors, PRS for Music and Phonographic Performance Limited (PPL) regarding the above music locations. The current situation is that if a college doesn't play any music outside the curriculum, it doesn't need a licence from either of the licensors. If, however, music is played in "public" places, a licence may be required.

Q – who are the music licensors?

A – PRS for Music (PRS). They licence the "playing" of music.

A - Phonographic Performance Limited (PPL). They licence the playing of "recorded" music.

A - Mechanical Copyright Protection Society (MCPS) licence the physical recording of music from master tapes to other media. MCPS members are writers and musicians. PRS and MCPS formed an alliance in 2009 and rebranded as PRS for Music

NB, for the purposes of these guidelines, the emphasis is on PRS and PPL. MCPS still retain their brand, in association with PRS and actually offer a very useful Limited Manufacture Licence that may be of benefit to colleges. It should also be noted that

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MCPS, although working in partnership with PRS, is owned by the Music Publishers Association (MPA) – more about them shortly.

And the author of these guidelines takes no responsibility for the complex nature of music licensing – the whole industry built on rights of composers, publishers, musicians, record companies and all others involve is variously described as "impenetrable", "incomprehensible" and "inexplicable"

Q – why am I still confused?

A – in a retail outlet, for example, if music is being played, both (PRS and PPL) licences are required. Music is being played, and capable of being heard, so PRS for Music is required and because the music is coming from a recorded source, a PPL licence is also needed

Q – are there any occasions when only one licence is required?

A – when the music is live, only the PRS licence is needed. If, for example, your College showcased musicians and performers playing live in the main reception area, only PRS is needed, since there is no recorded source. Once that recorded source is added, then PPL is also needed.

Unfortunately, many people don't realise this and when they start a business and have music playing either as a feature or background, then the business requires two licences.

PRS and PPL have realised that this situation is not ideal and have formed a Joint Venture called "TheMusicLicence". Although only one payment is required, the licences are still operating with individual tariffs based on numbers of listeners, number of seats (in restaurants and salons) a measured area, or based on the revenue at the venue.

Q – is it permitted to copy tracks from a CD to the VLE for teaching and learning purposes?

A – Yes – it does help if the College owns the CD but nothing in any case law indicates that it's essential – the author suggests that this is possible under the exception – s32, Illustration for Instruction

Q – is it permitted to use podcasts in our teaching and learning?

A – Yes – any podcasts distributed by stakeholders in the ERA are covered by that licence – along with radio broadcasts. Other podcasts, which can be defined, for legal purposes as "sound recordings" are covered for curricular use in s34 of the Copyright Act and could also be covered by s32

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Q – is it permitted to make copies of sheet music?

A – The general answer to this is still "No", Copying sheet music is fraught with difficulties. These difficulties don't seem to stop copying, however, judging by the number of choirs, for example, that allegedly work from photocopies rather than from original printed copies. Full sets of sheet music for choirs and orchestras can be very expensive.

A recent arrival to the already crowded music licensing market is Printed Music Licence Limited (PMLL) This organisation is wholly owned by The Music Publishers Association (MPA) and, with the mandates from composer and publishing members, offers licences to copy sheet music, either physically or digitally.

At the time of writing (October 2022), there are licences for schools (Schools Printed Music Licence), Amateur Choirs, Music Services, and there's a trial licence for Higher Education.

There appear to be no plans for a Further Education licence to be offered.

There are some allowances from the MPA to copy sheet music which has been damaged, but on the whole, they are very restrictive in what they do allow.

FE may not make as much use of sheet music as do schools and universities, but many colleges do have a music department. There are several computer programs now available that help the scoring and notation of musical works – these programs will come with their own terms and conditions relating to copyright. For further information, please go to www.mpa.org and for free sheet music, the following sites may be of use –

- 8notes. - https://www.8notes.com/
- IMSLP (International Music Score Library Project) - https://imslp.org/wiki/Main_Page
- Pianotte. - http://pianotte.szm.com/
- Mutopia Project. - https://www.mutopiaproject.org/
- ChoralWiki. - https://www.cpdl.org/wiki/
- Making Music Fun. - https://makingmusicfun.net/

The author suggests caution with some of these sites – one or two seem to be aggregators of sheet music and experience suggests that they are not too particular in respecting the copyright of the singers, publishers, composers and lyricists whose music appears on their sites.

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Sports intellectual property



In recent years, sport has become a very challenging battleground in relation to Intellectual Property. The issues of IP and sport have existed for some years as various sports became more popular, the reputation of sports stars developed, and brands of sporting manufacturers and broadcasters became more prevalent.

Within the sporting world, care needs to be taken over the use of TV channels broadcasting all manner of sports. SKY, BT and Virgin, among others, vie for the rights to broadcast the very best and the most bizarre of sports to global audiences.

These rights don't come cheap and the various companies protect them as rigorously as they can. The courts are no strangers to bars, clubs, shops and hotels being sued by the might of SKY, BT and Virgin for not paying for the sports rights, or using equipment that by-passes the need to take out an expensive business licence.

The principal areas of IP relating to sports are as follows –

Broadcasting

Your College's ERA licence allows all sports events, broadcast on the major terrestrial channels, to be recorded and used for teaching and learning in exactly the same way as any other licensed broadcasts.

Unfortunately, due to the buying power of the cable and satellite companies, there aren't that many events on the terrestrial channels. If the College feels that sports

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broadcasts are important, then they will have to consider introducing one of the cable or satellite stations – and being bound by their terms and conditions.

The upside of such a move is that since the cable and satellite stations aren't members of ERA, then s35 of the Copyright Act can be called into effect, allowing unlimited recording of programmes for curricular use.

Social Media

As already stated in these guidelines, there are no Collective Management Organisations for Social Media platforms – and that can be both good and bad.

Social media, especially YouTube, Facebook and Twitter, are used extensively for sharing clips and highlights from sporting events. The rights holders – Premier League football (both sides of the border), American NFL, NHL, golf's European Tour and the PGA in America, along with many others, aren't too happy about clips and highlights making their way to the social media platforms.

It is possible, thanks to European legislation earlier in 2019, that the platform hosts may have to introduce some form of filter to stop their users uploading those clips and highlights. The UK hasn't indicated if, how and when it may implement this legislation and until that happens, the clips and highlights will keep appearing on the platforms.

Music and sport

As with other aspects of the curriculum that make use of music, sport is treated the same. If music is used to support an exercise class and is regarded as part of the curriculum, then s34 of the Act covers the music.

If students are being taught how to be exercise class instructors, then, again, music is covered by the exception (s34)

The music licensors become interested in what's happening in Colleges when classes are being offered to the public, at a cost. This brings any music into the commercial realm, and the licensors will require a licence.

If the College hires out accommodation for third parties to run exercise classes with music, then either the College has to take out the licence, and pass the cost on to the third party, or they have to ensure that the hirer has their own licence.

Sport and trademarks

Another area of Intellectual Property which has evolved in recent years is the introduction of classes which have been trademarked by a third party. Examples of this are any Les Mills classes, Jazzercise and Zumba.

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These brands (many others are available) are built on Intellectual Property. There is no copyright in the massive variety of exercises that have been developed over time, from stretches, to star jumps to squats etc etc , But there is copyright in the way that these companies have constructed their exercise programmes and they protect them very strongly. They also protect their brands through trademarks.

A relative newcomer to this market, with an interesting business plan, is Peloton, who have successfully trademarked a standard word, and now sell their bikes around the world both for gym and personal use.

Peloton could be described as a disruptor in the exercise market and they did very well during the Covid lockdowns when gymnasia were closed and they managed to sell directly to individuals.

At the time of writing these guidelines (October 2022), Peloton has lost some of its gloss and popularity. The products and services have been copied by others (and as such Peloton is now trying to defend its Intellectual Property.

And proving that IP is often a two-way street, Peloton also had issues with the IP of third parties – music publishers and record companies in particular. They took exception to the number of music tracks that Peloton made available to their subscribers for their workouts. They took exception, because Peloton didn't licence the music.

- Was that intentional?
- Was it a matter of cost?
- Did they not realise that music is covered by copyright?
- Does it show, that along with many others, the company was not IP aware?

I would suggest that if you are interested in a number of aspects of business, particularly in sport, you can do no worse than search "Peloton" and see where else it has had IP issues - and not just with copyright, but also with trademarks as well.

More details of this can be found here -

https://www.musicbusinessworldwide.com/music-publishers-and-peloton-reach-settlement-over-copyright-infringement-lawsuit/

The message for the sports section of the College is the same as for all others – be aware of copyright, become familiar with the licences and exceptions and se copyright in a positive way, not as a constant barrier, trying to prevent you from being creative and innovative in your teaching practice.

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Appendices

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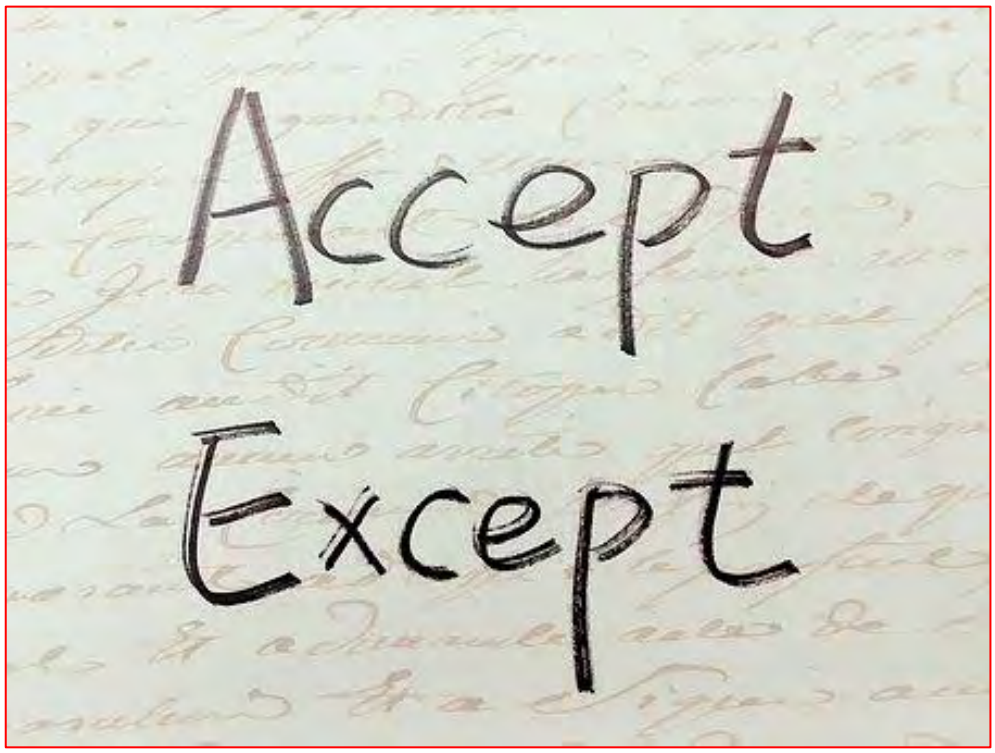
The next part of the guidelines is here as additional reading if you happen to find the subject of copyright either interesting or engaging.

I would encourage you to read Appendix A since it deals with the exceptions in the 1988 Act that were amended in 2014 and, in my opinion, give you a flexibility that did not exist prior to 2014.

If the exceptions are not used, they will be diluted and we will be no further forward – still confused by complex licences, still restricted by outdated terms and conditions that exist not to make the content users' lives easier, but to reinforce the control of the rights holders.

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Appendix A



Educational Exceptions – Use them or lose them

There is a selection of ways in which and learners and teachers can use materials that are subject to copyright. And it's perhaps as well to remember that all works, if they are original, expressed and fixed, are considered to be subject to copyright under UK law. The options are as follows -

- Own the rights to the work – if you or your organisation has the rights to a work or works, you can do what you like with it

- Seek permission – never be frightened to ask, but be precise in your request – exact details of work, how many pages, who it's for etc and give an assurance that the copies, if granted, will be fully acknowledged. You would ask for permission if the proposed use is very specific – your class, your course, your establishment etc. It is unlikely that permissions would be transferable to colleagues.

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- Use a collective licence – CLA, NLA, PRS for Music, PPL, NLA Media Access

- Use the legislated exceptions – **please use the legislated exceptions** – this is what this article is about.

- Seek alternative, copyright free or cleared resources – CC, OER, ITunesU, Khan Academy, FlickrCC, YouTubeCC etc. Just another note of caution here – all these materials are still subject to copyright – they belong to someone, somewhere, but those creators have decided to allow others to use their works, free of charge, and sometimes with permissions to adapt and share – but Creative Commons (CC) is still a licensing scheme – not a free-for-all

Prior to 2014, the use of exceptions was limited, and in some instances, not very helpful – s34(2) which allowed (and still does) the playing or showing of sound recordings, films and broadcasts for curricular purposes stood out from the others as being very useful. Over the past three years, the Intellectual Property Organisation (IPO) has been preparing amendments and additions to the exceptions, many of which relate specifically to education. Here is the IPO's rationale for making changes to the exceptions

> To amend copyright exceptions for education, *so that copyright does not unduly restrict education and teaching,* without undermining incentives to creators. This means *widening the current exceptions, applying them to more types of creative works, and more kinds of technology.* The aim is *to make it easier to use copyright works in education, particularly with modern technology, in order to enrich and enhance the learning environment.* This will also provide administrative and other savings to educational establishments, and *reduce the risks associated with using copyright materials when delivering education"*

(The italics are the author's to indicate the salient points)

Prior to the amendments, there were undoubtedly a number of restrictions on the exceptions. The amendments now allow us more flexibility in our approach to the use of potential learning and teaching materials. The changes don't give us *carte blanche* to do as we like – it's not a Pirate's Charter, but in the author's opinion, they open up a very useful flexibility that was previously unobtainable.

All the amended and new exceptions are now in force. For the purposes of this relatively brief article, I would ask that you come to terms with the concept of "fair dealing" which applies to the new and amended exceptions. If a learner or teacher would like to use third party material that isn't already covered by ownership, permission or licence, then "fair dealing" may come into use, as long as the copying can fulfill the following criteria

- The copies of the work are for non-commercial purposes
- The work has been "made available to the public", ie, published
- The copying is done by a person giving or receiving instruction (or preparing for giving or receiving instruction
- There must be a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

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Perhaps a diligent and "fair" use of the exceptions would help us think about moving away from the CLA licence, or at least reducing our exposure to it. Are book and reading lists still used to the same extent in colleges? Or are URLs more common? If the latter, please consider using the exception of s29 (Research, private study and text and data analysis for non-commercial research).

This exception allows staff and students to make single copies for their own purposes, as long as they qualify as research or private study for non-commercial research. I would suggest that this pretty much covers a lot of copying that occurs in colleges – if the work that a student requires has a URL, then just supply the link. The student can then choose to read from screen, save for later or print out a copy – none of which has to be covered by, for example, a CLA licence – perhaps worth thinking about.

The exceptions

Here is a list of the most appropriate exceptions for use in Scottish colleges. You don't have to quote them in any way, you must only be able to justify their use if asked why you have done what you've done.

Section 29 – research and private study

Prior to the amendments, research and private study could only be applied as an exception to literary, dramatic, musical or artistic works. The amendment while still requiring "fair dealing" now opens up all copyright works, so that sound recordings, films and broadcasts are all now available and complement a College's Collective Management Organisation licences such as those issued by CLA, ERA, NLA Media Access and the music licences, for example. The exception applies to the purposes of non-commercial research or study. "Non-commercial" is not defined. The only other requirement for the exception is the need for a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise. Again, there is no definition of *"practicality or otherwise"*

Section 30 – Criticism, review, *quotation* and news reporting

Interestingly, there is no limit under this section, (with the exception of individual photographs) to the categories of works that are included. This is the exception that newspapers and reviewers use when commenting on new films, plays, music, books etc. The view is that if the copying is done for genuine criticism and review, then there are no limits to the amount that can be copied – as long as they are "fair" – again, no guidance to precise limits in the legislation. Equally, no specific guidance is given to say that it is only newspaper publishers, for example, that can call upon this exception – there's nothing to say that educational establishments couldn't use the exception.

The significant change to this exception is the inclusion of "quotation". Again this is not defined. Any use of the exception has to be done under the rules of "fair dealing" – so, non-commercial and an acknowledgement. The challenge here is how

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much, either quantity or quality, of the original work is quoted. Is it one line, one paragraph, one page, one chapter? There is no guidance, no definitions and no interpretations – it's up to the user to determine, and be able to justify what use is "fair"

Section 32 – Illustration for instruction.

Of all the amendments made in 2014, I think that this is likely to have the most impact. I quote it in full –

"(1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work provided that the dealing is –

(a) For a non-commercial purpose
(b) By a person giving or receiving instruction (or preparing for giving or receiving instruction), and
(c) Accompanied by a sufficient acknowledgement (unless this would impossible for reasons of practicality or otherwise)

(2) For the purposes of subsection (1), "giving or receiving instruction" includes setting examination questions, communicating the questions to pupils/students and answering the questions

(3) To the extent that a term of a contract purports to prevent or restrict the doing of any act, which, by virtue of this section, would not infringe copyright, that term is unenforceable

The exception is short and sweet and could be construed as being open to interpretation. According to this exception, all works, on all platforms (including the World Wide Web, could be used for "illustration for instruction". There are no further definitions in the exception, other than that anything done under this exception must be done in the spirit of "fair dealing".

I don't see anything in this exception that would now prevent a learner or teacher from using tracks from a CD, DVD etc for their learning or teaching. Artistic works could also be used – there are no limits on the categories of works nor is there any mention of uses having to be recorded.

Another useful point to note is clause (3) that says that the exception over-rides any condition in a contract that curtails any action that is now allowed by the exception.

And just to finish up s32, there are no longer any restrictions on the methods of copying – previously, copying had to be done by "non-reprographic" processes, which make life very difficult – or used up a lot of chalk!

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Section 34 – Performing, playing or showing work in course of activities of educational establishment *(This exception hasn't been amended, but I've kept it in, since it still has considerable relevance and use)*

For the purposes of instruction, subsection 1 allows the "performance of literary, dramatic and musical works" in front of non-paying audiences of staff and students (parents are not included – as soon as they attend, everything changes)

Subsection 2 allows "the playing or showing of a sound recording, film or broadcast" before the staff/student audience for the "purposes of instruction". This is the clause, that could help a College financially – if the playing of music and sound recordings is only ever done for "the purposes of instruction" then the College would need neither a PRS nor PPL licence. As soon as you move away from the instruction, however, the need for those two licences appears – PRS for the playing of music, and PPL for the playing of sound recordings.

This clause is also the one that a College can use to avoid having to take out licences from either Filmbank or the Motion Picture Licensing Company (MPLC) – as long as the College shows movies only for educational purposes, and owns a copy of the movie, either on DVD or recorded under the terms of the ERA licence, then there is no need for either a licence from Filmbank or MPLC. These are both unnecessary licences, so please don't let yourselves be pushed into taking one – MPLC in particular have been very aggressive in their marketing which seemed to say to Colleges that the licence is compulsory.

Section 35 –Recording by educational establishments of broadcasts

This is still effectively, the ERA clause. Without the ERA, educational establishments would be able to record, store and distribute any broadcasts they were able to source. Sub section of this exception, however, states –

"Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact"

The good news is that you can still record, store and distribute broadcasts, but they must be those that are licensed by ERA and for which you must pay an ERA licence.

If you do come across any broadcasts that you can record and distribute and which you think will be of use to your learners, and which aren't covered by any of the ERA stakeholders, then you are allowed to do so, under the terms of this section, with no requirements for surveys or returns to anyone on the uses of the broadcasts.

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Section 36 – Copying and use of extracts of works by educational establishments

This clause was previously entitled “Reprographic copying by educational establishments of passages from published works”, so you can see that there is a significant change simply in the removal of the word “reprographic”, thereby making any form of copying legitimate – ie, from any platform – the restriction of having to use a photocopier has been removed.

The exception may still be called the “CLA” clause (although like section 35 and ERA, there is no specific mention of the actual licensing agency) but I think there are some interesting changes that Colleges should be aware of.

The exception covers all works with the exception of broadcasts (see s35) and “an artistic work which is not incorporated into another work”. I think this is an attempt to try to prevent the use of images in particular, because the next restriction goes on to say

“not more than 5% of a work may be copied under this section by or on behalf of an educational establishment in any period of 12 months, and for these purposes a work which incorporates another work is to be treated as a single work.”

However, if a lecturer or teacher would like to use, let’s say, an image, and the image isn’t in a text covered by the CLA licence, then I would suggest that you go back to s32 – Illustration for the purpose of instruction, and consider the terms of that exception. I can’t see anything in s32 that would restrict you to any category of work, nor any amount, nor the need for any recording of what you’re doing – always, as long as you can justify that your “dealing” is “fair”.

Going back to s36, “a work which incorporates another work is to be treated as a single work”. Does that mean that I could copy (no more than 5%) part of a soundtrack from a DVD, or sections of the DVD, or images, sounds etc from a CD? There is no requirement for any activity recording so that if you copy from a “work” to help your learners, is there anything to stop another lecturer somewhere in the same establishment using the same work for similar purposes?

Conclusion

In conclusion, and I have to remember that I am a consultant and I would ask you to remember that I am not qualified to give legal advice, I think there are opportunities in the exceptions for learners and teachers to make use of works that were previously denied or required written permission if their use fell outside the terms and conditions of a collective licence such as those available from CLA and ERA. In summary

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- All works are now available – print, CD, DVD, artistic, music, sound recordings
- All platforms can be used – analogue and digital
- Copying is no longer restricted to "reprographic" means
- There are no requirements for recording any copying activity
- Contract over-ride included
- In section 30, there is no stated limit on the quotation, other than "is no more than is required by the specific purpose for which it is used"
- The challenge is the definition of "fair dealing"

So, in my opinion, it comes down to the following

- Definition – and there are few specific definitions in the exceptions
- Interpretation – this could be subjective, but who's to say which interpretations are wrong and which are acceptable?
- Level of risk – what's your establishment's appetite for risk?
- Level of monitoring – there are no prescribed levels
- Level of education – are the amended exceptions going to be used any more/better than previously – will the right people know what to do/what not to do?

As previously stated, the amendments to the exceptions are not to be taken as the start of a copyright free-for-all. FE colleges, with all teachers and learners, must respect copyright – we are, after all, producing the next generation of creators and users of copyright works.

Under the exceptions, the "dealing" is to be "fair", and underpinning them, there is always the point that uses that could potentially undermine sales of teaching materials will still need a licence.

Throughout my copyright life, I have often been asked for a simple principle which would answer all questions – that's like asking what the answer is to life, the universe and everything is – we all know that the answer to that question is 42 (please read the "Hitchhiker's Guide to the Galaxy" for further information), but as simply as I possibly can, here's my single thought – "if you press the button to copy, or the mouse to scan, is anyone going to lose income from your actions?"

The exceptional challenge

It's all very well going through impact statements, legislated clauses and lots of speculation. What do the exceptions mean to College staff? What are the practicalities? What do they mean? How do we interpret them?

Sadly, there is no one scenario covering the entirety of a college curriculum to illustrate the potential uses of the exceptions. Here is one that tries to cover a few aspects of college work that can make use of the exceptions.

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A lecturer visits a learning services unit and says –

"Hello – I'm working on a learning package for learners taking a module on personnel management and I plan to use the following resources in the module which I would then request to be loaded to the College's VLE"

- A recording of a song by Amy McDonald – "Troubled Soul" (the lyrics explore personal feelings and set a context for the module) –

  Answer - s32 and/or s30

- A 3-minute excerpt from the movie "Apollo 13" – the clip where the line "Failure is not an option" is delivered. S30 - "Criticism, review, quotation and news reporting" operates under the concept of "fair dealing" – is 3 minutes "fair" – is "the extent of the quotation more than is required for the specific purpose for which it is used?"

  Answer - If the establishment has an ERA licence and has recorded this movie, then there are no issues – any amount can be used. If the establishment has the DVD, I would suggest that 3 minutes is fair. I would actually suggest that any excerpt is "fair" if justifiable for the learning and teaching purposes – it's a professional call by the teacher

- An episode of "Countryfile", broadcast by the BBC and showing how some farms, food distributors etc have developed innovative approaches to personnel management.

  Answer - If the establishment has an ERA licence and has recorded this programme, then there are no issues – as much as needed can be used. If the establishment doesn't have the programme, it can contact British Universities Film and Video Council (BUFVC) using the Television and Radio Index for Learning and Teaching (TRILT) See here for a case study involving a Scottish College and their use of Box of Broadcasts (BoB) – also a part of BUFVC - http://bufvc.ac.uk/wp-content/media/2017/03/BoB-Case-Study-Dundee-and-AngusWEB.pdf

- Three Powerpoint presentations, which I have already devised (and used) containing sound clips, movie clips and several images taken from various internet sources.

  *Answer - These will have to be checked and perhaps cleared for use depending on the content – but it is possible that s30 and s32 could be used to justify the inclusion of the content. This is where the exceptions are very useful, particularly since the amendments in 2014. There is no indication or constraint in the wording of those two exceptions about the source of the materials. In the Intellectual Property Office (IPO) statement in 2012, it states – "*The aim is *to make it easier to use copyright works in education, particularly with modern technology, in order to enrich and enhance the learning environment." "Modern technology" is being interpreted across the academic community as including the Internet.*

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- A series of “Peanuts” cartoon strips which highlight social interaction, relevant to the context of my module in a light-hearted, engaging fashion

  Answer - This is where the CLA licence could be helpful, if multiple copies were required. However, if the cartoon is on the Internet, a link to it might be enough for the learners and again, as with the previous question, in your judgement, s30 and s32 might apply. You could also contact the publisher for permission – that often works.

- A YouTube clip of Prof Smith from Superduper University (USA) delivering an excellent keynote speech at a recent international conference on the way in which staff working on farms etc are managed

  Answer - what’s to stop you? (Other than your establishment blocking YouTube!!). It’s safe to assume that Prof Smith is happy for his speech to be used. I would hope that he is aware of the speech being on YouTube! It could even be a TED talk!

- Video clips from a variety of TV broadcasts and DVDs from the College library.

  Answer - ERA licence and/or s30 and s32. Also possible to use s36 “copying and use of extracts of works by educational establishments” This, along with any other copying under the exceptions, has to be considered “fair dealing” and must not be more than 5% of the work (your judgement on how this is measured)

- A clip from a Video Arts training film highlighting how badly a Personnel Department in a company deals with someone who is a persistent absentee to the detriment of their co-workers.

  Answer - If you own the training film, then I see no reason why you couldn’t justify the use of a clip under s30 or s32. If it ever came to the push, I would suggest that s32 would be the better justification – if you were ever asked to justify this use. If you don’t own a copy of the film, then permission would have to be asked.

- Clips from videos I have made during visits to assess students on placement in local and regional company personnel departments.

  Answer - Release forms from the students indicating that they were happy for their images etc to be used. May also be politic to ask the companies for a release as well if the videos were recorded on their premises. Otherwise, you are good to go – these resources have been created by you, and without getting into deep discussion about ownership, if they have been created in your working hours, they belong to the College – which is then effectively the copyright owner

- And then there are the images that I’ve seen on a few image library sites on the web – Getty, Corbis, etc – just thought I’d cut and paste.

  Answer - This is one of the most contentious areas in the exceptions. The legislation makes no distinction about types of works nor the platforms where they are based – there is also a contract override provision which states that copying may still go ahead, even if there is a term in the contract which would prevent the copying – as long as the copying you want to do isn’t infringing copyright under the terms of the

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relevant exception. If you are in any doubt about the Getty, Corbis images etc, then there are many other free, copyright-cleared sites available such as Flickr CC, Unsplash, Pixabay and some of the Jisc collections.

Stop Press – even Getty are now allowing the use for embedding on non-commercial websites and blogs of many of their images. For more information, see here https://creativecommons.org/tag/getty-images/ and here - https://www.gettyimages.co.uk/resources/embed

Final Note on exceptions

If you choose to make a copy, under the terms of any of the exceptions, you must make your own judgement (or contact Alan Rae at alan@copyrightscotland.co.uk who will be happy to give further advice) and the copying must be under "fair dealing" – which is open to your interpretation! You don't have to quote any of the sections if you choose to use them for the justification of your copying – you would only be asked to give your reasoning for the copying if you were ever challenged about it. The only recognition you have to give, because it's part of the fair dealing process, is to give an acknowledgement where practical.

Acknowledgement is extremely important in using third party materials, especially if the works are not being used under the terms and conditions of the major licensing agencies. In an ideal world, all copying would be done under a licence from an agency, permission from a creator to an individual user or establishment, or under one of the legal exceptions mentioned in this section.

When carried out under a legal exception, it is strongly advised that an acknowledgement is given – this doesn't mean that a user can merrily copy multiple works and think that there will be no comeback from rights holders. What the acknowledgement does is recognise that the work, properly identified by title, date, page number (if applicable), creator's name, publisher's name etc. is being attributed by the user and not passed off as their own work. An acknowledgement also gives other users an indication of the provenance of the work for future reference.

For example, if someone wanted to copy a text which is excluded either by the author or publisher under the CLA licence, it is still possible to make a single copy, under either sections 29, 30, 30A and 32 of the Copyright Act, (the "fair dealing" clauses) as long as an acknowledgment is made. Interestingly, each clause (apart from 30A) says that a "sufficient acknowledgement" is to be given, but there is no indication of what "sufficient" entails.

Also worth remembering is that there is no monitoring of anyone's use of exceptions. They don't have to be logged or recorded in any way. This puts pressure on you as a lecturer, but using your professional judgement about outcomes, quality and suitability of the materials, the decision is yours.

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Please use the exceptions and also please ask the author if you have any doubts about what you, your colleagues or your students would like to do.

A final, final comment on exceptions and fair dealing

Here is a quote from Justice Lord Denning relating to his interpretation of “fair dealing”. Can we take heart from his opening sentence?

“It is impossible to define what is "fair dealing." It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also. But it must be a matter of impression. As with fair comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide.”

Hubbard v Vosper (1972)

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Appendix B

Collective Management Organisations

The CLA is a Collective Management Organisation with 4 stakeholders –

PLS – The Publishers' Licensing Society
ALCS – Authors' Licensing and Collecting Society
DACS – Design and Artists' Copyright Society
PICSEL – Picture Industry Collecting Society for Effective Licensing

The content owned by each of the stakeholders' members is licensed through CLA to end users who want to make use of text and images from books, magazines and image galleries

CLA issue licences to a wide community of business, education, pharmaceutical, public administration and voluntary organisations.

In education, CLA licence all sectors, but in different ways.

- Higher Education – licences are discussed with representative groups UUK and Guild HE

- Further Education – licences for this sector are discussed with representative groups Colleges Scotland, Association of Colleges, Colleges Wales

Tariffs

CLA levy two tariffs in FE, based on FTEs representing those students who are taking an FE course and those taking an HE in FE course.

The licence allows proportions of texts, whether print or digitised, to be copied and/or scanned for distribution to learners through printed handouts or as part of digital resources on a VLE

Since 2016, six Scottish FE colleges have withdrawn from the CLA licence on the basis that they can manage their acquisition and distribution of teaching and learning resources more effectively and efficiently without the need for a "blanket licence"

www.cla.co.uk

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The Education Recording Agency is another CMO, founded at the time of the current 1988 Copyright Designs and Patents Act, to licence the recording, copying and distribution of broadcasts from the ERA stakeholders.

As their name suggests, ERA deal only with the UK education sector, and as with CLA, deal either with representative organisations or directly with end users.

The ERA licence has moved with technological development and the licence permits recordings to be made to hard drives, stored on servers, distributed through VLEs and , if the purpose is educational, copies may be made and viewed both in the licensed establishment and by learners on their own devices at their own choice of time and location.

The only barrier to the ERA licence currently is that all activities have to take place in the UK.

The licence allows clips to be recorded and shown, as well as whole programmes. Catch-up services also fall under the management of the licence.

The broadcasters whose work is not licensed under the terms of the ERA agreement are the satellite and cable broadcasters in the UK.

If colleges choose to subscribe to a satellite or cable provider, an ERA licence will still be required to view programmes authorised by the ERA stakeholders. Any other programmes to be viewed or recorded on channels such as Netflix and Amazon are subject to the specific terms and conditions of those providers.

It is the author's opinion that if a college does have a contract with a satellite or cable broadcaster, then it is acceptable under s32 and s35 of the CDPA 1988 to make use of non ERA licensed content for educational purposes.

The use of YouTube also may fall into the s32 and s35 exceptions. Please see Apendix F on YouTube for further discussion on this subject.

www.era.co.uk

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NLA is a relative newcomer to the world of Collective Management Organisations. It was formed in 1996 by a consortium of newspaper publishers to licence clips and cuttings from their publications.

NLA does offer an educational licence, which is currently administered by CLA – although both organisations insist that they still operate separately – NLA use the CLA database to invoice their licensees.

It appears that the main client group that NLA wants to work with are the Media Monitoring Organisations employed by companies, including educational establishments, to assist with their media coverage. These MMOs will, for a fee, track all references to clients, irrespective of the media and also report on trends affecting the sector and the clients.

It is likely that your college has such an arrangement with an MMO, usually through the marketing department, which for our purposes, in these guidelines, has no impact on the educational use of titles licensed by the NLA

As with other Collective Licences, there is no compulsion for a college to take this licence either for marketing or educational purposes. If a college thinks that there are alternatives that can be used just as effectively, then it is free to do so.

In the case of educational use of NLA licenced content it is arguable that the use of s32 – Illustration for Instruction – may be an acceptable alternative. There was a court case involving NLA and a Media Monitoring Organisation, Meltwater, in 2014, where the Court of Justice of the European Union in Luxembourg ruled in favour of Meltwater and found that browsing and viewing articles online does not require authorisation from the copyright holder.

Therefore, if learners are referred to a link from a newspaper, as part of their studies, then they are free to browse and view. If they chose to copy for their own purposes, then s29 of the 1988 Copyright Act applies.

https://www.nlamediaaccess.com/default.aspx?tabId=40

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PRS for Music, formerly known as the Performing Rights Society, is one of three music licensing agencies that may have an impact on College use of music. The other two are Phonographic Performance Licensing Limited (PPL) and the Mechanical Copyright Protection Society (MCPS).

For our purposes, only PRS for Music and PPL are relevant to these guidelines. MCPS has a specific use which can be helpful to colleges in what is called a Limited Manufacture Licence. Although this licence is either an MCPS or a joint MCPS/PPL agreement, they are both administered by PRS. The link, for further information, is here - https://www.prsformusic.com/licences/releasing-music-products/limited-manufacture

PRS for Music

The stakeholders in this organisation are lyricists, composer and publishers who have granted collection rights in their compositions to PRS, who collect payment for the use of the content, deduct an administration fee, and distribute the rest of the income, in the form of royalties, to the stakeholders.

It is advisable for anyone who wants to exploit their own music to become a member of PRS so that their work will be rewarded when it is played in any/all of the licensed venues

PRS for Music licences all areas where their members' music is played – shops, restaurants, pubs, concerts, discos, hairdressers. There are 42 tariffs in total, ranging from Aircraft (0.17p per passenger) to Youth clubs, with Train stations (£96.00 per platform) and Circuses in between.

From an educational viewpoint, it could be argued that there is no need for either a PRS for Music or PPL licence, since the playing of music in the College curriculum is covered by s34 of the 1988 Copyright Act "The playing or showing of a sound recoding, film or broadcast ……. is not a playing or showing of the work in public for the purposes of infringement of copyright"

https://www.prsformusic.com/

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Phonographic Performance Limited

PPL is another music licensing organisation, representing performers and recording companies.

Why are two licences required to play music?

PRS for music licences the playing of the music – the lyrics and composition that you hear – while PPL licences the source of the music – the means of playback.

If music is being played in a shop, then both licences are required – PRS for the music and PPL for the means of playback – CD, radio, streaming through the internet, a phone, a computer etc.

If music is being played live in a venue, then only the PRS licence is required – there is no need for PPL since there is no playback facility. In reality, venues such as pubs, clubs, restaurants etc will have both licences to cover live and recorded music.

If someone is playing their own music, which hasn't been published and therefore hasn't been registered with a publisher or PRS, then no licence at all is required – but the musicians will not be receiving any royalties for their compositions, only a fee for playing?

PRS, PPL and Further Education

The issues with these two licensors and FE relate to the definition of curricular and non-curricular music.

All music played in the curriculum of students taking dance, drama, theatre, music, sound recording and PE courses (where students are being taught to take exercise classes) is covered by s34 of the Copyright Act.

The Colleges have discussed with the licensing agencies that music played as background in training restaurants, and hair and beauty salons should also be classed as curricular use of music. At the time of writing these guidelines, one of the licensors agrees with the colleges and we await an answer from the other. Watch this space!

https://www.ppluk.com/

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Appendix C

Image Galleries



Images are one of the main aspects of copyright issues – and not just in education, but also throughout business and the media. There are many well-documented cases of alleged infringement of images of celebrities in images circulated far and wide on social media.

The challenges relating to images are not helped by the major search engines that seem to take delight in aggregating images from the Web and then make them available through their own websites, apparently without asking permission of the image rights holders.

Granted, when using a site such as Google Images, there is a facility to search the provenance of the image beyond the page they are displayed on and where the comment "this image may be subject to copyright" is included. It's quite right that the image may be subject to copyright, but not everyone checks the provenance, cuts and pastes the image and is then surprised when a penalty letter from an image gallery, claiming to be the official rights holder of the image, arrives at your establishment demanding immediate removal of the image and a strongly worded request to pay the accompanying penalty invoice.

That's a worst-case scenario, but they do happen, and the penalties are paid, with no publicity, because the allegedly infringing organisation does not want to suffer reputational as well as financial loss.

It has become habitual for users, searching for an image for illustrative, marketing and publicity purposes, to be casual in their use of images. The images usually belong to someone else and the user should, theoretically, ask for permission. However, the quick cut and paste process is carried out without thinking, and, as indicated earlier, could lead to unwanted consequences.

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What's the solution?

For marketing purposes in a College, images can be commissioned from a photographer, they can be taken by a member of staff, or a student, or they can be acquired from an image gallery

Commissioning a photographer

Always, always, ensure there is a written agreement between the college and the photographer. Detail the uses of the images, how long the contract lasts and who owns the copyright in the images. Do not assume that because a third party has been asked to carry out work for the college, that the college automatically owns the copyright in the content produced. This is not the case. Normally, the copyright of any work carried out by a full-time employee belongs to the College, but with third party commissions, it is essential to agree all aspects of payment, use and ownership in advance.

A student is not a member of college staff. If a college wishes to use content created by a student, there must be an agreement in advance. It doesn't matter that the student may use college resources – that used to be relevant in photography, but is no longer the case.

Image galleries

Image galleries are always delighted to welcome new clients. They can take the complexity of selecting images away from the College and can also offer very high quality and relevant images for all purposes.

Just as with commissioning, the college should ensure that there is a contract in place with the image gallery and that the college understands the usage and payment system they are going to use.

Most galleries operate a form of subscription service that will allow a set number of images to be selected over a pre-determined time period, with either a single payment, or one made on a regular basis. It may also be the case that each time an image is used, that the college pays a royalty.

Doing the right thing in image use can be complicated and time-consuming, so it is easy to see why the "right click" on Google Images (or any other web based image) is so popular.

It is always worth doing the right thing – the consequences could be painful!

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Copyright free images

This can be a misleading phrase. Image galleries use the term as an inducement to new clients, who then find that although the images may be free of copyright, there is still a financial charge to pay

Creative Commons Images

One way to avoid any issues is to use those galleries that offer images covered by a Creative Commons Licence (There is more information about this form of licensing in Appendix D) There are many useful sites offering these images. Look particularly for Pixabay and Unsplash. They both offer images under a CC0 licence which doesn't even ask for an acknowledgement.

Be careful when copying images from the web. It may seem very simple to do and you may ask – "who's going to find out?" Perhaps it would be acceptable to copy images for curricular use (s32 of the Act) as long as they were kept on the VLE. Infringing copying becomes an issue if the VLE isn't secure or the images find their way on to a public facing website – either through staff or students' efforts.

Suggested image libraries, galleries and websites

Pixabay - https://pixabay.com/

Unsplash - https://unsplash.com/

Pexels - https://www.pexels.com/

Stocksnap - https://stocksnap.io/

Splashbase - http://www.splashbase.co/

Gratisography - https://gratisography.com/

The Blue Diamond Gallery - http://www.thebluediamondgallery.com/typewriter/c/copyright.html

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Appendix D

Creative Commons Licences

In recent years, and principally evolving from the USA, a few content creators have adopted the Creative Commons (CC) approach. It's very simple – whereas most copyright statements state that "all rights in the work are reserved", the CC proponents say that "some rights are reserved" and the remaining rights can be used freely under the terms of the licence. The best place to find out about CC is the informative CC website - http://creativecommons.org/

But just to give a flavour of what CC can do –

If you are a creator and you want to share, rather than reserve, your rights to your work, whatever it might be, then you can add a CC licence to your work – either in writing or attach it online to any digital forms of your work.

CC licences come in a number of variations, but the basic aspects are –

- The Creator still retains the copyright in the work (I'll come back to this, it's important)
- The creator grants a CC licence that allows the user to use the work as long as there is an attribution to the original creator
- The licence can state that derivatives of the work can be made – as long the derivatives carry the CC licence with them
- The creator can offer a licence that allows the user to share the work further
- The creator can state in the licence that the work can be shared, attributed, used for derivatives – if the work is not used for any commercial purpose

CC licencing is often associated with Open Education Resources (OER) a movement to free works from the constraints of copyright and allow much wider use and even allow further development of the work to be made.

I said at the start of the CC aspects that the creator still retains the copyright – that's important, because if the creator gives all rights away, they are effectively assigning their work to another party. The creator may be compensated for an assignment, but whether or not they are paid, the work no longer belongs to them and they have very little say in what happens to the work in the future.

It's the perennial dilemma of a creator. Say a publisher offers an outright payment of £10,000 to a creator for an assignation of the work, the creator has to decide what to do – is it worth taking the £10,000 and letting go, or should they try to licence the work (i.e. retain the copyright, but allow some uses to be made of the work) for a lesser amount and then rely on royalties from the sale/further licences of

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their work? Many struggling creators will be tempted/encouraged to take the money, how many live to regret it?

Some examples – David Bowie assigned much of his early work and tried in vain to buy back the rights when he became very successful in the Ziggy Stardust and Aladdin Sane days – he did eventually buy the works back, but not before other parties had made considerable income at his expense.

J K Rowling has become very famous, and very wealthy on the back of her Harry Potter stories – all licensed – she still retains all copyright – so every time a book is sold, a movie is made and distributed, a DVD is copied from the movie, a computer game is devised or merchandise is sold, Ms Rowling gets a royalty.

We could get money from Harry Potter as well, if we tried hard enough – come up with the good idea that would be enhanced greatly by an association with the young wizard, ask Ms Rowling's permission through either Bloomsbury, her publisher or Warner Brothers who look after the movie side of the product and hey, your worries are over – or are they? Are you prepared to pay up to 50% of your income in the way of royalties – will you be making enough from this wonderful product to pay your bills, the royalties and make a profit?

Knowing when to assign or licence is a tough call – and that's when an agent and/or publisher can come in, but they have to be paid as well!

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Appendix E

Alternative Resources

The digital teaching and learning world is no longer dependent on what might be called “traditional” resources – text books, journals, magazines, newspapers and video.

Now, the Virtual Learning Environment has taken over with e-books, e-resources, Open Education Resources, interactive packages and videos stored on hard drives. All are readily accessible to all learners and content creators through an authentication process.

Additionally, other resources are available through (and this is just a small selection)

ItunesU – available on the Apple App store for IOS devices

The Khan Academy - https://www.khanacademy.org/

Open Learn - https://www.open.edu/openlearn/

TED talks - https://www.ted.com/talks

BBC Bitesize - https://www.bbc.co.uk/bitesize

Jisc - https://www.jisc.ac.uk/

Jisc App Store - https://store.jisc.ac.uk/home

Bookboon - https://bookboon.com/

Tes Resources - https://www.tes.com/teaching-resources

YouTube - https://www.youtube.com/

Google books - https://books.google.co.uk/bkshp?hl=en&tab=pp

None of these resources is subject to the control of the Collective Management Organisations – CLA, NLA, PRS, PPL, ERA

They may well be subject to copyright, so it is important that you refer to the terms and conditions of the resource providers to see what limits there are.

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Using the Internet in the way it was intended – ie exchanging information and communicating to a global audience – is an ideal way to make learners aware of resources and content that they many find helpful in their studies. And it is very useful to know that

“Links are not copying”

The Court of Justice of the European Union (CJEU) decided in the case of *Svensson and Others v Retriever Sverige AB* (C466/12), that a website which redirects internet users through hyperlinks to protected works which are already freely available online does not infringe copyright in those works. (February 2012)

"If the decision had gone the other way it would have broken the internet," said Susan Hall, technology lawyer at Clarke Willmott.

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Appendix F

YouTube – Friend or Foe?

At a CPD session with lecturers at a Scottish FE college, I asked a group of 16 staff, representing the curricular width of a large college, what they used most for teaching and learning resources. Unanimously, the answer was "YouTube". No longer is the primary source of materials for this group text, journals, newspapers or recorded video.

They, and many more FE lecturers are turning to what some of their college managers consider a very risky resource. After all, who moderates YouTube? Who determines the quality of the content? Who checks that the copyright of embedded content has been cleared? Who peer reviews YouTube? Who checks the provenance of the "publisher" of the content?

Lecturers used to recommend texts to their learners – texts that came from a recognised and trusted publisher, safe in the knowledge that colleagues in the sector and subject had been asked to review the text, happy also knowing that the content had been edited and proofread and that the content was appropriate for the curriculum.

Then more visual content was introduced to FE (and all other sectors) in the form of video recorded programmes. Programmes were produced in the form of broadcasts by trusted organisations (BBC, ITV, C4 etc) and again, were relevant to the outcomes of learning units in the curriculum. These video recordings, along with some excellent support materials became a common and popular resource as the learners became more visually literate.

Just as many texts then fell under the blanket licence of the Copyright Licensing Agency (CLA), so the videos of the broadcasts were managed under the terms of the Educational Recording Agency (ERA). The licensing agencies also provided the "comfort" connotation of "blanket", allowing colleges to copy, distribute and show text and videos, subject to the terms and conditions of the respective licences.

This arrangement ticked over for a few years, but bit by bit, the introduction of digital technology began to fray the edges of the comfort blankets, providing less cover for the innovative ways in which teaching and learning content was being acquired. Not the least of the innovations is YouTube, an outstanding star in the concept of "Web 2.0". This iteration of the Web took us from the static delivery of "Web 1.0" into the wonderful world of User Generated Content (UGC) where, thanks to increasing

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bandwidth and the introduction of manifold apps, anyone with a digital camera, phone or tablet, could happily create a video, add effects and music and share it with the rapidly increasing numbers of YouTube subscribers.

Those subscribers included teachers and learners, and by a process of osmosis and recommendation, YouTube began to make inroads to those educational establishments that allowed this platform to be used. Most of the current generation of learners in FE have been brought up with YouTube and other similar platforms and take it as granted that it's as much a part of their entertainment and educational lives as is Google – and of course, Google owns YouTube!

The current learning generation is also more visually literate than their predecessors and have an expectation that a large proportion of their learning will take place using a screen, whether that is on a phone, tablet, computer or monitor. These visual expectations were previously met with video recordings made according to the terms and conditions of the ERA licence. Now, the visual expectations are only satisfied by the width of YouTube's repertoire – and very little of that is licensed.

If colleges are using unlicensed content in their curriculum, is there a higher level of risk? What are the risks?

- Unlicensed third party content in the YouTube video
- The threat of "cease and desist" action from a rights holder
- Inappropriate content in the video
- Relevance of the content to the curriculum?
- Uncertain provenance of the video
- How long will the video remain on YouTube?

How are these risks to be managed? Does the proliferation of YouTube use across education herald the beginning of a new era of wilful copyright non-compliance? None of the "blanket" licensing agencies seems able or willing to deal with the issue due to the multiple rights involved in the uploaded content.

Every college has a Health and Safety policy, an employment policy, and a diversity policy – and has CPD on these and other legal issues. Do these other legal issues include an Intellectual Property policy supported by guidelines and CPD? It's in such a policy that the answers to the risks posed by YouTube and other Web content challenges should be found.

The risks attached to the use of content such as that found on YouTube can be mitigated by the introduction of a supported IP policy. They may also be mitigated by using "fair dealing", a concept included in the educational exceptions of the Copyright Designs and Patents Act 1988 (as amended) – the UK legislation which provides the rules for copyright as well as patents, designs and trademarks.

YouTube is now a significant feature in teaching and learning in the UK – how long will it last? Will it be replaced? Will it ever be licenced by a collective management organisation such as ERA?

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Many colleges themselves now have a YouTube channel for promotion, recruitment, and advertising, communicating to their community. Is all this content checked before uploading?

Many colleges use programmes from professional organisations and suppliers where previously the content was provided by text – are there risks attached to this use?

Many colleges encourage students to create videos for their own curricular use and perhaps even for assessment. Should the video from the college fashion show, intended for the closed group of fellow students, family and friends be kept within the confines of the college VLE – or should it be uploaded to the global YouTube audience where the designs may be copied and where the owners of the music soundtrack may take exception to the use of their works?

So many questions, not so many answers. Another dilemma for colleges to tackle and in doing so, maintain their integrity and reputation – and even their finances if a content provider wishes to levy a financial penalty for the misuse of their works.

And just to ensure that you do understand that although YouTube is very popular and does, if managed effectively, provide variety to a curriculum, you're not going to get any assistance from YouTube itself in the management of the content – here is clause 7.9 from their Terms of Service -

"7.9 You further understand and acknowledge that in using the Service, you may be exposed to Content that is factually inaccurate, offensive, indecent, or otherwise objectionable to you. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against YouTube with respect to any such Content." (YouTube "Community Guidelines" in their Terms of Service)

Was it simpler in the days of texts? Of course it was – but it was also very boring.

YouTube is a learning phenomenon and with the enormous amount of very well crafted, relevant, entertaining, educational and engaging content, (TED talks come to mind) is a boon for the teaching community.

If your college allows access to YouTube, just please exercise caution. Think about the risks and how they can be mitigated. Each college should have a policy to deal with not just YouTube but all the content that can now be globally tracked by the content providers – especially digital image libraries. A policy is there to support staff and students and to show the content providers that the college is aware of copyright and wants to respect its use by displaying good practice – after all, just as learners are encouraged to show good practice on building sites, in hair and beauty salons, care homes, hospitals, art and design studios and all the many places that our students go to, so should they be shown good copyright practice – many of the businesses they are either employed by or are set up by themselves rely heavily on copyright for their commercial and profitable existence.

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Contrary to some views, I am not a copyright anarchist – I get close, admittedly, but I have two quotes posted above my desk in my office. The first is from the Impact Assessment that accompanied the most recent amendments to the educational exceptions in the 1988 Copyright Designs and Patents Act (as amended)

To amend copyright exceptions for education, *so that copyright does not unduly restrict education and teaching,* without undermining incentives to creators. This means *widening the current exceptions, applying them to more types of creative works, and more kinds of technology.* The aim is *to make it easier to use copyright works in education, particularly with modern technology, in order to enrich and enhance the learning environment.* This will also provide administrative and other savings to educational establishments, and *reduce the risks associated with using copyright materials when delivering education"*

The other quote, which I often use to introduce a talk on copyright is from the highly respected Mr Justice Hugh Laddie, commenting on a copyright case in 1996 – 21 years ago, but still relevant.

"The fact that our system of communication, teaching and entertainment does not grind to a standstill is in large part due to the fact that in many cases infringement of copyright has, historically, been ignored"

Neither quotation provides *carte blanche* for copyright infringement, but surely we should be challenging so many of the long held views that we should fear copyright and be prepared to be punished if we step out of line.

The current copyright legislation was written long before anyone imagined something such as YouTube, but, in my opinion, under the amended s32 of the 1988 Act, YouTube content can be copied and embedded for teaching and learning purposes. This assertion is also supported, in my opinion, by sections 30, 35 and 36 of the same Act.

Some readers may disagree, and that's fine – without debate, too many aspects of our lives remain untouched while the world around changes rapidly. With debate, and challenge, we may just be able to move some of those aspects, copyright included, into an age where platforms such as YouTube may just be considered as the *de facto* library.

And just as an addendum, I read with great interest, the following article – transactional licensing for YouTube? Not too far-fetched, in my opinion. And perhaps not only for YouTube? How radical 1

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Original article November 2017, updated October 2022

Appendix G

Permission

Although collective licences do offer permission, they are often described as "blanket" permissions, covering works and titles that have been mandated to the CMO by the creator or their representative.

There will be occasions, however, when you may wish to ask for permission to use a work that is neither subject to a CMO licence or exceeds the limits stated in those licences. Please note that there is nothing to stop you asking a publisher/creator directly if you wish to exceed the limits laid down in the CMO licence – the worst they can do is refuse, but at least you won't be left wondering if you don't ask the question – and you might be pleasantly surprised with the response you get, if you ask nicely!

When you ask for permission, it is imperative that you give the rights holder as much detail as you can. Don't ask for permission to "copy the Harry Potter book – I think it was the third one" - that won't get you anywhere.

You must provide

- Title
- Author
- Date of publication and/or edition
- Identifier such as ISBN, ISSN etc
- Pages required, along with page numbers

And you must tell them –

- What you want the copies for – photocopying, upload to VLE, inclusion in a website (provide the URL)
- How many copies you would like to make
- The course of study for which you want the copies
- The length of time you propose using the copies
- An assurance that the permission, if granted, is only for that course in your college
- An undertaking that if permission is granted, full acknowledgement will be given

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The example given relates to text, but similar applications can be made for other types of works, if you can provide the appropriate details – for example

- Track numbers of a CD
- Track or section ID of a DVD
- Titles
- Dates of release
- Production company name
- Director/producer
- Which artwork you would like to copy

Previously, an applicant for permission may have had to wait at least 3 – 4 months for a reply. Now, with e-mail available, waiting times have reduced, but it still helps to give the publisher some time to deal with your request and not expect an immediate reply.

Be patient in waiting for your answer and allow yourself a certain length of time, say a month, before you send a gentle reminder. If you haven't received a reply by that time, I would suggest that you look for an alternative resource and please do not fall into the trap of just going ahead, saying "well they couldn't bother sending a reply, so I'll just go ahead and use the works anyway". That is not recommended practice.

If you are still keen to copy the work, it may be that you have contacted the wrong person or the wrong company. You may have to search further for an agent or manager who might be able to help.

You may have seen works where permission to use other people's works hasn't been received saying, "all efforts were made to clear copyright in xyz extracts in this book, but permission was not received. If you are the copyright owner of xyz, please contact the following address to discuss further" - this is not recommended practice and wouldn't stand up in any defence against infringement.

When you receive a reply, you will either be refused, be granted permission for no fee or granted permission for a fee. It's then your choice what to do next. Please remember that when specific permissions are sought, they are only for your personal use, your classes' use, perhaps your college's use, but not for anyone else.

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Appendix H

Ownership of copyright

As you may have realised by now, copyright, like so many other legal concepts, isn't simple. According to the actual words stated in the legislation, it should be simple, but the law doesn't provide us with interpretations or definitions. We have to wait for case law to help us with any issues. One area, which seems simple, according to the appropriate legal clauses, is ownership. In reality, it can be one of the most contentious aspects of copyright, probably because people are involved!

Section 11 of the CDPA states

(1) The author of a work is the first owner of any copyright in it, subject to the following conditions –
(2) Where a literary, dramatic, musical, or artistic work, or a film, is made by an employee in the course of his/her employment, his/her employer is the first owner of any copyright in the work, subject to any agreement to the contrary

(There is a third clause, but it has no relevance to this document)

Seems simple?

What, then, are the rights of part-time employers, contractors, supply staff, students, commissioned photographers, writers, artists, programmers?

- What happens when content is created by more than one person?
- What happens when content is created by a full-time member of staff, working with a third party organisation?
- What happens when content is created by a full-time member of staff, but the exercise is funded by an external party?

There is a relatively simple solution to all these questions – write a contract or agreement so that as and when any dispute arises, there is a reference point to help find a solution. Sadly, this doesn't always happen and it can take a lot of unpicking if joint working goes wrong.

Full-time staff

As s11 of the CDPA (quoted above) states, the author of a work is the first owner of copyright, unless the work is made in the course of employment, when the employer is then deemed to be the owner of the copyright.

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That's all well and good, if the member of staff is preparing content for learning in the form of lesson plans, assessments, handouts, contributions on the VLE, creating videos, audio and images. In that instance the copyright of the works created belongs to the employer – but does the employee's contract of employment have any reference to Intellectual Property created by the member of staff?

What would be the college's reaction if, unknown to them, the member of staff aggregates their lesson plans, etc into a book or an interactive resource, is able to find a publisher who then releases the work for monetary gain?

What would be the college's reaction, if the content that the lecturer had put together for a publisher had no relation to the subjects that the lecturer is employed to teach? Eg a languages teacher writing learning materials on artistic welding?

Part-time staff

Scenario

New part-time member - " Hi, I've just come to teach XYZ – I have my first class this afternoon. Can anyone show me where the teaching and learning materials are for the class/course, please"?

Existing full-time member – "Hello, pleased to meet you. The materials should be in that cupboard/that file – here's the key/password"

New part-time member, on opening cupboard/file "There's nothing here"

Existing full-time member – "Oh, ABC (previous part-time member) must have taken them with him/her – sorry, can't help – got a class to go to"

Sound familiar?

What rights does a part-time member of staff have in regards to the teaching and learning materials that they create? Are they entitled to take them away, or should they be left for those who come afterwards?

What's the answer? A written agreement!!

Contractor

A contractor can take a variety of guises – writer, photographer, graphic artist, video producer, programmer, consultant or guest lecturer – and each can have their own specific rights requirements. For the purposes of these guidelines, here is a generic approach to these third-party contributors.

Get a written agreement!!

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Specify

- The length of the agreement – a day, a week, a term, until a particular task is completed?
- The purpose of the project that the third party has been contracted to carry out
- The payment – the amount, the frequency
- And most importantly, who owns what rights to the work that is being carried out.

An example

A commercial photographer is approached by a college to provide images for the marketing department to use on the College's various social media and the College website

NB – no written agreement so far: all communications by phone call and face to face meeting

The photographer duly takes all the requested images and sends the files to the College along with their invoice

The College is very happy with the images and pays the invoice.

All good, so far. The marketing department then decides to use the images on print and digital billboards, buses, bus shelters and advertising spaces at local sports areas such as football stadia and ice arenas.

The photographer contacts the College and complains that their images are being used for purposes not originally discussed. They suggest that they either want the College to stop using the additional media and locations or pay the invoice that the photographer attaches to their letter/e-mail

A "discussion" then ensues with the College maintaining that since the first invoice was paid, the College has the right to do what they want with the images.

The photographer maintains that the images were only ever to be used for the College's social media and website.

Who's right? Neither, because there is no agreement to refer to for a proposed solution. Most importantly, neither party has indicated what rights were paid for, nor which rights were implicitly licensed.

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The outcome? An unsavoury and expensive exchange of correspondence between the College, the photographer and their respective legal representatives. The exchange led to bitterness, damage to reputation and a grudgingly offered and received amount of compensation.

How could this have been avoided? By a written agreement – which could possibly have taken the form of an e-mail exchange which could effectively have been interpreted as offer, acceptance, counter offer, acceptance etc until both parties were in agreement.

In circumstances like this – and they do happen – far too often – there has to be an understanding of rights. It may have been the case that the college has a standard contract for suppliers – of goods and services, but does that contract mention "rights"?

This hypothetical case (based on real events) highlights the need to understand, in ownership of rights, the significance of "assignation" and " licensing"

An agreement, ideally, would have given a clear indication that –

The photographer and the College both had choices in reaching an agreement that would have led to a successful outcome. The photographer, if happy with the proposed payment, could have assigned all rights in the images to the College. This would have allowed the College to use the images, for whatever purpose, in perpetuity, since assignation means that all rights are signed over, usually for remuneration to the contracting agent, in this case, the College.

In the matter of licensing, again both parties have choices. The photographer, usually in the case of licensing, for a lesser payment, would allow/licence the college to use the images for specific, agreed purposes, for a specific, agreed period of time. The photographer could also have given either an exclusive or non-exclusive licence to the college. Exclusive means that only the college could use the images for the specified time; non-exclusive means that the photographer could have allowed other clients to use the images as well as the college for a specified period.

Co-authorship

Everything above applies to joint working as well. It's all very well, exciting and fun, to join with others to create content, whether that be a text book, interactive resources, music, lyrics, films or any other form of work.

To save disagreements among your co-creators about who owns what, who has contributed what, who takes the lead in negotiations with third parties, **write down all the details.** It's a faff, but those who do it will be successful, those who don't are likely to fall out and lose the joy of the content creation.

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Student copyright

Contrary to a widely held view, students own their own copyright. It doesn't matter that they may use College resources to help them create content –

- Text
- Images
- Video
- Software
- Inventions
- Choreography
- Illustrations
- Paintings

They are the creators of the work.

If the college feels that it does have a call on the students' content, then there must be a written agreement (yes, that again) drawn up when the student registers/matriculates at the start of their course.

Not only must it be done at the start of the course, the concept of Intellectual Property must be communicated to the students so that if they are required to sign an agreement at registration, they understand their rights and what they are signing for.

If nothing else, in this day of students leaving to set up their own business or working for organisations that relay heavily on their own IP, it is very good practice to introduce IP literacy to the curriculum.

Of course, the college might want to use student work to illustrate online marketing, exhibitions, press releases etc, but the college cannot just assume that it is acceptable to exploit that work without asking permission – and receiving agreement

Copyright literacy is as important for students as it is for teachers.

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Appendix I

Social Media and copyright

Facebook says –

"Specifically, when you share, post or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy and share it with others (again, consistent with your settings) such as service providers that support our service or other Facebook Products you use.This licence will end when your content is deleted from our systems."

Twitter says –

By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses by Twitter, or other companies, organizations or individuals, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services.

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YouTube says –

Rights you Grant

You retain all of your ownership rights in your Content. In short, what belongs to you stays yours. However, we do require you to grant certain rights to YouTube and other users of the Service, as described below.

Licence to YouTube

By providing Content to the Service, you grant to YouTube a worldwide, non-exclusive, royalty-free, transferable, sublicensable licence to use that Content (including to reproduce, distribute, modify, display and perform it) for the purpose of operating, promoting, and improving the Service.

Licence to Other Users

You also grant each other user of the Service a worldwide, non-exclusive, royalty-free licence to access your Content through the Service, and to use that Content (including to reproduce, distribute, modify, display, and perform it) only as enabled by a feature of the Service.

Pinterest says –

b. How Pinterest and other users can use your content

You grant Pinterest and our users a non-exclusive, royalty-free, transferable, sublicensable, worldwide licence to use, store, display, reproduce, save, modify, create derivative works, perform and distribute your User Content on Pinterest solely for the purposes of operating, developing, providing and using Pinterest. Nothing in these Terms restricts other legal rights Pinterest may have to User Content, for example under other licences. We reserve the right to remove or modify User Content, or change the way it's used in Pinterest, for any reason. This includes User Content that we believe violates these Terms, our Community Guidelines or any other policies.

Instagram says –

Proprietary Rights in Content on Instagram

Instagram does NOT claim ANY ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, "Content") that you post on or through the Instagram Services. By displaying or publishing ("posting") any Content on or through the Instagram Services, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, worldwide, limited license to use, modify, delete from, add to, publicly

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perform, publicly display, reproduce and translate such Content, including without limitation distributing part or all of the Site in any media formats through any media channels, except Content not shared publicly ("private") will not be distributed outside the Instagram Services.

I'm sure you get the idea! Apologies for labouring it, but it is essential that users of social media fully understand, that although you, as the poster of images, texts, artistic content, videos etc etc, may still hold the copyright of what you are posting (always assuming that if you don't hold the copyright, that you have asked permission of the content creators who do hold the copyright! No? you don't ask their permission? Tsk, tsk!!

Ok, all these social media platforms seem very generous in allowing you to retain your copyright (assuming it is yours, and I'll leave it at that), but when you post, you are giving all the platforms, and all their millions of users, the right to use your content, without payment and without acknowledgement.

Many people become incensed when they see "their" material being used all over the platforms, claiming that their copyright has been infringed. No, it hasn't been infringed – simply by using these platforms, you have given your permission for the content of your post to be used by everyone, everywhere – you've signed up to the terms and conditions, whether you have realised this – and boom! – you've lost control of your work

I agree that these social platforms are wonderful ways of keeping in touch, showing your work and marketing your content to a global audience, but please, only ever post something that you are prepared to lose control of.

Far too many photographers, for example, bemoan the fact that their content is appearing in many places that they may not wish their content to appear. Too late, it's gone. The photographer may try to regain control through cease and desist notices to alleged infringers, but the administrative burden and potential cost can far outweigh any success in recouping lost revenue or worse, lost reputation.

Yes, with images, try to use low resolution images, embed watermarks and copyright statements to preserve your integrity and potential income, but be aware that the watermarks and copyright statements can be removed by clever? but certainly unscrupulous people who just refer you back (if you do establish contact with them) to the licences that you have agreed to on the social media platforms where your work was first posted.

What the Internet gives, it can also take away.

Those of us who are using social media platforms are infringing all the time. If I see what I consider to be a funny cartoon that I want to share with my friends on Facebook, for example, and copy it to all, I'm infringing hundreds of times over. The platform has allowed me to make multiple copies, not just one.

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And don't be misled into thinking that such sharing of someone else's copyright is acceptable because there is no © symbol or statement on the cartoon. These symbols/statements don't have to be there. It's a huge flaw in the copyright system that there is no registration, but we're reached the stage globally, that to maintain and police such a register would be extremely difficult.

Interestingly, for the copyright geeks amongst us, the USA still maintains a copyright register, but it is no longer compulsory, but an infringed user has a much better chance of recompense if their work has been registered.

That applies in the UK, as well – not unfortunately to copyright, but to the other forms of Intellectual Property – Patents, Trademarks and Designs which can all be registered with the Intellectual Property Office.

In summary, if you are posting original content, no matter which form it takes, be prepared to lose it. If you're not prepared to lose it, don't post it, or at the very least try to protect it behind an authentication system or paywall.

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Appendix J

A copyright quiz

Copyright is often called a minefield where you can encounter some nasty surprises, a maze where you can enter but can get hopelessly lost – or it's just ignored – but you do that at your peril – shocks and confusion can appear from nowhere to the uninitiated. Let's see where you are at the moment and if the facts can be separated from the myths. The quiz is purely for your reference. I've set a number of commonly asked questions, suggested an answer and then followed up each question with more detail to justify the answers

---

Question 1 – Copyright in the UK is covered by

1 The Statute of Anne – 1710
2 The Copyright Act – 1956
3 The Copyright Act – 1976
4 The Copyright Designs and Patents Act – 1988
5 The Copyright Directive – 2001

Answer – option 4 – The Copyright Designs and Patents Act (CDPA) – 1988

Supplementary

All options are partially correct in Question 1. The Statute of Anne, passed in 1710, is generally recognised as the precursor to our current copyright law.

The Copyright Act of 1956 was in force until 1988. Copying processes and the proliferation of different types of media between 1956 and 1988 necessitated substantial changes to copyright law in the UK. New legislation was formulated and enacted in 1988. This Act has been amended on a number of occasions, in an effort to keep pace with technological innovation. Some parts of the 1956 Act, in relation to unpublished works and images, are still relevant, but for the purposes of this learning package, and current use, the 1988 Act is our benchmark.

The 1976 Act is the current legislation for copyright in the USA. Again, this has been amended many times in recent years, and the time of writing, there is considerable lobbying for a wholesale change to the copyright legislation.

As the UK has become a major participant of European legislation and economy in recent years, so we have adopted many of the directives that are European driven. Not all the clauses and requirements of European copyright directives have to be

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adopted by the UK, but increasingly, the UK outlook on copyright is more European based – and again, at the time of writing, there are calls for the overhaul of copyright throughout all members of the European community. If this does come to pass, then doubtless there will be many changes to UK copyright law.

Copyright practice, despite increasingly distant legislation, does just about keep pace with technological innovation, through Statutory Instruments in UK law, and an increasing adherence to forms of licensing, which interpret the 1988 Act in a number of ways.

For a very useful, entertaining and educative short video, outlining basic history and the components of copyright, please go here –

http://copyrightuser.org/copyright-and-creativity/

Question 2 - To gain copyright protection for any work in the UK

1 You must register the work at the Intellectual Property Office
2 You must register the work at your local Post Office
3 It is enough for you to create the work in a fixed form
4 You can register the work by sending it to yourself by Special Delivery
5 You must lodge the original of the work with a solicitor or bank

Answer - option 3 - it is enough for you to create the work in a fixed form

Supplementary

There is no registration requirement for copyright in the United Kingdom – unlike patents, trademarks and designs, for which there is a register held by the IPO. As soon as you write a manuscript, type a screenplay, paint a picture, take a photograph, record a sound, write down lyrics on a notepad, record a video etc , the work that you create is your copyright. In addition to being "fixed", it must also be original – and the test of originality is often decided by a court.

There is nothing to stop you sending the work to yourself (if practical) or lodging it (or photographs, plans, drafts, unedited recordings etc) with a bank or solicitor. Take care with any services offering "registration". There is no legal requirement in the UK – these services are only able to offer safekeeping. It might be better to lodge with a trusted bank or legal firm.

Some form of depositing the work may be useful if you were ever challenged about the provenance of your work – you would at least be able to prove that it existed at a particular date. This still doesn't prove originality.

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NB – the determination of originality/authenticity is something that a reputable publisher or agent may be able to advise on.

Question 3

For a work to be considered subject to copyright -

1 It must be registered at the IPO
2 It doesn't require any form of marking to indicate its status
3 It must have the copyright symbol on the title page (of a text, for example)
4 It must have the copyright symbol, creator's name, and year of publication included in the work as often as possible
5 It must have "all rights reserved" included as often as possible

Answer - option 2 - It doesn't require any form of marking to indicate its status

Supplementary

Since there is no legal requirement for the registration of copyright works in the UK, so it follows that there is no legal requirement for such works to carry any indication that the work is to be considered copyright.

However, in the current digital climate where works can be cut, pasted, copied, transferred and distributed to a very high quality, it is helpful to mark all copyright works in some way. Yes, the marks can be removed (this unfortunately is especially true of metadata - a form of digital recognition and information which accompanies images) but at least with some form of copyright indication, it shows that the creator is announcing the status of the work. No one can make the presumption that just because there is no copyright mark or statement about "all rights reserved" that the work is freely available to be used with impunity.

It is very good practice to show the copyright symbol, the year of creation and the creator's name as often as is practicable throughout a work.

As a prospective user of copyright works, you should always make the assumption that unless there is a notice that clearly states that the works can be used under the terms of a licence (Creative Commons, for example), that the work is copyright and that you will need a licence, permission or legal exception to allow you to use it.

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Question 4

Any works such as images, videos, games and sound recordings that are posted on the World Wide Web (WWW) –

1 Are in the Public Domain
2 Are free for anyone to use as they see fit
3 Can be copied and sold on for further use
4 Are still subject to copyright
5 Can't be traced

Answer – option 4 – Are still subject to copyright

Supplementary

Works are subject to copyright irrespective of the platform on which they are published. So, any text, image, video, sound recording etc which is copyright in its original format (print, film, tape, computer storage etc) is still copyright on the www and is subject to the same legislation, permissions and licencing systems.

The WWW is not the Public Domain (PD). A work is only considered, in the UK, to be in the PD once the term of copyright has finished (for general purposes, this is 70 years after the death of the creator) or if the creator has given away all rights to the work (and has stated such) and requires no further acknowledgment or remuneration for the work. This donation of works to the PD is actually very rare in the UK, although there is a move within the Creative Commons community towards the CC0 licence, which effectively allows a creator to divest themselves of all rights and future claims against their work.

Granted, it is very simple for even those with very little IT knowledge or experience, to cut and paste copyright works from the WWW, but ignorance is never a defence in law. Any works on the WWW are still in copyright, unless there is a statement to the contrary. AND it is very likely that legitimate works can be, and are being traced. Publishers, authors and rights organisations such as collecting societies constantly use tracking software to determine the legal or infringing use of their works.

Question 5

"Fair use" -

1 allows a user to copy anyone's work from any platform
2 allows a user to use anyone's work without payment or acknowledgement
3 doesn't exist in the UK

Answer – option 3 – Fair Use doesn't exist in the UK.

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Supplementary

Any copyright user must come to terms with the distinction between "fair use" which applies to the American copyright system, and "fair dealing" which applies to the UK copyright system. Although both expressions indicate a flexible approach to their countries' respective copyright systems, there are very important differences.

Question 6

"Fair dealing"

1 allows a user to copy anyone's work from any platform
2 allows a user to use anyone's work without payment or acknowledgement
3 isn't regulated in any way and allows considerable flexibility in the use of third party works
4 can be helpful to education establishments in the creation of teaching and learning materials

Answer – option 4– can be helpful to education establishments in the creation of teaching and learning materials

Supplementary

There is several clauses in the CDPA 1988 that are called "exceptions" in the UK copyright legislation. There is more information and further examination of your understanding of "fair dealing" and exceptions in Appendix A of this learning package. Now, it is sufficient to say that recent (2014) changes to the exceptions allow a more flexible approach to the use of third-party materials than previously.

Basically, all works irrespective of platform, may be used by teachers and learners without recourse to permissions and licences, but must also be used within the terms of "fair dealing".

"Fair dealing" is relatively simple. For a work to be used according to this concept, -

- It must be used for a non-commercial purpose
- It must be dealt with by a person giving or receiving instruction (or preparing for giving or receiving instruction)
- It must be accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

(Quoted from s32 – Illustration for instruction)

NB – there is a complete section on the topic of exceptions in Appendix A e

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Question 7

Any work that is created, in any form -

1 Belongs to the creator
2 Belongs to the creator's employer
3 Belongs to the person with whom the creator is in a contractual arrangement
4 Belongs to the government
5 Belongs to the organisation where a learner is studying

Answer - option 1 – belongs to the creator

Supplementary

The CDPA is quite clear about this. S11 "First ownership of copyright" states in subsection (1) "the author of a work is the first owner of any copyright in it, *subject to the following provisions*" (author's italics)

And it's in the "following provisions" that the challenges lie. There is a fuller section on the ownership of copyright later in this learning package, but for the moment, and in general -

- The creator does own the copyright in the creation unless it has been created in the course of employment, where it then belongs to the employer

- If the creator is an independent contractor, then the copyright in a work vests with them, unless there is a clause in the contract with the commissioning organisation to the contrary – this has to be watched very carefully as conditions of employment change – it is possible that different terms may apply to part-time staff, for example

- A particularly difficult area in recent years has been the determination of copyright ownership by students of their own work. Unless the students sign a declaration (and one which is explained to them and which they indicate that they understand) at the time of enrolment or registration, their work belongs to them and for any educational establishment to make use of the student work, in whatever form and for whatever purpose, the establishment must ask, and receive the student's permission.

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Question 8

Exceptions to copyright –

1 Allow the user to have the rights to works they wish to use
2 Allow the user unlimited use of works, irrespective of the platform on which they appear
3 Allow use of a broader range of copyright works with a wider range of technologies without risking copyright infringement
4 Are not available to educational establishments
5 Are so restrictive as to be ineffective

Answer – option 3 – Allow use of a broader range of copyright works with wider range of technologies without risking copyright infringement

Supplementary

As with a few other aspects of copyright, exceptions are dealt with in more detail elsewhere in the learning package. In general, exceptions, especially those which are specifically for use in educational establishment and those more general exceptions are as follows –

s29 – Research and Private study – appropriate when citing works to learners
s29A – Copies for text and data analysis for non-commercial research
s30 – Criticism, review, quotation and news reporting
s30A – Caricature, parody or pastiche
s31A – Disabled persons: copies of works for personal use
s32 – Illustration for instruction - a very useful amendment to previous exception
s33 – Anthologies for educational use
s34 – Performing, playing or showing work in course of activities of educational establishment – subsections (1) and (2) are particularly helpful
s35 – Recording by educational establishments of broadcasts
s36 – Copying and use of extracts of works by educational establishments

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Question 9

"Methods" of accessing copyright works are

1 Creating original work, yourself
2 Asking the original creator for permission to make use of the work(s)
3 Acquiring a Collective licence which allows use of categories of works
4 Applying the legislated exceptions available in the UK
5 Searching for appropriate copyright cleared or copyright free works from a variety of sources
6 All the above

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Answer – option 6 – all the above

Supplementary

All aspects will be covered later in this learning package.

Question 10

Intellectual Property in the UK is a generic term to cover

1 Patents
2 Registered and unregistered designs
3 Registered and unregistered trademarks
4 Confidential information
5 Rights in Performances
6 Copyright
7 All of the above

Answer – option 7 – all of the above

Supplementary

It must be remembered that copyright is only one part of the "portfolio" of rights in the UK, generally spoken of as "Intellectual Property" (IP).

Question 11

Copyright in a work lasts for

1 ever
2 until the creator decides
3 70 years after the death of the creator
4 50 years after the work is first produced
5 60 years after the work was first published
6 the length of time determined by a court
7 the length of time that the creator registers the work for

Answer – option 3 – 70 years after the death of the creator

Supplementary

70 years after the death of the creator is the general answer. There are slight differences in some areas of copyright – what is called the publisher's edition right, for instance (the right to lay out a work and make changes to margins, typeface, type

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size etc) only lasts 25 years, and the copyright in an actual broadcast only lasts 50 years – what confuses us is that the various works which make up the content of a broadcast are subject to the 70 year rule.

Copyright can last a long time and it is always worth checking whether or not the original creator has died. If an author, at the age of 30, creates a copyright work, and then lives for another 50 years, the term of copyright lasts, under current legislation, for 120 years – 50 years of the author's remaining life plus 70 years after his or her death. Since copyright is regarded as part of "Intellectual Property" and as such, has property rights, the heirs of the author can continue to collect royalties from the author's work for those 70 years. Copyright, being classed as property, can be bought, sold, bequeathed and used for securing finance.

It is important not to become confused between UK law and other jurisdictions. To a large extent, the term of UK copyright is determined by both UK law and European directives. Other jurisdictions may have different terms of copyright and if you are using works from another country, it is advisable to check whether they are in or out

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Audit and Assurance Committee Handbook

March 2018



Scottish Government
Riaghaltas na h-Alba
gov.scot

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Foreword

An effective Audit and Assurance Committee* is essential to a strong corporate governance culture within public and private sector organisations.

The role is a challenging one and needs strong, independent members with an appropriate range of skills and experience. It will benefit from a strong collaborative relationship with the organisation to ensure that the committee gets the support and information that it needs. The committee will also need to act as the conscience of the organisation. This means providing insight and strong constructive challenge where required, such as on risks arising from fiscal and resource constraints, cyber-attack and transformation programmes. It also means challenging the agility of the organisation to respond to emerging risks.

This revision of the Handbook** sets out the fundamental principles with explanatory good practice notes, relating to the role, membership and work of Audit and Assurance Committees in those organisations to which the Scottish Public Finance Manual is directly applicable. This includes the core Scottish Government and bodies sponsored by the Scottish Government such as Executive Agencies, Non Ministerial Departments, Non Departmental Public Bodies and Other Significant Bodies.

The Handbook emphasises the sources of assurance available to Audit and Assurance Committees in addition to internal and external audit. We encourage all organisations within the Scottish Government family to define their assurance needs, map their various sources of assurance and develop an integrated approach to assurance which will secure best value for the public purse and embed best practice principles within their organisation.

A degree of flexibility, pragmatism and proportionality will be needed in applying the guidance in this Handbook to individual organisations. For example, the use of the term “Board” referred to in chapter 4 should be interpreted in the context of the “On Board” Guidance (March 2017), which defines the differences between Statutory and Management Advisory Boards. Subject to these caveats, any significant non-compliance with the principles in this Handbook should be explained and reported in the annual Governance Statement.

We commend this Handbook to you.

Leslie Evans	Alyson Stafford
Permanent Secretary	Director General Scottish Exchequer

* Alternatively referred to as the Audit Committee / Audit and Risk Committee / Audit and Risk Assurance Committee. For the purposes of this Handbook-the term Audit and Assurance Committee will be used in a generic context.

**The *Scottish Government Audit and Assurance Committee Handbook* draws on, and is consistent with, generally accepted principles concerning corporate governance and the role of audit and assurance committees. Relevant source publications include:

- HM Treasury: Audit and Risk Assurance Committee Handbook (March 2016)
- HM Treasury: Corporate Governance in Central Government Departments: Code of Good Practice (July 2011)
- OPM and CIPFA: Good Governance Standard for Public Services (2005)
- Financial Reporting Council: The UK Corporate Governance Code (April 2016)
- Scottish Public Finance Manual
- On Board: A Guide for Members of Statutory Boards in Scotland (March 2017)
- On Board: A Guide for Members of Management Advisory Boards (March 2017)

Glossary of Terms

AO	Accountable Officer
CoA	Certificates of Assurance
DG	Director General
IAD	Internal Audit Directorate
NDPB	Non Departmental Public Body
NMD	Non Ministerial Department
NXD	Non-Executive Director
OCIO	Office of the Chief Information Officer
PSIAS	Public Sector Internal Audit Standards
SG	Scottish Government
SGAAC	Scottish Government Audit and Assurance Committee
SPCD	Scottish Procurement and Commercial Directorate
3LA	Three Lines of Assurance

Chapter 1: Good Practice Principles for Audit and Assurance Committees

Principle 1: Membership, independence, objectivity and understanding

The committee should be independent and objective; in addition, each member should have a good understanding of the objectives and priorities of the organisation and of their role as a committee member.

Principle 2: Skills

The committee should corporately own an appropriate skills mix to allow it to carry out its overall function.

Principle 3: Role and Scope

The committee should support the Accountable Officer and Board by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the annual report.

The scope of the committee's work should be defined in its terms of reference and should encompass all the assurance needs of the Accountable Officer and Board. Within this, the committee should have particular engagement with the work of Internal Audit, risk management, the External Auditor, and financial management and reporting issues.

Principle 4: Communication and Reporting

The committee should ensure that it has effective communication with all key stakeholders, for example, the Board, the Head of Internal Audit, the External Auditor and other relevant assurance providers e.g. Risk Manager. In addition, the role of the Chair and provision of appropriate secretariat support are important elements in achieving committee effectiveness. Good practice guidance on these roles is provided, respectively, in **Annex A** and **Annex B**.

Chapter 2: Membership, Independence, Objectivity and Understanding

Independence

2.1 An effective Audit and Assurance Committee must have members who are both independent and objective. The Accountable Officer and Board should be supported by an Audit and Assurance Committee with no executive responsibilities, comprising of at least three members. The Chair should be a Non-Executive Member (NEBM) [sometimes called a Non-Executive Director (NXD)] with relevant experience. There should be at least one other NEBM/NXD on the committee; when there are insufficient NEBMs/NXDs to form the committee, independent external members will need to be appointed. The committee may also need to seek further independent, non-executive membership from sources other than the Board in order to ensure an appropriate level of skills and experience. These members are appointed to the Audit and Assurance Committee but not to the Board and the independence of the committee from an executive function should be its guiding ethos. In order to operate in an independent and competent manner, the committee should possess the requisite knowledge and skills to effectively engage with and challenge the organisation (see Chapter 4: Role and Scope).

Relationship with the Executive of the organisation

2.2 Executive members of the organisation should not be appointed to the Audit and Assurance Committee. The role of the executive managers is to attend, to provide information, and to participate in discussions, either for the whole duration of a meeting or for particular items.

2.3 The Accountable Officer and the Finance Director should routinely attend the Audit and Assurance Committee. It is also normal for the Head of Internal Audit and a representative of the External Auditor to attend. However, the strategic internal audit terms of reference, which forms the basis of the relationship between the body and internal audit, should also provide for the Audit and Assurance Committee to sit

privately without any non-members present for all or part of a meeting if they so wish.

2.4 It is also good practice for the Chair of the Audit and Assurance Committee to meet the Accountable Officer, the Finance Director, the Head of Internal Audit and the External Auditor's senior representative outside of the formal committee structure (see Chapter 5: Communication and Reporting).

Other participants

2.5 It is also common for representatives of sponsoring or sponsored bodies to attend Audit and Assurance Committee meetings (for example, a member of the core Scottish Government may attend the Audit and Assurance Committee of one of its Executive Agencies or bodies). However, such representatives should not be appointed as members of the committee.

Conflicts of interest

2.6 Normally the process for recording declarations of conflicts of interests in the Audit and Assurance Committee should mirror the processes used at Board level. Each member of the committee should take personal responsibility to declare pro-actively any potential conflict of interest arising out of business on the committee's agenda or from changes in the member's personal circumstances. The Chair should then determine an appropriate course of action with the member. For example, the member might simply be asked to leave while a particular item of business is taken; or in more extreme cases the member could be asked to leave the committee. If it is the Chair who has a conflict of interest, the Board or Accountable Officer should ask another member of the committee to lead in determining the appropriate course of action. A key factor in determining the course of action will be the likely duration of the conflict of interest: a conflict likely to endure for a long time is more likely to suggest that the member should leave.

Terms of appointment

2.7 All members of the Audit and Assurance Committee should have a clear understanding of:

- what is expected of them in their role, including time commitments;
- how their individual performance will be appraised, including a clear understanding of what would be regarded as unsatisfactory performance and the criteria which would indicate the termination of Audit and Assurance Committee membership should be considered;
- the duration of their appointment and how often it may be renewed; and
- training required and how this will be provided.

2.8 The terms of appointment of an Audit and Assurance Committee member should be clearly set out at the time of appointment. A model letter of appointment is set out at **Annex C**. The letter should also specify what other activities the individual may or may not undertake in relation to the organisation. The impact on independence of any remuneration from other activities should be given careful consideration.

Chapter 3: Skills

The committee should corporately own an appropriate skills mix to allow it to carry out its overall function.

Range of skills

3.1 The committee is charged with ensuring that the Board and Accountable Officer of the organisation gain the assurance they need on risk management, governance and internal control. So, it needs a range of skills and experience relevant to various aspects of risk, governance and control. A competency framework for an Audit and Assurance Committee is at **Annex G**.

3.2 Because of the importance of financial management and financial reporting to every organisation, at least one member of the committee should have recent and relevant financial experience. This experience should be sufficient to allow them to engage competently with financial management and reporting in the organisation, and associated assurances.

3.3 The committee should identify, and agree with the Board and Accountable Officer, the other skills required for committee effectiveness. These identified skills should inform the choice of members of the committee. The required skills set should be periodically reviewed.

3.4 Although Audit and Assurance Committee members are recruited for their individual skills, it is vital that they are able to work collaboratively.

Additional skills

3.5 The committee should be empowered to either:

- co-opt members for a period of time (not exceeding a year, and with the approval of the Board and/or Accountable Officer) to provide specialist skills, knowledge and experience that the committee needs at a particular time; (Co-opted members may be remunerated at an appropriate rate for the time and effort they are expected to contribute); or

- procure specialist advice at the expense of the organisation on an ad-hoc basis in order to support in relation to particular committee business. Budgets for such procurement should be approved by the Board and/or Accountable Officer.

Training and development

3.6 All committee members, whatever their status or background, will have training and development needs. Those who have recently joined the Audit and Assurance Committee will need induction training, either to help them understand their role; or if they have Audit and Assurance Committee experience elsewhere, to help them understand the organisation. In particular, those joining a public sector Audit and Assurance Committee for the first time will need training to help them understand public sector standards, especially those relating to governance and accountability and internal audit (PSIAS).

3.7 The Chair should, in addition, ensure that all committee members have an appropriate programme of engagement with the organisation and its activities to help them understand the organisation, its objectives, business needs, priorities and risk profile. Consideration should be given to underpinning such programmes with training and/or learning plans.

Chapter 4: Role and Scope

Supporting the Board and Accountable Officer

4.1 Accountable Officers and Boards have many issues competing for their attention. One of the challenges they face is knowing whether they are giving their attention to the right issues. Key to addressing this is assurance, defined as: “an evaluated opinion, based on evidence gained from review, on the organisation’s governance, risk management and internal control framework”

4.2 Assurance draws attention to the aspects of risk management, governance and control that are functioning effectively and, just as importantly, the aspects which need to be given attention to improve them. An effective risk management framework and a risk-based approach to assurance helps an Accountable Officer and Board to judge whether or not its agenda is focussing on the issues that are most significant to achieving the organisation’s objectives and whether best use of resources is being made. The Audit and Assurance Committee can help the Accountable Officer and Board to formulate their assurance needs, and then consider how well assurance received actually meets these needs by gauging the extent to which assurance on risk management is comprehensive and reliable. Assurance cannot be absolute so the committee will need to know that the organisation is making effective use of the finite assurance mechanisms at its disposal, targeting areas of greatest risk. This can include carrying out a ‘Deep Dive’ exercise of risks that the committee determine are key threats to the organisation.

4.3 Formulation of the specific assurance need is key to determining the resource that needs to be dedicated to delivery of assurance in the organisation. Key elements include:

- the strategic outcomes and objectives which the organisation is charged to deliver, and the associated risks and control mechanisms;
- the sources of assurance available; and
- the level of confidence required in assurances, including the extent to which the range of assurance providers can be relied on by Internal Audit in

delivering its overall opinion on risk, control and governance in accordance with the Public Sector Internal Audit Standards.

4.4 A well designed assurance framework will help. At its simplest, this will identify all the key sources of assurance in the organisation and seeks to orchestrate them to best effect. This can help to ensure that gaps are reduced or eliminated and unnecessary duplication avoided. A conceptual model that is often used to help to categorise the various sources of assurance is the 'three lines of assurance'. By defining the sources of assurance in three broad categories, it helps to understand how the type and nature of the mechanisms can contribute to the bigger assurance picture:

- First line: management assurance from "front line" or business operational areas;
- Second line: oversight of management activity, including effective management information, separate from those responsible for delivery, but not independent of the organisation's management chain; and
- Third line: independent and more objective assurance, including the role of Internal Audit and from external bodies (e.g. accreditation and Gateway reviews). Further detail of the role of Internal Audit is provided later in this chapter.

4.5 An understanding of the three lines of assurance can help the Audit and Assurance Committee to play a key role in helping the Accountable Officer and Board establish an optimum mix of assurance. For example, management and oversight assurance activities can be harnessed to provide coverage of routine operations, with Internal Audit activity more effectively targeted at riskier or more complex areas. As well as strengthening assurance arrangements, this helps the Audit and Assurance Committee to demonstrate added value to the organisation. Advice on developing assurance frameworks is available in the Treasury Assurance Framework Guidance document.

4.6 The overall provision of assurances to the Accountable Officer and Board should be reviewed by the Audit and Assurance Committee, which should constructively challenge:

- whether the nature and scope of the assurance providers' activity meets the Accountable Officer's and Board's assurance needs;
- the credibility and independence of each provider; and
- where appropriate, the actual assurances to test that sufficient reliable evidence and that conclusions are reasonable in the context of the evidence.

The committee should also be proactive in commissioning assurance work from appropriate sources if it identifies any significant risk, governance and control issues which are not being subjected to sufficient review, and in seeking assurance on weaknesses identified by reviews are actually remedied by management.

A "prompt" list of questions for Audit and Risk Assurance Committees to ask is provided at **Annex F**.

4.7 The overall committee view may draw attention to areas where:

- risk is being appropriately managed (no action needed);
- risk is inadequately controlled (action needed to improve control);
- risk is over controlled (resource being wasted which could be diverted to other use); and/or
- there is lack of evidence to support a conclusion. If this concerns areas material to the organisation's operations more assurance work may be needed, subject to an assessment of costs and benefits.

4.8 Assurance should be obtained on risks across the organisation. The governance structure of the departmental family/group will therefore need to ensure that there is effective communication on risks and control to ensure appropriate visibility of and timely action on such matters as well as to feed into the annual Governance Statement.

4.9 Similarly assurance on the risk and control environment should also encompass services outsourced to external providers, including shared service arrangements, so that all key elements of the organisation are considered as parts of the wider organisation and business function.

4.10 It is also good practice to have reasonable oversight of risks that cross organisational boundaries, for example, in major projects. This could include a Chairs of Audit and Assurance Committee Forum. Any such forum should focus on assurances on cross organisational governance, risk and control arrangements.

Internal and external audit

4.11 For any government organisation there will always be two significant sources of independent and objective assurance: Internal Audit and External Audit.

4.12 The work of Internal Audit is carried out primarily for the benefit of the Accountable Officer and Board/Executive of the organisation and is likely to be the single most significant resource used by the committee in discharging its responsibilities. This is because the Head of Internal Audit, in accordance with the Public Sector Internal Audit Standards, has a responsibility to provide an annual opinion on the overall adequacy and effectiveness of the organisation's governance, risk management and control processes. There is consequently a major synergy between the purpose of the Head of Internal Audit and the role of the Audit and Assurance Committee.

4.13 In central government, the Auditor General is responsible for securing the external audit of most public sector bodies in Scotland and reporting on their financial health and performance. Audit work is carried out by Audit Scotland staff and appointed auditors including private firms. This includes the audits of financial statements as well as performance and Best Value audits. All external auditors appointed by the Auditor General are required to follow the Code of Audit Practice which outlines their responsibilities. Once appointed, auditors act independently in carrying out their responsibilities and in exercising professional judgement.

4.14 The role of the Audit and Assurance Committee in relation to Internal Audit should include advising the Accounting Officer and Board on:

- the Internal Audit strategy and periodic Internal Audit plans, forming a view on how well they reflect the organisation's risk exposure and support the Head of Internal Audit's responsibility to provide an annual opinion;
- the adequacy of the resources available to Internal Audit;
- the Internal Audit charter/terms of reference for Internal Audit;
- the results of Internal Audit work, including reports on the effectiveness of systems for governance, risk management and control, and management responses to issues raised;
- the annual Internal Audit opinion and annual report; and
- the performance of Internal Audit, including conformance with the applicable standards, expected performance measures, and the results of both internal and external quality assessments.

4.15 Auditor responsibilities are derived from statute, the Code of Audit Practice, International Standards on Auditing (UK and Ireland) and professional requirements. These include:

- undertaking statutory duties, and complying with professional engagement and ethical standards
- providing an opinion on audited bodies' financial statements and, where appropriate, the regularity of transactions
- reviewing and reporting on, as appropriate, other information such as annual governance statements, management commentaries and remuneration reports
- notifying the Auditor General when circumstances indicate that a statutory report may be required.

4.16 The Code of Audit Practice defines a wider scope for public audit that goes beyond the financial statements. This includes work that contributes to audit judgements and conclusions on the appropriateness, effectiveness and impact of corporate governance, performance management arrangements and financial sustainability. External auditors will report annually to those charged with

governance on the results of their work covering both the financial statements and wider scope audit work. Audited annual financial statements including the independent auditors' reports, and reports by the Auditor General are sent to Scottish ministers to be laid before the Scottish Parliament.

4.17 It is important that the Audit and Assurance Committee engages regularly with external audit. The committee should consider the results of external audit work and the proposed actions against audit recommendations. The committee should also consider planned external audit activity and enquire about the level of coordination and engagement between internal and external audit to ensure there is no unnecessary duplication of audit work.

Governance

4.18 It is essential that the committee understands how governance arrangements support achievement of the organisation's strategies and objectives, especially:

- the organisation's vision and purpose;
- mechanisms to ensure effective organisational accountability, performance and risk management;
- role definitions, committee and other structures to support effective discharge of responsibilities, decision making and reporting;
- promotion of appropriate ethics and values within the organisation;
- communication of management information, including on risk and control among the board and to appropriate areas of the organisation; and
- relations with ALBs including reporting functions to relevant AACs and Scottish Government.

Risk management and the control environment

4.19 It is also essential that the committee:

- understands the organisation's business strategy, operating environment and the associated risks, taking into account all key elements of the organisation as parts of an "Extended Enterprise";
- understands, where applicable, the role and activities of the Board (or equivalent senior governance/advisory body) in relation to managing risk;
- discusses with the Board its policies, attitude to and appetite for risk to ensure these are appropriately defined and communicated so management operates within these parameters;
- understands the framework for risk assessment, management and assurance and the assignment of responsibilities;
- critically challenges and reviews the risk management and assurance framework, without second guessing management, to provide assurance that the arrangements are actively working in the organisations; and
- critically challenges and reviews the adequacy and effectiveness of control processes in responding to risks within the organisation's governance, operations, compliance and information systems.

Financial management and reporting

4.20 The committee should consider significant accounting policies, any changes to them and any significant estimates and judgements, if possible before the start of the financial year. It should also review the clarity and completeness of disclosures in the year-end financial statements and consider whether the disclosures made are set properly in context.

4.21 The committee will not itself be able to review the accounts in detail in order to advise the Accounting Officer whether they are true and fair. Ideally, the committee should expect a comprehensive overview of the financial statements by the Finance Director, including comparisons with the prior year and current year budget, and an

explanation for any issues arising. In reaching a view on the accounts, the committee should consider:

- key accounting policies and disclosures;
- assurances about the financial systems which provide the figures for the accounts;
- the quality of the control arrangements over the preparation of the accounts;
- key judgements made in preparing the accounts;
- any disputes arising between those preparing the accounts and the auditors; and
- reports, advice and findings from external audit (especially the Audit Completion Report – ISA 260 Report).

Terms of reference

4.22 The committee's terms of reference should be agreed by the Accountable Officer/Board and made publicly available (including on the organisation's website). It is important that a balance is struck during meetings between corporate governance, risk management, control and financial reporting items. The terms of reference should be reviewed annually alongside the performance of the committee. Model terms of reference are suggested at **Annex D**. A suggested self-assessment checklist is provided at **Annex H**.

4.23 The responsibilities assigned to the committee should not provide any conflict with the guidance in this handbook, in particular by compromising independence. The committee should not have any executive responsibilities or be charged with making or endorsing any decisions, although it may draw attention to strengths and weaknesses in control and make suggestions for how such weaknesses might be dealt with. The overarching purpose of the committee is to advise the Accountable Officer and Board; it is then the Accountable Officer and Board that make the relevant decisions.

4.24 The committee should have appropriate authority to require any member of the organisation to report on the management of risk or on the control environment within their areas of responsibility, in general terms or in respect of specific issues, either by:

- attending a committee meeting; or
- providing written report(s) to the committee to help the committee in fulfilling its role.

4.25 The Accountable Officer and Board need adequate and timely feedback on the work of the committee in order to consider its contributions formally. A schedule of the committee's agreed delegations from the Board, and the mechanisms for feedback and assurance, should be formally documented.

4.26 To fulfil their role, most committees will need to meet at least four times a year. A model "core programme" of work for a Committee meeting four times a year is provided at **Annex E**.

4.27 The committee will require access to funding to cover the costs incurred in fulfilling its role. The funding should be sufficient to:

- meet any remuneration and working expenses of its members (where applicable);
- meet the relevant training needs of its members;
- provide specialist (external) advice or opinions when required; and
- (as agreed with the organisation) provide external review of the effectiveness of the committee.

Chapter 5: Communication and Reporting

Communication between the Committee and the Board

5.1 The work of the Audit and Assurance Committee needs to be effectively communicated. After each meeting of the committee a report should be prepared for the Accounting Officer and Board to:

- summarise the business taken by the committee, explaining if necessary why that business was regarded as important; and
- offer the views of, and advice from, the committee on issues which they consider the Accounting Officer and Board should take action on.

5.2 If the minutes of the committee meeting are used as the report, care should be taken in their presentation to highlight the advice being provided. These reports should be copied to the Head of Internal Audit and the External Auditor (especially if the report contains advice about or to the auditors).

Improving relationships

5.3 It is important for the committee to have good relationships and communication with those it seeks briefings from, and those it provides assurance to. This ensures that it is effectively engaged with the organisation and able to fulfil its function. This should include where risks cross organisational boundaries, for example, in major projects.

Annual reports

5.4 The committee should provide an Annual Report, timed to support the preparation of the Governance Statement. This internal report needs to be open and honest in presenting the committee's views if it is to be of real benefit to the Accountable Officer and Board. This report is likely to be used by the Accountable Officer and Board in preparing their own report for publication in fulfilment of the reporting requirements of the Scottish Administration.

5.5 The Annual Report should summarise the committee's work for the year past, and present its opinion about:

- the effectiveness of governance, risk management and control;
- the comprehensiveness of assurances in meeting the Accountable Officer's and Board's needs;
- the reliability and integrity of these assurances;
- whether the assurance available is sufficient to support the Accountable Officer and Board in their decision taking and their accountability obligations;
- the implications of these assurances for the overall management of risk;
- any issues the committee considers pertinent to the Governance Statement and any long term issues the committee thinks the Accounting Officer and/or Board should give attention to;
- financial reporting for the year;
- the quality of both Internal and External Audit and their approach to their responsibilities; and
- the committee's view of its own effectiveness, including advice on ways in which it considers it needs to be strengthened or developed.

5.6 The Audit and Assurance Committee's report should take into account any other relevant assurance reports.

Bilateral communications

5.7 There should be mutual rights of access between the Chair of the Audit and Assurance Committee, the Accountable Officer, Head of Internal Audit and the External Auditor. Periodic discussions outside of the formal meeting help to ensure that expectations are managed and that there is mutual understanding of current risks and issues.

Annex A: The role of the Chair: good practice

A.1 Role of Chair

The role goes beyond chairing meetings and is key to achieving committee effectiveness. Key activities in addition to committee meetings should include the following.

- Before each meeting the Chair and the Committee Secretary should meet to discuss and agree the business for the meeting. The Chair should take ownership of, and have final say in, the decisions about what business will be pursued at any particular meeting.
- Meeting time should be optimised by making sure that all agenda papers are issued in good time and then having each paper summarised outlining the key points, cross referred to the organisational business and risk agenda and stating what action the committee is required to take.
- The Chair should ensure that after each meeting appropriate reports are prepared from the committee to the Accountable Officer and Board. An annual report to the Accountable Officer and Board should also be provided.
- The Chair should have bilateral meetings at least annually with the Accountable Officer, the Head of Internal Audit and the External Auditor. In addition, the Chair should meet any people newly appointed to these positions as soon as practicable after their appointment.
- The Chair should also ensure that all committee members have an appropriate programme of engagement with the organisation and its activities to help them understand the organisation, its objectives, business needs and priorities.
- The Chair of the Audit and Assurance Committee should establish a mechanism enabling key stakeholders to consider the overall risk and assurance needs (see 5.3).

- Encouraging good, open relationships between the committee, Accountable Officer, Finance Director and Internal and External Auditors. There are a number of ways that a Chair can encourage this.

The profile of the committee can be raised to support and add weight to audit work by:

- promoting audit issues internally with relevant Board members and other directors to make sure they appreciate the value of audit;
- holding managers within the organisation to account for the implementation of audit recommendations; and
- calling appropriate business heads to meetings, for example, to explain how they are delivering their agreed actions on risks for which they are responsible.
- Arranging separate meetings for the Chair, Non-Executives and independent members and Internal and External Auditors to help establish open working relationships;
- Arranging meetings with the Chair, Internal Auditors and the Finance Director etc in the weeks leading up to the committee meeting to discuss areas for the agenda and papers that should be provided;
- Arranging meetings with the Internal Auditors (and possibly External Audit) immediately before the committee meeting to help give focus to discussions; and
- The Chair should ensure that there is an appropriate process between meetings for action points arising from committee business to be appropriately pursued. The Chair should also ensure that members who have missed a meeting are appropriately briefed on the business conducted in their absence. Chairs may choose to rely on the Secretariat to take these actions.

A2 Appraisal

The Chair should take the lead in ensuring that committee members are provided with appropriate appraisal of their performance as a committee member and that training needs are identified and addressed. The Chair should seek appraisal of their performance from the Accountable Officer (or Chair of the Board, as appropriate).

The Chair should ensure that there is a periodic review of the overall effectiveness of the committee and of its terms of reference.

A.3 Appointments

The Chair should be involved in the appointment of new committee members, including providing advice on the skills and experience being sought by the committee when a new member is appointed.

The Chair should also be actively involved in the appointment of the Head of Internal Audit.

A.4 Resources

The Chair is responsible for ensuring that the work of the committee is appropriately resourced.

Annex B: Committee support: good practice

B.1 The secretariat should be able to support the Chair in identifying business to be taken, and the relevant priorities of the business. For this reason, and as the Audit and Assurance Committee is a committee of the Board, the Committee's Secretariat function should be supervised by the Board Secretariat. The Chair of the committee and the Secretariat should agree procedures for commissioning briefing to accompany business items on the committee's agenda and timetables for the issue of meeting notices, agendas, and minutes. The Chair of the committee should always review and approve minutes of meetings before they are circulated.

B.2 The specific responsibilities of the Audit and Assurance Committee Secretariat should include:

- meeting with the Chair to prepare agendas for meetings;
- commissioning papers as necessary to support agenda items;
- circulating meeting documents in good time before each meeting;
- arranging for executives to be available as necessary to discuss specific agenda items with the committee during meetings;
- keeping a record of meetings and providing draft minutes for the Chair's approval;
- ensuring action points are being taken forward between meetings;
- support the Chair in the preparation of committee reports to the Accountable Officer and Board;
- arranging the Chair's bilateral meetings with the Accountable Officer, the Head of Internal Audit, the External Auditor, and, in ALBs, with the Chair of the Board etc;
- keeping the Chair and members in touch with developments and relevant background information about developments in the organisation;

- maintaining a record of when members' terms of appointment are due for renewal or termination;
- ensuring that appropriate appointment processes are initiated when required;
- ensuring that new members receive appropriate induction training, and that all members are supported in identifying and participating in ongoing training; and
- managing budgets allocated to the committee.

B.3 When the committee decides to meet privately, the Chair should decide whether the Secretariat members should also withdraw. If so, the Chair should ensure that an adequate note of proceedings is kept to support the committee's conclusions and advice.

Annex C: Model letter of appointment

It is recommended that the following issues be included in the Letter of Appointment of an Audit and Assurance Committee member.

Appointment and purpose

You are hereby appointed as a member of the Audit and Assurance Committee of (*organisation*). As a member of the committee you are accountable to the Board (*or Accountable Officer where appropriate*) through the Chair of the Committee. Your appointment is for (*number*) years from (*date*). This appointment may be renewed (*number*) times (*by mutual agreement*) after the duration of this appointment.

The committee is a committee of the Board of (*organisation*) and its purpose is to:

- review the comprehensiveness of assurances in meeting the assurance needs of the Board and Accountable Officer;
- review the reliability and integrity of these assurances;
- review the integrity of the financial statements; and
- advise the Board and Accountable Officer about how well assurances consequently support them in decision taking and in discharging their accountability obligations.

A copy of the committee's Terms of Reference is enclosed. The committee is chaired by (*name*) and the other members are (*names*). [*It is recommended that new members be provided with a list of contact details*.]

Support and training

The Secretary of the Committee is (*name/contact details*) and he/she will shortly be in touch with you to discuss and arrange appropriate induction training.

To help you understand the governance arrangements and the role of Audit and Assurance Committees in government, you should read the Audit and Assurance Committee Handbook published by the Scottish Government.

Commitment and remuneration

The committee meets at least four times each year, but additional meetings may be required from time to time. You will also be expected to undertake appropriate training and activities designed to keep you in touch with the organisation's activities and priorities. Your remuneration will be (*include details of daily rate and procedures for claims and payment*). All monies paid in connection with this appointment are taxable and it is your responsibility to make appropriate arrangements in respect of income tax.

Expenses and subsistence

Travel and subsistence costs will be paid in accordance with (*the organisation's*) standard arrangements.
A copy of the current rates and conditions is enclosed for your information.

You are entitled to claim the following expenses and subsistence:

- travel expenses to and from home to the meeting venue;
- travel and subsistence expenses incurred as part of the work of the committee away from the normal venue; and
- dependent care costs.

You would be entitled to travel standard class by rail. Any further clarification on (*the organisation's*) arrangements should be sought via the Secretary of the Committee. As a rule of thumb the aim is to use the most efficient and economic means of travel, taking into account sustainability, subsistence costs and savings in time.

Conflicts of interest

Any potential conflict of interest for you in your committee role, including any arising from a change in personal circumstances during your period of appointment, must be declared to the Chair of the Committee.

Appraisal

As a member of the committee you will be subject to appraisal by the Audit and Assurance Committee Chair (*include brief details of the appraisal process*).

Conduct

You are expected to conduct yourself in accordance with the principles of the *Seven Principles of Public Life* identified by the Committee on Standards in Public Life. A copy of the *Seven Principles of Public Life* is enclosed.

Liability

Under the terms of the *Scottish Public Finance Manual* issued by the Scottish Ministers, individual non-executive board members of public bodies and independent external members of board committees who have acted honestly and in good faith do not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their board or committee functions, save where the person has acted recklessly.

Termination

If you choose to resign from this appointment you will be expected to give (*number*) months' notice, unless your circumstances have changed in a way that make it appropriate for you to resign immediately. If your performance as a committee member is decided to be unacceptable (see appraisal) or if your conduct (including conflicts of interests) is unacceptable your appointment may be terminated by the Board/Accountable Officer (*delete as appropriate*).

Annex D: Model terms of reference

The Board (and/or Accountable Officer - *delete as appropriate*) has established an Audit and Assurance Committee as a Committee of the Board to support in their responsibilities for issues of risk, control and governance and associated assurance through a process of constructive challenge.

Membership

The members of the committee are:

- non-executive directors: (List those who are appointed to the committee);
- independent external members: (List those who are appointed to the Audit and Assurance Committee; in all cases indicate the date of appointment and when the appointment is due to end/become eligible for renewal).

The committee will be Chaired by …….

The committee will be provided with a secretariat function by ……..

Reporting

- The committee will formally report in writing to the Board and Accountable Officer after each meeting. A copy of minutes of the meeting may form the basis of the report.
- The committee will provide the Board and Accountable Officer with an Annual Report, timed to support finalisation of the accounts and the governance statement, summarising its conclusions from the work it has done during the year.

Responsibilities

The committee will advise the Board and Accountable Officer on:

- the strategic processes for risk, control and governance and the governance statement;

- the accounting policies, the accounts, and the annual report of the organisation, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors;
- the planned activity and results of both internal and external audit;
- the adequacy of management response to issues identified by audit activity, including external audit's management letter/report;
- the effectiveness of the internal control environment;
- assurances relating to the corporate governance requirements for the organisation;
- (*where appropriate*) proposals for tendering for either internal or external audit services or for purchase of non-audit services from contractors who provide audit services; and
- anti-fraud policies, whistle-blowing processes, and arrangements for special investigations.

The Audit and Assurance Committee will also periodically review its own effectiveness and report the results of that review to the Board and Accountable Officer.

Rights

The committee may:

- co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience; and
- procure specialist ad-hoc advice at the expense of the organisation, subject to budgets agreed by the Board or Accountable Officer.

Access

The Head of Internal Audit and the representative of External Audit will have free and confidential access to the Chair of the Committee.

Meetings

The procedures for meetings are:

- the committee will meet at least four times a year. The Chair of the Committee may convene additional meetings, as he/she deems necessary;
- a minimum of (*number*) members of the committee will be present for the meeting to be deemed quorate;
- committee meetings will normally be attended by the Accountable Officer, the Finance Director, the Head of Internal Audit, and a representative of External Audit (*add any others who may routinely attend such as representatives of sponsoring/sponsored bodies*);
- the committee may ask any other officials of the organisation to attend to assist it with its discussions on any particular matter;
- the committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters;
- the Board or Accountable Officer may ask the committee to convene further meetings to discuss particular issues on which they want the committee's advice.

Information requirements

For each meeting the committee will be provided with:

- a report summarising any significant changes to the organisation's Risk Register;
- a progress report from the Head of Internal Audit summarising:
    - work performed (and a comparison with work planned);
    - key issues emerging from Internal Audit work;
    - management response to audit recommendations;
    - significant changes to the audit plan;
    - any resourcing issues affecting the delivery of Internal Audit objectives;
- a progress report from the External Audit representative summarising work done and emerging findings.

As and when appropriate, the committee will also be provided with:

- business update reports from the Accountable Officer;
- the Charter / Terms of Reference of the Internal Audit Directorate;
- the Internal Audit Strategy;
- the annual Internal Audit Plan
- the Head of Internal Audit's Annual Opinion and Report;
- quality assurance reports on the Internal Audit function;
- the draft accounts of the organisation;
- the draft governance statement;
- a report on any changes to accounting policies;
- External Audit's management letter/report;
- a report on any proposals to tender for audit functions;
- a report on co-operation between Internal and External Audit;
- a report on the Counter Fraud and Bribery arrangements and performance;
- reports from other sources within the “three lines of assurance” integrated assurance framework (eg Best Value self-assessment Reviews, Gateway Reviews, Health Check Reviews, ICT Assurance Reviews, Digital 1st Service Standard Reviews, Procurement Capability Reviews, Procurement Key Stage Reviews).

The above list suggests minimum requirements for the inputs which should be provided to the committee. In some cases more may be provided.

Annex E: Example Annual Core Work Programme

Spring Meeting

- Review performance relating to risk management
- Review the Internal Audit charter / terms of reference, strategy and the periodic work plan for the coming financial year
- Consider External Audit plans for the coming financial year
- Consider any reports from Internal Audit and management responses
- Consider financial reports, including relevant information about financial performance and achievement of financial targets
- Consider any reports from other sources within the “three lines of assurance” integrated assurance framework

Summer Meeting

- Review performance relating to risk management
- Review and consider the accounts for the financial year just finished
- Consider (emerging) External Audit opinion for the financial year just finished
- Review assurances provided by senior staff for the annual governance statement
- Consider Internal Audit opinion for the financial year just finished
- Consider an annual report on fraud and security
- Advise the Accountable Officer on signing the accounts and governance statement
- Consider any reports from Internal Audit and management responses
- Consider a financial report, including relevant information about financial performance and achievement of financial targets
- Consider an annual report to the Board and Accountable Officer
- Consider any reports from other sources within the “three lines of assurance” integrated assurance framework

Autumn Meeting

- Review performance relating to risk management
- Review the performance management arrangements adopted by the body including, where appropriate, the timetable for reviewing such arrangements
- Consider any reports from Internal Audit and management responses
- Consider the External Audit management letter for the previous financial year and the response to/implementation of any recommendations
- Consider a financial report, including relevant information about financial performance and achievement of financial targets
- Consider any reports from other sources within the “three lines of assurance” integrated assurance framework

Winter Meeting

- Review performance relating to risk management
- Consider any reports from Internal Audit and management responses
- Consider a financial report, including relevant information about financial performance and achievement of financial targets
- Consider the committee's own effectiveness in its work
- Review the committee's Terms of Reference
- Consider any reports from other sources within the “three lines of assurance” integrated assurance framework

Annex F: Key lines of enquiry

This list of questions is not intended to be exhaustive or restrictive nor should it be treated as a tick list substituting for detailed consideration of the issues it raises. Rather it is intended to act as a 'prompt' to help the committee ensure that their work is comprehensive.

On the strategic processes for risk, control and governance, how do we know:

- that the risk management culture is appropriate?
- that there is a comprehensive process for identifying and evaluating risk, and for deciding what levels of risk are tolerable?
- that the risk register is an accurate reflection of the risks facing the organisation?
- that appropriate ownership of risk is in place?
- that management has an appropriate view of how effective internal control is?
- that risk management is carried out in a way that really benefits the organisation or is it treated as a box ticking exercise?
- that the organisation as a whole is aware of the importance of risk management and of the organisation's risk priorities?
- that the system of internal control will provide indicators of things going wrong?
- that the AO's annual governance statement is meaningful, and what evidence underpins it?
- that the governance statement appropriately discloses action to deal with material problems?
- that the organisation is appropriately considering the results of the effectiveness review underpinning the governance statement?

On risk management processes, how do we know:

- how senior management (and Ministers where appropriate) support and promote risk management?
- how well are people equipped and supported to manage risk well?
- that there is a clear risk strategy and policies?

- that the organisation’s risk appetite has been articulated?
- that there are effective arrangements for managing risks with partners?
- that the organisation's processes incorporate effective risk management?
- if risks are handled well:

    - key strategic risks can change very quickly?
    - scenario planning and stress testing?
    - bubbling under’ risks?

- Risk focus is wide enough:
    - external and emerging risks are considered?
    - ‘financial’ risks and ‘non-financial’ risks are reviewed?

- if risk management contributes to achieving outcomes?
- that management are regularly reviewing top risks?

On the planned activity and results of both internal and external audit, how do we know:

- that the Internal Audit strategy is appropriate for delivery of a positive reasonable assurance on the whole of risk, control and governance?
- that the internal audit plan will achieve the objectives of the Internal Audit strategy, and in particular is it adequate to facilitate a positive, reasonable assurance on the key risks facing the organisation?
- that Internal Audit has appropriate resources, including skills, to deliver its objectives?
- that Internal Audit takes appropriate account of other assurance activity, especially in the first and second line (and that this assurance is understood and owned by management)? that Internal Audit recommendations that have been agreed by management are timeously implemented?
- that any issues arising from line management not accepting Internal Audit recommendations are appropriately escalated for consideration?

- that the quality of Internal Audit work is adequate? What does application of the Internal Audit Quality Assessment process tell us about the quality of the Internal Audit service?
- that there is appropriate co-operation between the internal and external auditors?
- The Accountable Officer and Board have taken all necessary steps to make themselves aware of any relevant information and that auditors are aware of that information?

A more detailed tool for evaluation of the quality of the Internal Audit service is the "Internal Audit Quality Assessment Framework" produced by HM Treasury.

On the accounting policies, the accounts, and the annual report of the organisation, how do we know:

- how effective and accurate budgeting and in-year forecasting is?
- if the finance function is fit for purpose?
- what the "hidden" financial risks are, relating to (inter alia):
- HR?
- VAT?
- Overruns?
- Sudden loss of funding/revenue?
- that the accounting policies in place comply with relevant requirements, particularly the HMT *Financial Reporting Manual*?
- there has been due process in preparing the accounts and annual report and is that process robust?
- that the accounts and annual report have been subjected to sufficient review by management and by the Board and Accountable Officer?
- that when new or novel accounting issues arise, appropriate advice on accounting treatment is gained?
- that there is an appropriate anti-fraud policy in place and losses are suitably recorded?
- that suitable processes are in place to ensure accurate financial records are kept?

- that suitable processes are in place to ensure fraud is guarded against and regularity and propriety is achieved?
- that financial control, including the structure of delegations, enables the organisation to achieve its objectives with good value for money?
- if there are any issues likely to lead to qualification of the accounts?
- if the accounts have been qualified, that appropriate action is being taken to deal with the reason for qualification?
- that issues raised by the External Auditors are given appropriate attention?

On the adequacy of management response to issues identified by audit activity, how do we know:

- that the implementation of recommendations is monitored and followed up?
- that there are suitable resolution procedures in place for cases when management reject audit recommendations which the auditors stand by as being important?

On assurances relating to the corporate governance requirements for the organisation, how do we know:

- corporate governance arrangements operate effectively and are clear to the whole organisation?
- the Accountable Officer's Governance Statement is meaningful, and that robust evidence underpins it?
- the Governance Statement appropriately discloses action to deal with material problems?
- the Board/Executive is appropriately considering the results of the effectiveness review underpinning the annual Governance Statement?
- the range of assurances available is sufficient to facilitate the drafting of a meaningful annual Governance Statement?
- those producing the assurances understand fully the scope of the assurance they are being asked to provide, and the purpose to which it will be put?
- effective mechanisms are in place to ensure that assurances are reliable and adequately evidenced?

- assurances are ‘positively’ stated (i.e. – premised on sufficient relevant evidence to support them)?
- the assurances draw appropriate attention to material weaknesses or losses which should be addressed?
- the annual Governance Statement realistically reflects the assurances on which it is premised?

On the work of the committee itself, how do we know:

- that we are being effective in achieving our terms of reference and adding value to corporate governance and control systems of the organisation?
- that we have the appropriate skills mix?
- that we have an appropriate level of understanding of the purpose and work of the organisation?
- that we understand all of the sources of assurance available to the organisation?
- that we have sufficient time to give proper consideration to our business?
- that our individual members are avoiding any conflict of interest?
- that we are avoiding “group think”
- what impact we are having on an organisation?

Annex G: Competency framework

All members of the committee should have, or acquire as soon as possible after appointment:

- understanding of the objectives of the organisation and current significant issues for the organisation;
- understanding of the organisation's structure, including key relationships such as that with a sponsoring directorate/portfolio or a major partner;
- understanding of the organisation's culture;
- understanding of any relevant legislation or other rules governing the organisation;
- understanding of the organisation’s three lines of assurance and sources of assurance;
- broad understanding of the government environment, particularly accountability structures and current major initiatives.

The committee should collectively possess:

- knowledge/skills/experience (as appropriate and required) in:
    - accounting;
    - risk management;
    - audit;
    - technical or specialist issues pertinent to the organisation's business.
- experience of managing similar sized organisations and people management skills;
- understanding of the wider relevant environments in which the organisation operates;
- detailed understanding of the government environment and accountability structures.

Annex H: Self-assessment checklist

Role and remit	YES/NO/NA	Comments/Action
Does the committee have written terms of reference?		
Do the terms of reference cover the core functions as identified in the *SG Audit and Assurance Committee Handbook*?		
Are the terms of reference approved by the Audit and Assurance Committee and reviewed periodically?		
Has the committee been provided with sufficient membership, authority and resources to perform its role effectively and independently?		
Does the body's governance statement mention the committee's establishment and its broad purpose?		
Does the committee periodically assess its own effectiveness?		
Membership, induction and training	YES/NO/NA	Comments/Action
Has the membership of the committee been formally agreed by the management board and or Accountable Officer and a quorum set?		
Are members appointed for a fixed term?		

Does at least one of the committee members have a financial background?		
Are all members, including the Chair, independent of the Executive function?		
Are new committee members provided with an appropriate induction?		
Has each member formally declared his or her business interests?		
Are members sufficiently independent of the other key committees of the Board?		
Has the committee considered the arrangements for assessing the attendance and performance of each member?		
Meetings	YES/NO/NA	Comments/Action
Does the committee meet regularly, at least four times a year?		
Do the terms of reference set out the frequency and broad timing of meetings?		
Does the committee calendar meet the body's business and governance needs, as well as the requirements of the financial reporting calendar?		
Are members attending meetings on a regular basis and if not, is appropriate action taken?		

Does the Accountable Officer attend all meetings and, if not, is he/she provided with a record of discussions?		
Does the committee have the benefit of attendance of appropriate officials at its meetings, including representatives from internal audit, external audit and finance?		
Internal control	YES/NO/NA	Comments/Action
Does the committee consider the findings of annual reviews by internal audit and others, on the effectiveness of the arrangements for risk management, control and governance?		
Does the committee consider the findings of reviews on the effectiveness of the system of internal control?		
Does the committee have responsibility for review of the draft governance statement and does it consider it separately from the accounts?		
Does the committee consider how accurate and meaningful the governance statement is?		
Does the committee satisfy itself that the arrangements for risk management, control and governance have operated effectively throughout the reporting period?		
Has the committee considered how it should coordinate with other committees that may have responsibility for risk management and corporate governance?		

Has the committee satisfied itself that the body has adopted appropriate arrangements to counter and deal with fraud?		
Has the committee been made aware of the role of risk management in the preparation of the internal audit plan?		
Does the committee's terms of reference include oversight of the risk management process?		
Does the committee consider assurances provided by senior staff?		
Does the committee receive and consider stewardship reports from senior staff in key business areas such as Finance, HR and ICT?		
Financial reporting and regulatory matters	YES/NO/NA	Comments/Action
Is the committee's role in the consideration of the annual accounts clearly defined?		
Does the committee consider, as appropriate:		
• the suitability of accounting policies and treatments		
• major judgements made		
• large write-offs		
• changes in accounting treatment		

• the reasonableness of accounting estimates		
• the narrative aspects of reporting?		
Is an committee meeting scheduled to receive the external auditor's report to those charged with governance including a discussion of proposed adjustments to the accounts and other issues arising from the audit?		
Does the committee review management's letter of representation?		
Does the committee gain an understanding of management's procedures for preparing the body's annual accounts?		
Does the committee have a mechanism to keep it aware of topical legal and regulatory issues?		
Internal audit	YES/NO/NA	Comments/Action
Does the Head of Internal Audit attend meetings of the committee?		
Does the committee consider, annually and in detail, the internal audit plan including consideration of whether the scope of internal audit work addresses the body's significant risks?		
Does internal audit have a direct reporting line, if required, to the committee?		

As well as an annual report from the Head of Internal Audit, does the committee receive progress reports from internal audit?		
Are outputs from follow-up audits by internal audit monitored by the committee and does the committee consider the adequacy of implementation of recommendations?		
If considered necessary, is the committee chair able to hold private discussions with the Head of Internal Audit?		
Is there appropriate co-operation between the internal and external auditors?		
Does the committee review the adequacy of internal audit staffing and other resources?		
Are internal audit performance measures monitored by the committee?		
Has the committee considered the information it wishes to receive from internal audit?		
Has the committee considered formal terms of reference defining internal audit's objectives, responsibilities, authority and reporting lines?		
External audit	YES/NO/NA	Comments/Action
Does the external audit representative attend meetings of the committee?		

Do the external auditors present and discuss their audit plans and strategy with the committee (recognising the statutory duties of external audit)?		
Does the committee chair hold periodic private discussions with the external auditor?		
Does the committee review the external auditor's annual report to those charged with governance?		
Does the committee ensure that officials are monitoring action taken to implement external audit recommendations?		
Are reports on the work of external audit presented to the Audit and Assurance Committee?		
Does the committee assess the performance of external audit?		
Does the committee consider the external audit fee?		
Administration	YES/NO/NA	Comments/Action
Does the committee have a designated secretariat?		
Are agenda papers circulated in advance of meetings to allow adequate preparation by committee members and attendees?		
Do reports to the committee communicate relevant information at the right frequency, time, and in a format that is effective?		

Does the committee issue guidelines and/or a pro forma concerning the format and content of the papers to be presented?		
Are minutes prepared and circulated promptly to the appropriate people, including all members of the Board?		
Is a report on matters arising presented or does the Chair raise them at the committee's next meeting?		
Do action points indicate who is to perform what and by when?		
Does the committee provide an effective annual report on its own activities?		
Overall	YES/NO/NA	Comments/Action
Does the committee effectively contribute to the overall control environment of the organisation?		
Are there any areas where the committee could improve upon its current level of effectiveness?		
Does the committee seek feedback on its performance from the Board and Accountable Officer?		



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Code of Good Governance for Scotland's Colleges

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Annex 1: References and Definitions

1. Background

The original *Code of Good Governance for Scotland's Colleges* was published in December 2014. The Code has been periodically updated by the Good Governance Steering Group over the last few years to take into account the Cabinet Secretary's Good Governance Task Group recommendations which were published in 2016 and new governance practices and processes.

Colleges Scotland will act as custodian for any future reviews and in keeping with the way that the Code was created, the broad range of stakeholders who developed the Code will be engaged fully with any revisions.

This Code refers to regional colleges, assigned colleges and regional strategic bodies.

2. Foreword

Colleges in Scotland thrive in the heart of their communities, serving the interests of those communities, students, employers, governments and their agencies and other stakeholders. They have an essential and valuable role in Scottish society. Colleges deliver 70 million hours of learning each year, and 95% of these learning hours lead to a recognised qualification. Across Scotland colleges employ 11,000 staff and deliver education, skills and training to 240,000 students, 11,000 apprentices and 52,000 school pupils.

Colleges and regional strategic bodies receive substantial public funding and also operate in an increasingly commercial and enterprising way. We value the significant contribution college board members make to governing our colleges and regional strategic bodies, and to their stewardship of taxpayer's money, ensuring its efficient and effective use.

Boards are expected to innovate, pursue new opportunities and take measured risks in delivering what is best for their stakeholders.

Against this background, it is right and proper that the highest standards of governance and propriety are expected of our boards and those individuals who serve them. This Code of Good Governance codifies the principles of good governance for learners and learning that already exist in our colleges and promotes accountability and continuous improvement in how colleges and regional strategic bodies are governed.

The Code is based on key principles and has been written in a way that is mandatory and anticipates compliance. All colleges that receive funding from the Scottish Funding Council (SFC) or from a regional strategic body must comply with the Code as a term and condition of grant. Exceptions should be rare and must be explained publicly.

In addition to demonstrating good governance, colleges and regional strategic bodies must also ensure compliance with their statutory and other obligations. The governance professional role is vital in providing guidance to the board on its legal and other obligations.

Colleges have an important individual and collective role to play in promoting economic, social and cultural well-being. We expect this Code to provide the essential underpinning to help discharge that role to the highest standards possible.

Waiyin Hatton, Chair of the Good Governance Steering Group
September 2022

3. Code of Good Governance for Scotland's Colleges

Governance and the Code

Corporate governance:

- is the way in which organisations are directed and controlled within a legislative and regulatory framework
- defines the distribution of rights and responsibilities among the different stakeholders and participants in the organisation
- determines the rules and procedures for making decisions on corporate affairs including the process through which the organisation's objectives are set
- provides the means of achieving those objectives and monitoring performance.

Scotland's colleges refer to colleges either funded by SFC or by a regional strategic body for the provision of education. Such colleges can be incorporated or non-incorporated. The overarching purpose of good governance for Scotland's colleges is to:

- lead the college, region or regional strategic body and set its strategic direction and values
- ensure effective management and financial controls to support the student experience within a framework of public accountability and transparency
- deliver high quality learning and outcomes.

The *Code of Good Governance for Scotland's Colleges* has been developed and is owned by the college sector. Colleges are required to comply with it as a condition of grant from either SFC or their regional strategic body. It establishes standards of good governance practice for all boards and provides the essential foundations for compliance within the legislative framework.

Boards must not only follow the letter but also the spirit of the Code to ensure good governance. Boards must think deeply, thoroughly and on a continuing basis about their overall tasks and the implications of these for the roles of their individual members. Key to this is the leadership of the chair, the support given to and by the principal, and the frankness and openness of mind with which issues are discussed and tackled by all board members.

Statement of Compliance with Good Governance

Each board must state its adoption of the Code in the corporate governance statement contained in its annual financial statement. The chair, on behalf of the board, is expected to report as to how the principles have been applied by the board. Where, for whatever reason, a board's practice is not consistent with any principle of the Code, it should make this known to SFC or, if it is an assigned college, the regional strategic body. This should be done immediately they become aware of an inconsistency and, without exception, in advance of publishing the information. An explanation for that inconsistency must be clearly stated in its corporate governance statement. Boards will be expected to offer a clear rationale for exceptions in the context of their college's operational model and to identify mitigations.

Individual board members have a duty to act on serious concerns about the governance of their body. Information on who board members can approach is included in *The Guide for Board Members in the College Sector*.

4. Principles

Section A: Leadership and Strategy

Conduct in Public Life

A.1 Every college and regional strategic body must be governed by an effective board that is collectively responsible for setting, demonstrating and upholding the values and ethos of the organisation.

A.2 Every board member must ensure that they are familiar with and their actions comply with the provisions of their board's Code of Conduct.

A.3 The *Nine Principles of Public Life in Scotland*, which incorporate the seven Nolan principles, must be the basis for board decisions and behaviour. These key principles, which apply individually and collectively, are:

- Duty/Public Service
- Selflessness
- Integrity
- Objectivity
- Accountability and Stewardship
- Openness
- Honesty
- Leadership
- Respect

Vision and Strategy

A.4 The board is responsible for determining their institution's vision, strategic direction, educational character, values and ethos. Regional strategic bodies must also determine the regional strategy for colleges assigned to them. The board of an assigned college must have regard to the strategy determined by the regional strategic body. Board members have a collective leadership role in fostering an environment that enables the body to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves.

A.5 The board must develop and articulate a clear vision for the region or college. This should be a formally agreed statement of its aims and desired outcomes which should be used as the basis for its overall strategy and planning processes.

A.6 The board provides overall strategic leadership of the region or college. The board is responsible for formulating and agreeing strategy by identifying strategic priorities and providing direction within a structured planning framework.

A.7 The board (except in the case of assigned college boards) is responsible for overseeing the negotiation of its outcome agreement with SFC, to meet the needs of the college or region and make best use of available funding, consistent with national strategy. The board must ensure effective engagement with all relevant stakeholders in the development of its outcome agreement and monitor performance in achieving the agreed outcomes.

A.8 The roles and responsibilities of the boards of assigned colleges should be undertaken in the context of the roles and responsibilities of their regional strategic body. Assigned college boards must contribute constructively to the development of the outcome agreement led in its region by the regional strategic body and support the regional strategic body to monitor performance in achieving the agreed outcomes.

Performance

A.9 The board must ensure that a comprehensive performance measurement system is in place which is clearly linked to the regional strategic framework and identifies key performance indicators. It must ensure that it scrutinises performance measures and reports these on their website in a manner that is both timely and accessible to stakeholders. This will allow the board to determine whether or not the vision and mission of the region or the college are being fulfilled and that the interests of stakeholders are being met.

Corporate Social Responsibility

A.10 The board must demonstrate high levels of corporate social responsibility by ensuring it behaves ethically and contributes to economic development while seeking to improve the quality of life of the local community, society at large and its workforce.

A.11 The board must exercise its functions with a view to improving economic, cultural and social wellbeing in the locality of the college or region. It must have regard to social and economic needs and social inclusion.

A.12 The board must provide leadership in equality and diversity.

A.13 The board must seek to reflect in its membership, the make-up of the community through offering maximum opportunity of membership to a range of potential members and removing potential barriers to membership, in partnership with its regional strategic body, as appropriate.

Section B: Quality of the Student Experience

Student Engagement

B.1 The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions.

B.2 The board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, the students' association and as appropriate staff and trade unions in relation to the quality of the student experience. Consultation is essential where significant changes are being proposed.

B.3 The board must consider the outcome of student surveys and other student engagements and monitor action plans that could impact on the quality of the student experience.

B.4 The college board must have regard to the Framework for the Development of Strong and Effective College Students' Association in Scotland. It must put in place robust partnership procedures (e.g. partnership agreement) to work together to achieve change and which are supported by regular and open communications.

B.5 The college board must encourage a strong and autonomous students' association and ensure that the students' association is adequately resourced.

B.6 The college board must ensure that the students' association operates in a fair and democratic manner and fulfils its responsibilities.

B.7 The college board should review the written constitution of its students' association at least every five years.

Relevant and High-Quality Learning

B.8 The board must seek to secure coherent provision for students, having regard to other provision in the region or college's locality. The board must be aware of external local, national and international bodies and their impact on the quality of the student experience, including community planning partners, employers, skills development and enterprise agencies and employer bodies. The board must seek to foster good relationships and ensure that the body works in partnership with external bodies to enhance the student experience, including employability and the relevance of learning to industry needs.

Quality Monitoring and Oversight

B.9 The board must ensure appropriate mechanisms are in place for the effective oversight of the quality and inclusivity of the learning experience in the college or region. The board must ensure that the college works in partnership with sector quality agencies and other appropriate bodies to support and promote quality enhancement and high-quality services for students.

Section C: Accountability

Accountability and Delegation

C.1 The board is primarily accountable to its main funder, either SFC or its regional strategic body. Through the chain of funding, the body is ultimately responsible to the Scottish Ministers who are accountable to the Scottish Parliament.

C.2 The board must ensure delivery of its outcome agreement or in the case of an assigned college, its agreed contribution to the region's outcome agreement.

C.3 The board must ensure it fulfils its statutory duties and other obligations on it, and that the terms and conditions of its grant are being met.

C.4 Scottish Ministers have powers to suspend or remove by order any or all board members of an incorporated college (except the principal) or a regional board for serious or repeated breaches of a term and condition of grant.

C.5 The board also has a wider accountability to a range of stakeholders including students (both current and prospective), its staff, the wider public, employers and the community it serves, for the provision high quality education that improves people's life chances and social and economic well-being.

C.6 Incorporated colleges and regional boards must maintain and publicly disclose a current register of interests for all board members. Board members have a personal responsibility to ensure any changes to their register of interests are notified timeously to the governance professional and to declare any specific conflicts of interest in the business of the meeting prior to the commencement of each meeting of the board and its committees and withdraw from meetings as appropriate. See section D.6 for the 'objective test' for judging if there is a conflict of interest.

C.7 The board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely, and that appropriate and effective systems of financial and operational control, quality, management of staff, risk assessment and management are established, monitored, continuously improved and appropriately impact assessed. This includes:

a) the prompt production, dissemination and online publication of board/committee agendas, minutes and papers to the public
b) every board meeting and every committee meeting having a well-structured agenda circulated timeously in advance
c) the retention of all key documentation which help justify the decisions made by the board and its committees
d) setting quorum for board and committee meetings in line with good practice and preferably at 50% or higher are non-executive members. A board should satisfy itself that adequate arrangements are in place to ensure that decisions it has delegated to a committee are taken with a non-executive majority. When determining a quorum, the chair of the board may be considered to be a non-executive member. (see Annex 1 for the definition of non-executive).

C.8 The board may delegate responsibilities to committees for the effective conduct of board business. As a minimum the committees required are Audit, Remuneration, Finance and Nominations/Appointments. Delegation of responsibilities from and matters reserved to the board and its committees must be set out in a scheme of delegation including the functions delegated by the board to the chair, committees, the principal and the governance professional (and any other members of staff). Incorporated college boards and regional boards have no powers to delegate functions

to an individual board member (except the chair who has no authority to act out with their delegated powers).

C.9 The board must ensure every board committee has a specified member of the management team to provide objective, specialist advice to support it to discharge its remit, including by explaining in an accessible way the matters under discussion and the possible implications of different options.

C.10 The board must consider and have in place procedures to ensure effective working relationships and constructive dialogue amongst the board as a whole and ensure there are effective reporting and two-way communications between committees and the board. The board must ensure that discussions and decisions of every committee are accurately recorded and reported to the board, no later than the next meeting of the board.

Risk Management

C.11 The board of a college or a regional body is responsible for the overall management of risk and opportunity. It must set the risk appetite of the body and ensure there is an appropriate balance between risk and opportunity and that this is communicated via the principal to the body's management team.

C.12 The board must ensure that sound risk management and internal control systems are in place and maintained. It must ensure there is a formal on-going process for identifying, reporting, evaluating and managing the body's significant risks and review the effectiveness of risk management, business continuity planning and internal control systems.

Audit Committee

C.13 The Audit Committee must support the board and the principal by reviewing the comprehensiveness, reliability and integrity of assurances including the body's governance, risk management and internal control framework. The Scottish Government Audit and Assurance Committee Handbook promotes the development of an assurance framework to aid the Committee in fulfilling this role. See Audit and Assurance Committee Handbook

C.14 The scope of the Audit Committee's work must be defined in its terms of reference and encompass all the assurance needs of the board and the principal. The Audit Committee must have particular engagement with internal and external audit, and must work with management and auditors to resolve any issues in relation to financial reporting.

C.15 The Audit Committee must promptly pursue recommendations arising from audit reports and must monitor their implementation.

C.16 The membership of the Audit Committee cannot include the board chair or the principal and, in line with the Audit and Assurance Committee Handbook, 'executive members of the organisation should not be appointed to the Audit and Assurance Committee', and the majority of members must be non-executive. The role of the college executive is to attend meetings at the invitation of the committee chair and to provide information for particular agenda items.

C.17 The Audit Committee terms of reference must provide for the committee to sit privately without any non-members present for all or part of a meeting if they so decide. The Audit Committee members should meet with the internal and external auditors without the executive team present at least annually.

C.18 At least one member of the Audit Committee should have recent relevant financial or audit experience.

Remuneration Committee

C.19 It essential that members of the Remuneration Committee understand their role and responsibilities. Members must undertake the online training module for Remuneration Committees provided by College Development Network within one month of appointment.

C.20 The board must have a formal procedure in place for setting the remuneration of the principal by a designated committee of non-executive members. The board may wish to supplement this by taking evidence from a range of sources. In particular, staff and students should have a role in gathering and submitting evidence in relation to the college principal to the relevant committee.

C.21 The board chair cannot be the chair of the Remuneration Committee (but they can be a member of it).

Financial and Institutional Sustainability

C.22 The board is responsible for ensuring the financial and institutional sustainability of the body. The board must ensure compliance with its Financial Memorandum (either with SFC or the regional strategic body, depending on which is funding it), including in relation to incorporated colleges and regional boards, relevant aspects of the Scottish Public Finance Manual.

C.23 The board must ensure that:

- funds are used as economically, efficiently and effectively as possible
- effective monitoring arrangements are in place
- college staff report relevant financial matters to it.

C.24 For colleges that are charitable organisations, board members are also charity trustees. The board of a college that is a charity must ensure its members are aware of their responsibilities under charity legislation and for complying with relevant provisions as set out by the Office of the Scottish Charity Regulator. See *OSCR Guidance and Good Practice for Charity Trustees*.

Staff Governance

C.25 The college board as the employer, is responsible for promoting positive employee relations and for ensuring effective partnership between recognised trade unions and management.

C.26 The board must have a system of corporate accountability in place for the fair and effective management of all staff, to ensure all legal obligations are met and all policies and agreements are implemented and identify areas that require improvement and to develop action plans to address them.

C.27 The board must comply with the nationally agreed college sector *Staff Governance Standard*.

C.28 The college board must comply with collective agreements placed on it through national collective bargaining for colleges.

Section D: Effectiveness

The Board Chair

D.1 The chair is responsible for leadership of the board and ensuring its effectiveness in all aspects of its role. The chair is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, particularly strategic issues. The chair must promote a culture of openness and debate by:

- encouraging the effective contribution of all board members
- fostering constructive challenge and support to the principal, executive team and fellow board members
- effective team-working
- positive relations between board members.

The chair must engage with the principal and the governance professional in a manner which is both constructive and effective.

D.2 The board and its committees must have the appropriate balance of skills, experience, independence and knowledge of the body to enable them to discharge their respective duties and responsibilities effectively.

Senior Independent Member

D.3 The board must appoint one of the non-executive members to be the senior independent member to provide a sounding board for the chair and to serve as an intermediary for the principal, other board members and the governance professional when necessary (see Annex 1 for the definition of 'non-executive'). The senior independent member should also be available where contact through the normal channels of chair, principal or governance professional has failed to resolve an issue or for which such contact is inappropriate. The senior independent member is also responsible for holding annual meetings with Board members, without the Chair, to appraise the Chair's performance and provide the Chair with relevant feedback Further information on the role of the senior independent member can be found in *The Guide for Board Members in the College Sector*.

Board Members

D.4 Each board member is collectively responsible and accountable for all board decisions. Board members must make decisions in the best interests of the college and/or region as a whole rather than selectively or in the interests of a particular group.

D.5 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.

D.6 Where the college is a charity, all board members, as charity trustees, including staff and student board members, have legal duties and responsibilities under the Charities Act 2005. This includes registering any personal interests that could be seen as conflicting with the interests of the body. The 'objective test' for judging if there is a conflict of interest is:
"… whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your decision making in your role as a member of a public body".

Principal and Chief Executive

D.7 The college board must appoint the principal as chief executive of the college, securing approval for the appointment and terms and conditions of the appointment from the regional strategic body if necessary.

D.8 The college board must ensure there is an open and transparent recruitment process for the appointment. Students and staff must have an opportunity to contribute to the recruitment process.

D.9 The college board must delegate to the principal, as chief executive, authority for the academic, corporate, financial, estate and human resource management of the college, and must ensure the establishment of such management functions are undertaken by and under the authority of the principal.

D.10 The college board must ensure a clear process is in place to set and agree personal performance measures for the principal. This process should seek the views of students and staff. The chair, on behalf of the board, should monitor, review and record the principal's performance, at least annually, against the agreed performance measures.

D.11 The principal, as a board member, shares responsibility for good governance with the chair and all other members of the board, supported by the governance professional. The principal also enables good governance through supporting effective communication and interaction between the body and the rest of the college including staff and students.

D.12 The board provides strategic direction for the region and/or college, and the chair provides leadership to the board. The principal provides leadership to the staff of the body.

D.13 The board must provide a constructive challenge to the principal and executive team and hold them to account.

Governance Professional

D.14 The board must appoint a governance professional who is responsible to it and reports directly to the chair in their governance professional capacity. The governance professional may be a member of the senior management team in their governance professional capacity, but they cannot hold any other senior management team position at the same time. The appointment and removal of the governance professional is a decision of the board.

D.15 All board members must have access to the governance professional who has an important governance role in advising the board, the committees and individual board members and supporting good governance. The distinctive governance professional role includes:

- facilitating good governance and advising board members on:
    - the proper exercise of their powers, including in relation to relevant legislation
    - the board's compliance with its Financial Memorandum, the Code for Good Governance, its Standing Orders and Scheme of Delegation
    - their behaviour and conduct in relation to the board's Code of Conduct.
- providing clear advice to the chair and the board/committees on any concerns the governance professional may have that board members have not been given:

- sufficient information
- information in an appropriate form
- sufficient time to monitor, scrutinise or make informed and rigorous decisions in an open and transparent way.

- attending and providing support to every board meeting and every meeting of every board committee. Where the governance professional is unable to attend, while the governance professional retains overall responsibility, proper arrangements must be made to cover the role with a person who is fully able to discharge the role effectively.

- having an unambiguous right to speak at board and committee meetings to convey any concerns they may have about governance. This extends to someone substituting for the governance professional.

- reporting any unresolved concerns about the governance of the body to the relevant funding body (i.e., SFC or the regional strategic body).

D.16 The board must ensure the governance professional:

- has suitable skills, knowledge and behaviours to carry out their role effectively
- receives appropriate induction, and if new to the role, is mentored by a more experienced governance professional for at least their first year
- has adequate time and resources available to undertake their role effectively.

D.17 The board must ensure arrangements are in place to deal with a governance professional's potential or real conflicts of interest.

Board Member Appointment, Induction and Training

D.18 For boards with responsibility for board appointments, the board must ensure a formal and open procedure is in place for recruiting and selecting new non-executive board members. Boards must have regard to current Ministerial Guidance on board appointments.

D.19 The board is responsible for ensuring appropriate arrangements are in place for the conduct of student elections and nominations, and elections and nominations of staff members to the board.

D.20 The chair must ensure that new board members receive a formal induction on joining the board, tailored in accordance with their individual and collective needs. The governance professional should support the chair in the provision of relevant induction for new board members.

D.21 The board must ensure all board members undertake appropriate training and development in respect of their governance role. The governance professional should support the chair in the provision of relevant training and development opportunities for board members, which should be tailored to meet board members skills and needs. The governance professional must keep records of the development activity of board members, including the chair.

D.22 The board must ensure that new committee members receive a committee induction and have their specific training needs assessed and met.

Board Evaluation

D.23 Extension of the term of office of board appointments requires evidence and the board must ensure appropriate mechanisms are in place to support this.

D 24 The board must keep its effectiveness under annual review and have in place a robust self-evaluation process. There should also be an externally facilitated evaluation of its effectiveness every three to five years. The board should determine the timing for this externally facilitated review as part of the annual effectiveness review. The board must send its self-evaluation (including an externally facilitated evaluation) and board development plan (including progress on previous year's plan) to its funding body and publish them online.

D.25 The board must agree a process for evaluating the effectiveness of the board chair and the committee chairs. The evaluation of the board chair should normally be led by the senior independent member.

D.26 The board must ensure all board members are subject to appraisal of their performance, conducted at least annually, normally by the chair of the board.

D.27 The performance of regional college chairs will also be evaluated by the Scottish Government, as regional college chairs are appointed by the Scottish Ministers and are personally accountable to them.

D.28 The performance of assigned, incorporated college chairs will also be evaluated by the regional strategic body, as they are appointed by the regional strategic body and are personally accountable to them.

Section E: Relationships and Collaboration

Partnership Working

E.1 The board must work in partnership to secure the coherent provision of high quality fundable further and higher education in their localities.

E.2 The board 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.

E.3 The board must ensure effective partnership working with local and national bodies including businesses, public and third sector organisations to develop commonly agreed priorities following the principles of effective collaborative working.

E.4 The board must encourage and support effective partnership working and collaboration within and across regions to address local needs and meet national priorities and specialisms.

Annex 1

References and Definitions

- "**college**" means a college funded by either SFC or a regional strategic body.

- "**incorporated college**" means a college with a board of management under part 1 of the Further and Higher Education (Scotland) Act 1992.

- "**assigned** college" means a college assigned to a regional strategic body.

- "**regional board**" means a regional strategic body that has no other functions. There is one regional board – Glasgow Colleges' Regional Board.

- "**board**" means the governing body of the college or to the regional strategic body.

- "**body**" means the organisation in question, i.e., a college or regional strategic body.

- "**principal**" includes where appropriate in the context, the chief officer or equivalent person of a regional strategic body.

- '**non-executive**' means a member who is not the chair of the board and who does not otherwise hold a specific position on the board i.e., is not a student member or a staff member; and in the case of a college board, is not the principal; and in the case of a regional board is not the chair of an assigned college.

- The reference to a non-executive majority under C.7(d) reflects the underlying governance principle of ensuring an appropriate degree of independence and objectivity in all board decision-making. A board quorum should always require a non-executive majority. When determining a quorum, the chair of the board may be considered to be a non-executive member.

- In the context of the regional strategic body in the Highlands and Islands, the board means the Court of the University of the Highlands and Islands (UHI).

- New College Lanarkshire is the designated regional college and regional strategic body with South Lanarkshire College as an assigned college.

- Glasgow Colleges' Regional Board: this is the only part of Scotland with a regional strategic body which has been established as an organisation with only this role.

Framework

for the Development of Strong and Effective College Students' Associations in Scotland

nus scotland
national union of students

colleges scotland

Scottish Funding Council
Promoting further and higher education

The Scottish Government
Riaghaltas na h-Alba

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Ministerial Foreword

I want to thank students, principals and other college staff, college chairs and other college board members, as well as colleagues in sparqs, NUS Scotland and the Scottish Funding Council for their contribution to this, Scotland's first framework for supporting the development of effective students' associations.

Its publication marks another important step in our collective journey to put students at the centre. I endorse the approach it takes, including the five principles on which it is based – autonomous, partnered, accountable, representative and sustainable.

This Government has done more to advance student representation than any other, legislating as we have to put students at the heart of college life. It is no accident that the Post-16 Education (Scotland) Act 2013 contains more references to students' associations than any other piece of legislation in Scottish history. Or that one of the first changes made by the Act was to require colleges to seek to ensure the interests of their students are represented by an association. We have introduced new duties to consult and collaborate with associations and doubled the number of students they nominate to incorporated college boards.

I look to colleges and associations to work in partnership with common purpose in a spirit of openness, trust and mutual respect. The distinctive contribution that associations make to college life arises from their autonomous, representative role. It is therefore essential to the success of partnership that this is cherished and developed. It makes sense for colleges to support vibrant, autonomous and thriving students' associations, given how integral they are to colleges' mission to deliver positive outcomes for students. In line with the Code of Good Governance for Scotland's Colleges, I have no doubt that they will ensure they are adequately resourced.



Cabinet Secretary for Education and Lifelong Learning - Angela Constance MSP

The Framework

The Role and Importance of Students' Associations

Students' associations are the legally representative voice of students. A strong, effective students' association should enable students to make their voices heard, and to take collective action to change and improve their student experience.

Strong students' associations will be able to work as equal partners with their college, acting as critical friends, and enabling the college to develop robust quality and governance processes. A well-developed association will enable students to self-organise and speak in a representative, autonomous voice in discussions and decision making. Students' associations can introduce students to democratic activity and empower them to become active citizens both within the college and in the wider world. Students' associations can also come together to strengthen the student voice at a national level.

Scotland is world-leading in student engagement but students' associations have, in the past, been relatively underdeveloped. Students' associations have made great strides forward in recent years, even as the expectations on them have increased. This has included both new duties in legislation and increased responsibilities under sector policies.

However, both student officers and college staff recognise that there is still much work to be done. This Students' Association Development Framework is a sector-agreed shared way forward for students' association and college partnership development.

Legislative Context: Summary

1994 Education Act

The 1994 Education Act places a number of obligations on relevant governing bodies with regard to the proper running of their students' association. This includes ensuring that the association operates in a fair and democratic manner and is accountable for its finances. The governing body has a duty to prepare and revise a code of practice on how the various requirements are observed by or in relation to the association.

Post-16 Education (Scotland) Act 2013

- Two student members on incorporated college boards. Two student members on Regional Boards.
- The Scottish Funding Council (SFC) must be satisfied each college has suitable "arrangements for the purpose of seeking to ensure that the interests of the body's students are represented by a students' association".
- Regional colleges and regional strategic bodies must:
  - seek to secure the collaboration of students' association(s) (so far as is consistent with the proper exercise of their functions).
  - consult students' association(s) where they consider it appropriate to do so in the exercise of their functions.
- Other specific duties to consult students' associations on regional strategic bodies, Regional Boards, Ministers and SFC.

In multi-college regions, students' associations will therefore have a direct relationship with their regional strategic bodies, as well as with their colleges.

Please see Legislation Supplement: References to Students' Associations in Legislation at saframework.co.uk

Sector Expectations of College and Students' Association Partnerships

The Student Engagement Framework for Scotland identifies and defines five Elements of Student Engagement. Students' associations have a particularly key role to play in Element 4 which focuses on "formal engagement with institutions through representative structures and processes operated primarily by students' associations" but they can also contribute to the delivery of the other elements.[1]

Since 2007 'Student Engagement' has been one of the three Pillars underpinning college quality arrangements in Scotland. Education Scotland emphasise the role of students through a confidence statement against the question "How well are learners engaged in enhancing their own learning and the work and life of the college?"[2] Students' associations therefore have a key role to play in supporting college quality processes and quality enhancement. They also have an increasingly key role to play in external quality reviews.

The College Code of Good Governance states that the college governing bodies "must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions." It goes on to say that "the board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, the students' association and as appropriate staff and trades unions in relation to the quality of the student experience."[3]

Students' associations also play a key role in the negotiation of Outcome Agreements. SFC expect to see evidence of how "outcomes within the outcome agreements have been developed and discussed with the students' association."[4]

Purpose of Framework

Students' associations need to be strong and effective in order to fulfil their role in the partnership, and both the college and students' association have a key role to play in making that partnership a success. The Framework has been developed through strategic dialogue with the college sector including colleges, students' associations, government, and sector agencies. Its purpose is to set out a sector-agreed framework for how colleges and students' associations can work in partnership, with the support of sector agencies and NUS Scotland, to develop strong and effective students' associations.

This Framework therefore provides:

- a shared vision for students' association development and a common understanding of its key concepts and qualities.

It is accompanied by a Self-Evaluation and Development Planning Tool which outlines:

- a set of standards and indicators/ prompts which identify the resources and support a students' association needs to be effective.

The Self-Evaluation and Development Planning Tool enables colleges and students' associations to measure the current level of development of their students' associations and college/ association partnership against the broad Principles of the Framework, to identify strengths and areas for development, and to agree actions for a Development Plan.

Implementing the Framework

As the students' association and the college both have key roles to play in ensuring students' association effectiveness, a partnership approach is essential for the effective implementation of this Framework.

Joint Working Group

Students' associations and colleges will want to set up a Joint Working Group to implement this Framework locally. Membership of this group should include student officers and senior college staff. Some partnerships may have already established groups which can take on this remit.

Resources and Support

In order for students' associations to be able to develop they need resources and support. Dedicated, highly skilled staff who are accountable to the students' association are absolutely fundamental to developing effective students' associations, and to their ongoing success. Students' associations will also need buy-in and support from all college staff.

Resources and tailored support is available nationally from sparqs and NUS Scotland.

Development of the Framework

The Framework has developed out of the increased focus and expectations placed on students' associations as a result of the Post-16 Reforms first identified in the Review of Further Education Governance in Scotland. The review recommended that "Student participation and representation become a commitment across the College Sector. Student Associations should be strengthened and become appropriately funded, autonomous and sustainable."[5]

NUS Scotland, SFC, and the Scottish Government led on the development and were joined by a representative from the Regional Chairs Group to provide high level sector support. Four Strategic Dialogue Events were held in May 2014 at which over a hundred and fifty delegates from across the college sector discussed good practice and areas for development in their students' association and college partnerships, and their vision for the future. Feedback on the final draft of the Framework was sought from seventy stakeholders at Validation Events in January 2015.

Through these events common themes were identified and these have guided the development of the Framework. Some key themes included:

- The need for a common language or framework for students' association development.
- The need for the development of both a culture supportive of students' associations and the embedding of processes and structures to enable students' associations to function effectively.

Some of the key issues identified included:

- Lack of resources, both in terms of operating budget and dedicated association staff and paid officers. However, associations who had accessed temporary funds cited their increase in sabbatical officers and dedicated staff as key factors in their success.
- Lack of autonomy, and confusion over what is meant by that term, and unclear accountability processes.
- Need to develop partnership working between the association and all levels of the college.
- Difficulty maintaining and building on achievements over multiple years.

Introduction to the Principles and Themes

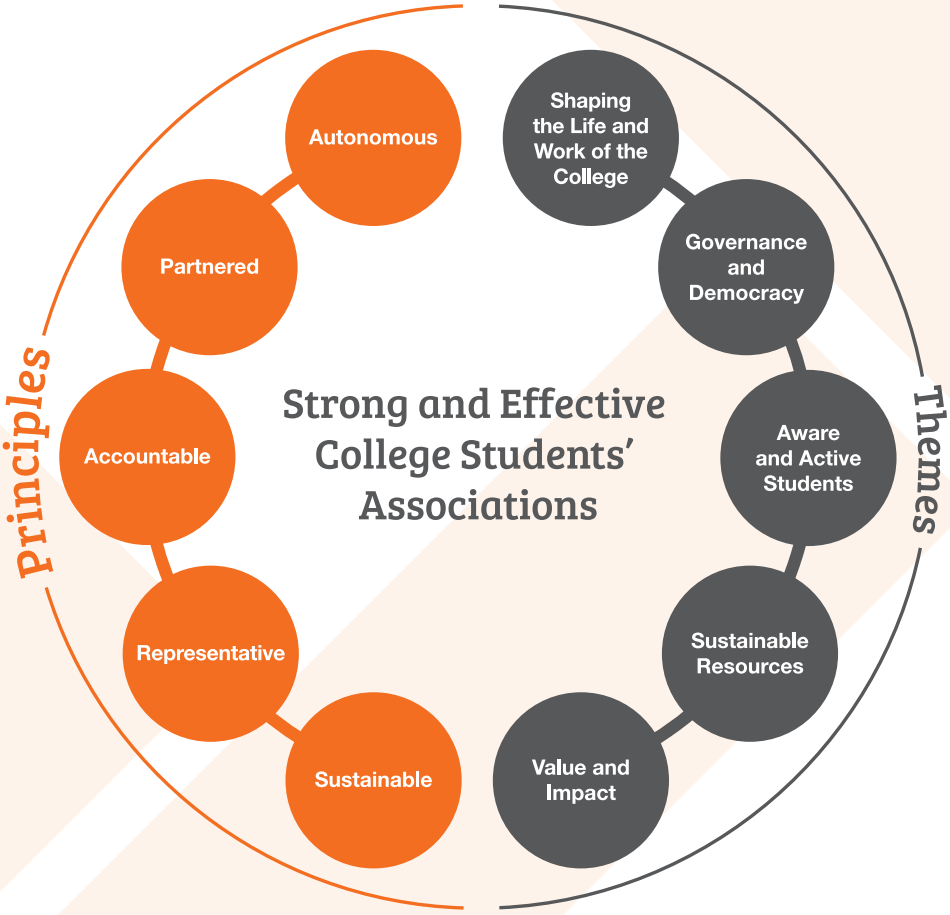
There are two interdependent factors which are key to developing and sustaining effective students' associations. These are:

One: A culture within the college which actively values, supports, and encourages the students' association to develop and deliver its autonomous, representative role.

The Principles section outlines five key principles that must underpin, and drive forward, all the development and work of students' associations if they are to operate effectively.

Two: A scaffolding of resources, working structures, processes, and procedures which govern the students' association and ensure that it is able to deliver its responsibilities and manage the changeover between student officers and between staff.

The Themes section outlines five areas of development that colleges and students' associations will need to work together to put in place in order to enable the students' association to develop the key Principles and to fulfil its role effectively.



The Principles

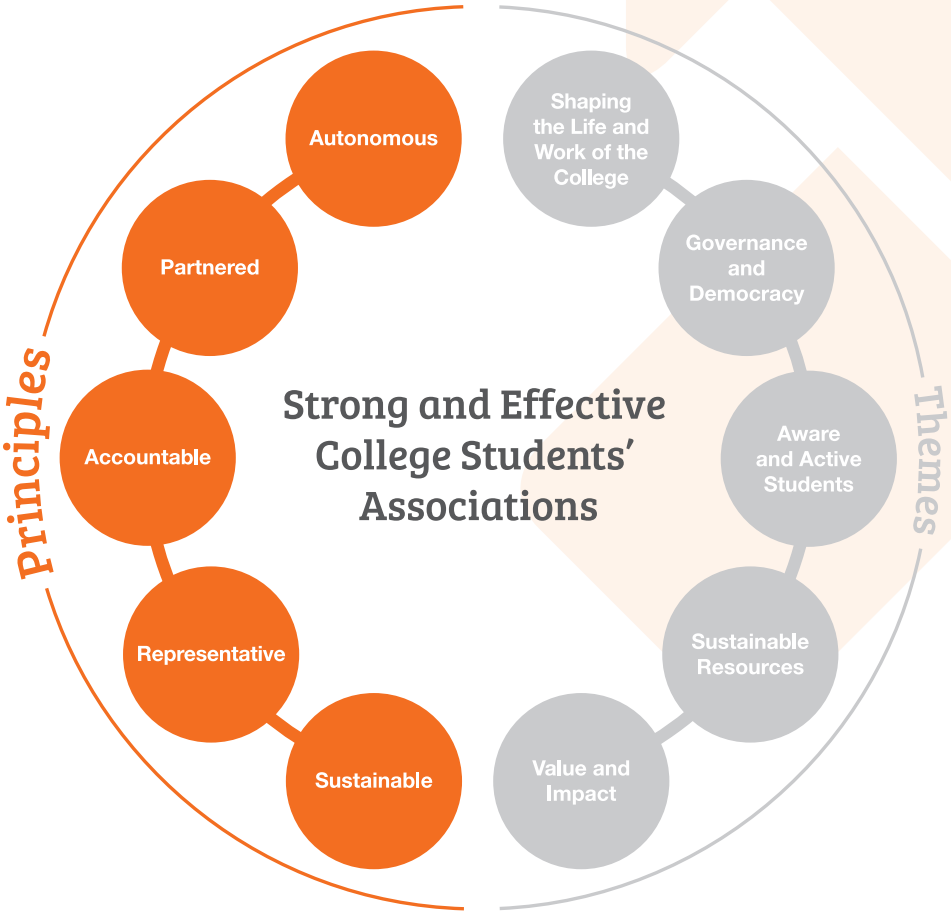
The Principles

There are five Principles:

- Autonomous.
- Partnered.
- Accountable.
- Representative.
- Sustainable.

These Principles together make up the foundations of strong, effective students' associations and a culture which enables students' associations to thrive. This section of the Framework provides definitions of these Principles that students' associations and colleges will need to develop and implement.

All of the Principles are interdependent and therefore need to be developed simultaneously in order to succeed. If not, the students' association risks becoming unstable and will be unable to fulfil its representative purpose. For example, a students' association which has a well-developed Partnership will lose all progress if it's not also Sustainable. Similarly a students' association with a well developed representative structure will not be able to speak in an unbiased, independent student voice if it is not also Autonomous.



Autonomous

An autonomous students' association is one which enables students to articulate an independent student voice, and which can ensure that voice will be heard at the highest levels. Students determine its internal organisation and representative structures. Student representatives act according to the student determined priorities and policies and engage with college leaders as equal partners to negotiate how these priorities will be implemented.

Why Autonomy is Important

Autonomy enables students to determine their own policies and priorities independently which means that they are able to set the agenda for discussion and ensure the focus is kept on students. This enables the students' association and college to build a stronger relationship as the college is able to hear un-influenced truth about the quality of learning and teaching and the wider student experience

The students' association and college must be able to act as critical friends to each other, supporting each other to grow and develop. Students' association autonomy rebalances the distribution of power between the association and the college by ensuring the association is able to determine its own direction. This gives student officers the confidence to raise student identified issues, speak in an impartial and unbiased voice, and disagree with the college without fear of repercussions. Equally, the college should feel able to offer advice and recommendations to support the association while being mindful of the power differential between the association and college and ensuring that recommendations are not misinterpreted as directions.

By working together as equal partners in this way the students' association and the college can deliver stronger outcomes for students.

Autonomy will mean different things to students' associations at different stages of development; some will want to develop as separate organisations, others will be more comfortable with a greater degree of closeness with the college. As the principles outlined in this Framework are embedded, self-determination will develop and grow.

Key Characteristics

- The college, as the association's principal partner and funder, recognises the natural power imbalance and the degree to which it could unduly influence the association. It therefore releases its controls over the association and actively supports its autonomy.
- The students' association is able to decide, within its agreed budget and financial management procedures, how to use the resources and support it receives from their college. It is supported by staff who are accountable to the association and who can provide advice and guidance.
- The students' association has organisational autonomy. It is able to decide how best to organise to represent its students, and make decisions on its own structures and processes. It has procedures and processes in place which enable it to resolve any internal issues itself, and sufficient resources to manage its own structures.
- The students' association is able to develop and articulate an independent student voice; students can decide their own priorities, ideas, and plans. The students' association's right to run campaigns is recognised and supported.
- The students' association is able to take ownership of projects and responsibilities. It has the 'freedom to fail' and to learn from its experiences.
- The students' association is included in the colleges' governance and decision making processes as an equal partner, not as a sub-department of the college.

Partnered

A college and students' association in partnership have an equal relationship based on mutual value, trust, and respect. They have clearly agreed roles and responsibilities and work together to deliver positive change for students.

Why Partnership is Important

Partnership is a widely accepted concept in colleges in Scotland. Effective students' associations are built on a strong, equal partnership between the students' association and the college.

College support is key to students' association success, and strong partnership is fundamental to the development of strong and effective students' associations. The relationship between the two organisations, and between college staff and student officers, is therefore key.

There will be times when the students' association and college will disagree. A strong partnership relationship enables the students' association and college to disagree on some areas, and the students' association to campaign on college policies, while continuing to respect each other, and to work in partnership on different areas of work or policy. Assurance that the partnership will survive disagreement gives the students' association confidence to act as a critical friend.

Partnership working is the most effective way for students' associations to deliver change, and therefore a strong partnership relationship between the students' association and the college enables the students' association to represent students effectively within the college's decision making processes and achieve positive change on their behalf. This also enables the students' association to contribute effectively to college governance and quality procedures.

Key Characteristics

- The roles and responsibilities of the association and the college within the partnership are clear and understood. In particular, the association's role as the college's 'critical friend', and the importance of this role to college governance, is understood by college staff. Both partners have realistic expectations of each other.
- The students' association and the college have embedded partnership procedures through which they can work together to achieve change and which are supported by regular and open communications.
- Partnership working takes place at both strategic and operational levels. The students' association is involved in all decision making which impacts students. Both the college and the students' association supports their partner to work more effectively, for example, taking each other's priorities and vision into account when developing strategic plans.
- The college ensures that their students' association has the support and resources it needs in order to realise their ambitions.
- The college and the students' association respect each other, recognising that they both bring a unique and valuable perspective to the partnership, and work to build trust, being mindful of the other's perspectives. For example, the association utilises its resources responsibly and the college hands areas of responsibility to the association.
- The college encourages student officers to develop into equal partners and avoid slipping into a 'teacher-student' or 'employer-employee' relationship which could put the officers' ability to think and act autonomously at risk.
- The college works proactively with the association, is actively committed to partnership working to create a direct positive impact on the student experience, and validates the importance of the students' association's role.

Accountable

An accountable students' association has clearly defined lines of accountability for its policy decisions and for its performance. It is accountable to its student members for what it says and does on their behalf. It is accountable, where appropriate, to its college's governing board for its compliance with the 1994 Education Act, the agreed terms and conditions of the funding it receives from its college, and for its performance against any other such agreements the students' association and the college have made in partnership.

Why Accountability is Important

An accountable students' association knows what it is responsible for. Responsibility encourages the association to take ownership of its activities.

If the students' association is not accountable to its student members then it loses its legitimacy as the voice of students and is unable to fulfil its role in its partnership with the college. Conversely, an accountable students' association can speak on behalf of the student body with authority and credibility.

An accountable students' association supports the college's governing body to fulfil its responsibility under legislation to seek to ensure that there is a students' association which represents the interests of its students.

Robust accountability processes enables the students' association to develop autonomously because they give the college and students reassurance that it can self-monitor and function effectively day to day.

Key Characteristics

- The students' association has clearly defined and understood lines of accountability which have been developed in partnership. Expectations are realistic.
- The students' association takes its mandate from the wishes of its students, and regularly and formally justifies what it says and does on their behalf to its student members. Student members understand their right and responsibility to hold their association to account. Democratic processes are the means by which the students' association is held to account for its policy decisions. The students' association also has other governance processes, such as a Trustee or Advisory Board, which complements and enforces the democratic processes and hold the students' association to account for its overall functioning.
- There are formal arms-length processes in place, though not line management of sabbaticals, through which the college can scrutinise the students' association and thereby uphold its legal responsibilities. This may include written agreements for delivery of services. For example, as part of budget negotiations reasonable terms and conditions may be agreed; the college should ensure that these do not overly limit association decision-making.
- The college supports the functioning of the association's democratic procedures. For example, providing meeting space, facilitating publicity, encouraging students to attend meetings and participate in elections, etc.
- The students' association has robust financial processes through which it is held to account for expenditure against its budget.
- Student officers who are also college board members are accountable to the board in their role as a board members, and to the association in their role as representative officers.

Representative

A representative students' association takes its mandate from its student members through its democratic processes. It speaks on their behalf with a collective, evidenced, and informed voice and is able to make claims, negotiate solutions, campaign, and create the change its members want. Its officers are elected through free and fair elections.

Why Representation is Important

A students' association must be representative in order to fulfil its core function of representing the interests of all students. It is important that the quality of the representation is high in order to ensure that the students' association is performing its function well and giving value to the students it represents. This increases the association's legitimacy in the eyes of the students, the college, and national bodies.

A representative students' association will challenge the college on occasion. This is important as it demonstrates that the association is fulfilling its roles and bringing issues which might be damaging to the college to its attention. If the association never challenges the college, this should be a cause for concern.

A representative students' associations has the right to speak out on issues of interest to its student members. If an acceptable compromise cannot be reached through the association and the college's partnership working structures the students' association must have the ability to continue the campaign through other methods. Preventing the students' association from doing so would be preventing it from representing its students. It is therefore important that the college understands that the students' association can exercise this right and it is important that the association takes into account the college's concerns when it does so.

Key Characteristics

- The students' association represents the interests of its students and should not be dominated by the views of a vocal minority. It is able to evaluate the different voices of the students it represents in order to develop a single students' association vision. A representative students' association understands that the majority opinion is not always the representative opinion, and ensures that the interests of disadvantaged minority student groups also shape students' association policy. On occasion, this may mean that the needs of the few will outweigh the wishes of the many.
- The college recognises and values the benefits of the students' association's representative role to the quality, life, and work of the college. It supports the association to gather evidence, influence decision making, and have an impact on student lives.
- The students' association supports all students to have a voice on decisions that affect them. The students' association actively engages with students with protected characteristics and with 'non-traditional' students to ensure it is representing different groups and that its democratic processes are accessible.
- Officers are elected in free and fair elections, receive training in their representative role, and are supported by skilled staff.
- The students' association has effective democratic and accountability structures. Class reps and student members are able to actively engage in the democratic processes and ensure that the association speaks in a legitimate voice.

Sustainable

A sustainable students' association is able to function effectively and deliver its core representative purpose, at the same or a higher level, year after year. There is continuity of organisational memory, skills, plans and structures.

Why Sustainability is Important

Student officers are elected for one year terms, and most will serve only two. Under the 1994 Education Act students may only serve two paid terms in total at an institution. This means that there is a high turnover of student leadership within the association. If a students' association is not sustainable it has to start from the beginning every year, which means that it can do very little to fulfil its representative purpose.

Sustainability ensures that all the work and resources put in to students' association development are not wasted, and that there is value for money, because the achievements of one year are not immediately lost. Because the students' association and the college are not continually 'reinventing the wheel' structures and activities can be reviewed and improved in an incremental and organic way.

Sustainable does not mean the association is self-funding; a students' association reliant entirely on commercial activity would be very unsustainable as funding could never be guaranteed, and commercial efforts would leave little time for the association to deliver its representative purpose. The college will need to ensure that the students' association has the resources and support it needs to function effectively. The support and advice needed by the association may vary year to year.

Sustainability of structures and resources makes future planning possible, and enables the students' association and college to embark on long term projects and services which improve the student experience.

Key Characteristics

- The students' association has the resilience and flexibility to respond to challenges and solve problems using its own structures and processes.
- The students' association has long term dedicated staff who ensure the organisation continues to work and develop year on year, who manage progression planning and knowledge transfer, and who develop partnership relationships with college staff.
- The students' association is not person dependent or vulnerable to changes in leadership. It is able to maintain its structures and processes, and maintain and increase its levels of effectiveness regardless of changes in personnel and relationships due to elections and staff changes. It is not reliant on the goodwill of individuals.
- The primary responsibility for supporting and advising the students' association is written into the role of a key senior college staff member.
- There is effective progression planning, handover, and induction for students' association officers.
- The students' association is able to make long term plans for the future. Student officers are able to leave a legacy, and incoming officers are able to build on the achievements of previous years.
- The students' association has continuity of funding and resources. These are taken into account during the college's planning processes.
- There is continuity of organisational knowledge, planning and activities, structures, and processes. This includes both internal students' association processes, partnership processes with the college, and resources.
- The students' association has a college who is committed to partnership working.

Themes

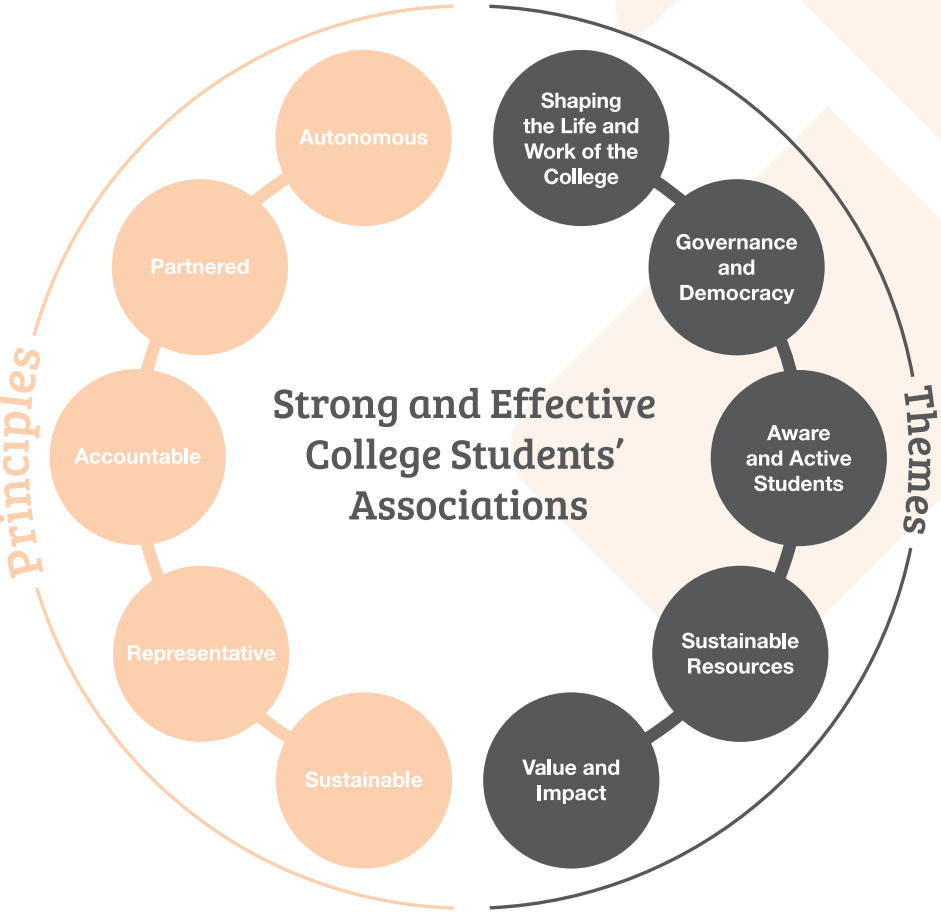
This section looks at the processes, procedures and structures – 'the scaffolding' - that enables a students' association to function. These are the practical steps and actions that students' associations need to take in order to embed the Principles and to represent the interests of their students effectively.

These development actions have been organised into five thematic areas:

- Shaping the Life and Work of the College.
- Governance and Democracy.
- Aware and Active Students.
- Sustainable Resources.
- Value and Impact.

Each Theme feeds into and enhances the quality of the others. Each Theme also contributes to all five of the Principles. Students' associations and colleges therefore need to move forward on all of them together.

This section introduces each of the Themes and briefly summarises the elements of development they cover. The Self-Evaluation and Development Planning Tool breaks each Theme down further into actionable measures.



Shaping the Life and Work of the College

This Theme looks at how colleges and students' associations can ensure that students, and the student voice, are at the centre of everything that colleges – and the sector – do. It looks at what actions and processes colleges and students' associations need to put in place if students' associations are to be able to act as co-decision makers within the college and be able to influence its direction for the benefit of students and, ultimately, the college itself.

It is about:

- Ensuring that the students' association is regarded as an integral part of the college's governance, quality development, and decision making processes.
- Ensuring that the students' association is fully involved at all levels of the college decision making processes.
- Developing partnership working relationships between the students' association, senior management, board members, and teaching and non-teaching staff.
- Developing the association into an autonomous partner who is able to identify issues, set the agenda for discussion, and act as a critical friend to the college.
- Recognising that the association is a democratic, representative organisation which must be able to campaign for the needs and interests of its members.
- Ensuring that the college engages and consults with students through the association and seeks where possible to collaborate with the students' association on matters of common interest.

Self-Evaluation Measures

- There is a strong culture throughout the college that the association's influence on college policies, strategies, and delivery is highly valued, that the association is a high priority, and that it should be supported to deliver its core purpose.
- Robust, equal relationships based on trust, respect, and frequent communication exist between the association officers and the college staff. They identify, develop, and agree shared values and a shared vision and objectives for the college.
- All college staff, from the Senior Management Team to teaching staff, understand and value the role of the students' association and have clear responsibilities for supporting and facilitating the association's work.
- The partnership has mutually agreed and established equal partnership structures and processes which are embedded in the appropriate documents. For example, a Partnership Agreement.
- Students' associations act as co-creators and co-decision makers and have input into every decision which impacts on the student experience.
- The students' association acts as co-creators in the review and development of the curriculum and learning and teaching.
- Students' associations set the agenda for discussion as well as responding to the college's priorities.
- Two members of the college's governing body are students nominated by the students' association.
- The students' association is able to represent their students' interests at both a local and a national level, if they choose, and to work with NUS Scotland to ensure this takes place.
- Skilled, engaged class reps contribute to a smooth flow of information from class reps to the student officers, enabling the development of a college-wide evidenced student voice; the class rep system is integrated into the college's quality processes.

Governance and Democracy

This Theme looks at how students' associations and colleges can ensure that the association has an effective and democratic governance structure in place which enables it to represent the interest of its student members. It looks at how students' associations, with the support of their colleges, can develop robust governance systems.

It is about ensuring that:

- The students' association has organisational autonomy and takes autonomous positions.
- The students' association has appropriate lines of accountability in place.
- All student members have the opportunity to influence the priorities, decisions, and actions of the association and to hold their elected officers to account.
- The students' association and college are able to monitor the governance structures to check they are functioning effectively.
- Governance and democratic processes are sustained year on year.

Self-Evaluation Measures

- Student officers make autonomous decisions - informed by student opinion - on the organisation of the association, its priorities, and its activities. Student members are able to influence and shape the students' association's agenda throughout the year.
- The college and students' association ensure that all major officer roles are elected through free and fair elections.
- The association is structured in a way that best enables it to meet the needs of its student members and to represent their interests to the college.
- Student officers are accountable to their student members for the decisions and actions they take on their behalf.
- The students' association has governance structures which complement and reinforce its democracy and which ensure the students' association is appropriately accountable. The college's governing body has confidence that the association is operating effectively and fulfilling its responsibilities.
- Robust procedures are in place to hold paid officers to account and to safeguard their autonomy and ability to act as a critical friend to the college.
- The governance structures and processes are embedded and sustained year on year.
- The association's governance and democratic structures are reviewed regularly to ensure they are functioning effectively.

Aware and Active Students

This Theme looks at how students' associations and colleges can ensure that all students are aware the association exists, that they understand its representative role, and that they are able to play an active role within it. It looks at how the association is able to develop an evidenced, representative student viewpoint.

It is about ensuring that:

- The students' association is visible to students and that it delivers accessible and relevant services which meet their needs.
- Students feel able to bring their issues and concerns to the students' association.
- The students' association is able to gather views from all student groups.
- Student members engage with the association's democratic governance structures enabling them to function effectively.
- Enthusiastic, motivated students take up leadership roles at all levels of the association, from President to Faculty Reps to event organisers, in order for the association to develop and deliver services and activities effectively.

Self-Evaluation Measures

- The students' association is highly visible in all aspects of students' college experience. All students are aware of their students' association, understand its role as their representative body, and know how to engage with it.
- A significant number of students choose to take part in association activities and fulfil their roles as members of a democratic organisation. This will range from attending association organised social events, bringing their concerns to the attention of the association, and voting in elections. Students are able to see the changes that result from their engagement.
- A significant number of students choose to take a more active role in the association. This may be through volunteering as a course rep, organising events, societies, and campaigns, or running for election.
- There is a pool of motivated students running for major officer posts each year, supporting the sustainability of the students' association.
- All students are able to engage with the students' association and make their voices heard. The students' association is able to understand the perspectives of different groups of students and represent them effectively. This includes students on all campuses, part time, evening, and distance learners, students with protected characteristics, and students with additional or complex support needs.

Sustainable Resources

This Theme looks at how colleges and sector agencies can ensure that students' associations have the resources and support they need to function and to deliver their core purpose effectively. Without resources, students' associations can't function.

It is about:

- Ensuring that the students' association has the resources its needs, particularly funding, paid officers, and students' association staff.
- Ensuring that officers and association staff have the skills they need in order to deliver their roles.
- Ensuring that all resources are managed in a way which supports both the association's autonomy and its partnership with the college.

Self-Evaluation Measures

- The students' association has a sustainable funding stream. The funding is at a level which enables it to have functioning organisational structures, to deliver its core representative purpose, and to have a positive impact on the student experience and the life and work of the college.
- There is an agreed process and timeline by which the students' association budget is negotiated and signed off.
- The students' association has robust financial management processes.
- The students' association has dedicated, long term staff who provide continuity, sustainability, and a stable skills base which enables the development and operation of an effective students' association.
- The students' association's major office holders are able to focus on their representative role. They have time to plan ways to increase the effectiveness of the students' association, to engage with hard to reach student groups, to attend college meetings and to build relationships with college staff and, where relevant, the college's regional strategic body.
- Volunteer officers and volunteers in general play a valuable role in the association, increasing its capacity, ensuring it has officers who are also current students, enabling students to get involved at all levels and stimulating interest in the major association offices.
- Student officers are equipped with the skills and knowledge they need to carry out their role effectively. There is an effective handover and induction process for new officers.
- Students' association has a dedicated social or office space.

Value and Impact

This Theme looks at how students' associations can prioritise and plan activities that meet the needs of their students and deliver positive change. It looks at how students' associations and colleges can evaluate and measure the partnership's success and ensure that students' associations represent students and have a positive impact on their experience at college. A students' association's success is highly dependent on its college's actions, and so any evaluation of impact must evaluate the contributions of both partners.

It is about:

- Enabling the association to articulate how it is aiming to improve the lives of students, and to evidence and evaluate how well it is succeeding.
- Exploring the other forms of beneficial activities students' associations can deliver, over and above their core representative purpose, and being able to identify the students' association's own priorities.

Self-Evaluation Measures

- The students' association plans its aims and activities to respond to the needs of its students.
- The association has continuity and sustainability of vision and planning and the flexibility to respond to changing contexts and the priorities of newly elected officers.
- The students' association and college evaluate how effectively the students' association is representing students, delivering beneficial impacts to them, and carrying out its plan. They determine whether it needs additional resources and support, and how it can continue to improve and develop.
- The students' association and college demonstrate impact to students and external partners.
- The students' association acts on the evidenced voice of students to represent them and achieves change on their behalf.
- The students' association takes ownership of college services, or works in partnership with the college to deliver them, where students' association leadership can add value to the services.
- The students' association delivers direct services or activities which enhance the student experience. The students' association's core representative purpose is prioritised. These are not essential, and should not be prioritised over the students' association's core representative purpose.

Acknowledgements

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- South Lanarkshire College and Students' Association
- Forth Valley College and Students' Association
- North East Scotland College and Students' Association
- University of the Highlands and Islands
- Dundee and Angus College and Students' Association

We would also like to thank all those who attended the events, gave their inputs, and helped to create this Framework throughout the process.

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2. Quality Framework for the External Review of Scotland's Colleges (interrogative version) (Education Scotland, August 2012)
   https://www.educationscotland.gov.uk/inspectionandreview/about/collegereviews/index.asp

3. Code of Good Governance for Scotland's Colleges (Code of Good Governance Steering Group, December 2014)
   http://www.scottishcollegegovernance.ac.uk/code/cogg-home

4. SFC College Outcome Agreement Guidance 2015-16 (Scottish Funding Council, August 2014)
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   http://www.gov.scot/Topics/Education/UniversitiesColleges/17135/CollegeGovernanceReview/FEGovernanceReport

Website

For full framework and supporting documents see: saframework.co.uk



nus scotland
national union of students

Colleges Scotland

Scottish Funding Council
Promoting further and higher education

The Scottish Government
Riaghaltas na h-Alba

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Guidance Note – Conducting Externally Facilitated Effectiveness Reviews

Scope

1. The Code of Good Governance (2022) states that:

   D 24 The board must keep its effectiveness under annual review and have in place a robust self-evaluation process. There should also be an externally facilitated evaluation of its effectiveness every three to five years. The board should determine the timing for this externally facilitated review as part of the annual effectiveness review. The board must send its self-evaluation (including an externally facilitated evaluation) and board development plan (including progress on previous year's plan) to its funding body and publish them online.

2. The Board Member Development Framework published in November 2015 offered guidance to the sector on board training and evaluation in general. This Guidance Note builds on that and provides more detailed guidance on conducting an externally facilitated evaluation of board effectiveness.

3. Every board will be slightly different and at a different stage of its own development. It is important therefore that the evaluation focuses on the issues of most importance to the development of the board, but the review is also a mechanism to provide assurance to college funding bodies that the level of governance in each organisation is appropriate. It is suggested therefore that the output from an externally facilitated evaluation should be both a basic level of assurance relating to core governance requirements plus an agreed list of actions on areas that board members wish to develop their governance further.

4. This external evaluation process is not intended to duplicate routine work undertaken by internal auditors to assess the governance processes of the organisation either as part of the normal annual audit programme or in order to support the Annual Statement of Compliance in the annual report. Audit reports will however provide helpful background material and should be made available to the external facilitator if appropriate (see below).

Timeframe

5. External Effectiveness Reviews (EERs) should be carried between three to five years after the previous review.

6. The Board should determine the timeframe for the next external review as part of their annual effectiveness review, considering progress against the action plan that resulted from the previous review and the outcome of the annual effectiveness review. The timeframe should meet the governance related development needs of the board and should be responsive to the dynamic nature of governing as a process and may change year on year.

7. The timeframe should meet the governance related development needs of the board and should be responsive to the dynamic nature of governing as a process and may change year on year.

8. The CDN report **Overview of The External Governance Effectiveness Reviews For Scotland's Colleges 2020/21** highlighted that many college boards are 'in transition', and some college boards are in significant transition where several elements are in flux, including the appointment of a new Chair, new Principal, new Board Secretary and / or the appointment of significant numbers of new Board members. In such circumstances it may be advisable for the board to plan for the external review within a shorter timeframe, possibly at the three-year point.

9. For other boards, that might not be facing significant governance issues or challenges the timeframe might be longer, up to five years.

10. It is important that the funding body is kept informed of the board's plans. The time frame agreed by the board should form part of the annual self-evaluation and board development plan that is submitted to its funding body. This should also be published online.

Evaluation Process

11. It is suggested that the effectiveness review should cover the five sections of the Code of Good Governance:

- **Leadership and Strategy**
- **Quality of the Student Experience**
- **Accountability**
- **Effectiveness**
- **Relationships and Collaboration**

12. A board may choose to add to those topics if it so wishes. A summary of the detailed requirements covered in each section of the Code and two simple questions that a board may wish to use to evaluate itself are set out in Annex A.

13. The process of the review itself should include a number of steps:

	Process
1.	Board to agree the areas to be covered in the review (all sections of the Code as a minimum), the process and timescales required.
2.	Recruit the independent facilitator who is to provide external validation and agree the proforma or questionnaire to be used.
3.	Board members and senior staff who work closely with the board, provide their views to the facilitator on (a) board performance to date (b) areas for future development using a proforma/questionnaire. This process can be done in a range of ways including: i. A board workshop is held that results in an agreed summary of views; or ii. Members and senior staff complete the proforma/questionnaire and the facilitator summarises the results; or iii. The facilitator undertakes 1 to 1 interviews with some or all board members and staff based on the proforma/questionnaire.
4.	The facilitator pressure tests the views expressed at step 3 by, as a minimum: o Observing at least one board meeting. o Undertaking a desktop review of: o a sample of board and committee remits, minutes, agendas and papers. o a sample of corporate documents to examine alignment between corporate objectives, the objectives of supporting strategies such as HR, estates and finance and the performance information coming to the board and its committees. o the risk register and a sample of recent audit reports. o the current board and board member development plans, appraisal and induction processes and the skills matrix used. o recent staff, student or stakeholder surveys and any board responses. o any audit reports on governance that are used to underpin the Statement of Compliance in the annual report. o If step 3iii above is not chosen, conducting 1 to 1 interviews with a sample of board members and senior staff including a staff and student board member.

5. The facilitator draws up a draft report summarising the output for steps 3 and 4. The board is given an opportunity to discuss and comment on the facilitator's findings and to draw up an action plan for areas of development over the next 12 months.

6. A final report is provided by the facilitator to the board and the board chair writes to the relevant funding body as required by the Code of Good Governance.

External Facilitator

14. It is common across the public and private sectors for annual governance self-evaluations to be alternated every few years by an external review that is independent of the organisation and is used as a means of validating/calibrating the board's view of itself. A number of companies and individuals undertake this work. It is for each board to decide who it wishes to contract with but the successful person should meet the following minimum criteria:

    - A clear understanding of how to undertake an external governance review of the type required.
    - Independent of the board and the college/strategic body being evaluated.
    - Expertise in board governance with knowledge of college sector governance issues and the requirements placed on its boards.
    - An ability to provide rigorous challenge to the board while developing a constructive relationship with it.

15. Each board will agree the terms of the contract with their reviewer but, as a rough guide, if the reviewer were asked to undertake steps 3-6 above, this might require 5-9 days of their time (step 3iii may require more days if chosen).

September 2022

Code of Good Governance Criteria	Our performance in the last 12 months (including evidence)	Development required during the next year
LEADERSHIP AND STRATEGY 1. Board decisions and behaviour reflects the boards Code of Conduct and Nine Principles of Public Life. 2. We determine the vision, direction, educational character, values and ethos of the college. 3. Our performance management system is adequate, identifying KPIs and we monitor progress. 4. Relevant stakeholders are engaged in compiling the outcome agreement. 5. We provide leadership on ethics, equalities, diversity and staff welfare. 6. We have regard to the social and economic needs of our area.		
QUALITY OF THE STUDENT EXPERIENCE 1. The voice of students and the quality of their experience is central to our decisions including monitoring student surveys and any resulting action plans. 2. We have open ongoing engagement with students, working in partnership and encouraging a strong independent student association having regard to the Student Association Framework. 3. Our Student Association is adequately resource, operates fairly and in a democratic manner, fulfilling its duties; it has a written constitution that the board has reviewed in the last five years.		

Code of Good Governance Criteria	Our performance in the last 12 months (including evidence)	Development required during the next year
4. We are aware of and foster good relationships with partner organisations that help us provide coherent learning, including employability. 5. Mechanisms ensure effective oversight of quality and inclusiveness of learning.		
ACCOUNTABILITY 1. We fulfil our primary accountability to our funding body by: a. delivering our outcome agreement. b. fulfilling our statutory duty and terms of our grant. 2. We fulfil our accountability to students, public, employers and our community for provision of education that enhances social and economic wellbeing. 3. We manage conflicts of interest and disclose our register of interests. 4. Our decision making is transparent, informed, rigorous and timely and associated documentation is adequate. 5. Our scheme of delegation to staff and committees is clear and fit for purpose with appropriate two way communication with the board. We ensure: a. we have audit, remuneration, finance and nominations/appointments committees. b. the staff charged with advising each committee are clear. c. committee minutes go to the next meeting of the board.		

Code of Good Governance Criteria	Our performance in the last 12 months (including evidence)	Development required during the next year
6. We set the risk appetite, balancing risk and opportunity and this is known to senior staff. 7. We ensure sound risk management and supporting review systems. 8. The Audit Committee: a. Reviews the comprehensiveness, reliability and integrity of all our assurances on the governance, risk and control frameworks, engaging with internal and external auditors and monitoring any actions recommended. b. Members are all non-executive, objective and independent with at least one having recent relevant financial or audit experience. c. Can hold all or some of its meetings in private, meeting internal and external auditors privately at least once a year. 9. The Remuneration Committee: a. Members understand their role and are trained in it: the chair is not board chair. b. Implements a procedure agreed by the board for setting the principal's salary, including consulting staff and students. 10. We ensure our body's sustainability, complying with the SFC FM the SPFM, ensuring adequate reporting and monitoring and economic, efficient and effective use of our funds. 11. We ensure compliance with charities provisions.		

Code of Good Governance Criteria	Our performance in the last 12 months (including evidence)	Development required during the next year
12. As an employer we: **a. promote positive employee relations.** **b. ensure effective management: union partnerships.** **c. comply with the Staff Governance Standard.** **d. comply with any national collective agreements placed on us.** **e. ensure fair and effective staff management.**		
EFFECTIVENESS **1. The board chair provides leadership and ensures board effectiveness, working well with the principal and board secretary.** **2. Our board and committees have the right balance of skills, experience, independence and knowledge of the college to fulfil their role effectively.** **3. We abide by collective responsibility, taking decisions in the interests of the body and managing conflicts of interest appropriately.** **4. Staff and student members are treated as full board members.** **5. We have an open and transparent process for recruiting and setting the performance measures for our principal; staff and students can contribute to it.** **6. There is a clear understanding of the responsibilities delegated to the principal and the respective roles of the chair, board members and executive staff.**		

Code of Good Governance Criteria	Our performance in the last 12 months (including evidence)	Development required during the next year
7. The board secretary is: a. appointed by the board with the appropriate skills and experience and is not a member of the senior management team in any other capacity. b. available to advise all board members and committees and has adequate time to fulfil the role. 8. We have a formal and open board member recruitment process that reflects Ministerial guidance. 9. We have appropriate arrangements for student and staff member recruitment. 10. All members undertake training tailored to their needs (including committee training), new members receive formal induction tailored to their needs and there are records of training. 11. We review the board's effectiveness annually using a robust self-evaluation process, externally facilitated at least every three years.		
RELATIONSHIPS AND COLLABORATION 1. We work in partnership at a local, regional and national level to: a. secure coherent education provision in our locality. b. achieve commonly agreed outcomes. c. develop agreed priorities. d. address local needs as well as national priorities and specialisms.		

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CODE of GOOD GOVERNANCE for SCOTLAND'S COLLEGES

Guide for Board Members in the College Sector

Your essential guide to being a board member



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Introduction



This short guide provides an overview of the key things you need to know as a member of a college sector board in Scotland. It describes the context of the role, its key duties and responsibilities and it signposts you to other important information that you should be aware of.

Being a board member in the college sector in Scotland is a rewarding and fascinating role but it brings with it important obligations. This guide is designed to complement the Code of Good Governance for Scotland's Colleges and more detailed legal, financial, and good practice documents that exist by providing you with an overarching summary of the role and information on where to go when you need more specific guidance.

On being appointed to a board you become part of a national network of bodies responsible for delivering quality education across Scotland. In most parts of the country responsibility lies with a single **Regional College**:

- Ayrshire
- Borders
- Dundee & Angus
- Dumfries & Galloway
- Edinburgh
- Fife
- Forth Valley
- North East Scotland
- West
- West Lothian

In three parts of Scotland there is a **Regional Strategic Body** with a number of colleges assigned to it:

- Glasgow Colleges' Regional Board (City of Glasgow College, Clyde College, Kelvin College). This is the only part of Scotland with a Regional Strategic Body which has been set up as a separate organisation with only this role.
- New College Lanarkshire is the designated Regional College and Regional Strategic Body with South Lanarkshire College as the assigned college. The Regional Strategic Body is known as the Lanarkshire Board.
- University of the Highlands and Islands which delegates its Regional Strategic Body functions to the UHI FE Regional Board (Inverness College, Lews Castle College, Moray College, North Highland College, Orkney College, Perth College, Shetland College, West Highland College).

In addition, Sabhal Mòr Ostaig and Newbattle Abbey College are funded directly by the Scottish Funding Council and the University of the Highlands and Islands works with a number of other specialist and research partner bodies.

While some of the detailed references in this guide describe the situation for members of the boards of regional colleges rather than Regional Strategic Bodies or other types of colleges, the vast majority of the requirements and expectations set out in this handbook apply to all board members in the college sector. In multi-college regions, accountability arrangements may differ because of the role of Regional Strategic Bodies.

This guide has been produced by the national Code of Good Governance Steering Group. It will be reviewed periodically by the sector to ensure that it remains up to date.

What are you responsible for?

Colleges play a crucial role in the delivery of education and training to young people and adults of all ages in Scotland and are seen as a key means of improving the economic and social well-being of its people. To provide this service colleges work closely with local, regional and national bodies in both the public and private sectors.

Colleges are primarily funded through annual budgets awarded by the Scottish Funding Council (sometimes through a regional strategic body) but many colleges also earn income from providing tailored training services to employers and from applying for grants from a variety of bodies.

As a member of the college's board you, and your fellow board members, are responsible for ensuring the quality of the education provided, and also that it is delivered in a way that offers value for money. The board is the governing body of the college and has a legal responsibility to 'manage and conduct' the affairs of the college in such a way that its staff deliver the required services. However, as a non-executive member of the board (i.e. all board members except the Principal) you are not expected to be involved in the delivery of the services themselves – that is the job of the staff the board employs.

You must also ensure that your college has a students' association that is effective and properly run and that your college works in close partnership with it, while respecting its autonomy.

The governance role of your board is therefore vital and you and your college are required to abide by the Code of Good Governance for Scotland's Colleges.

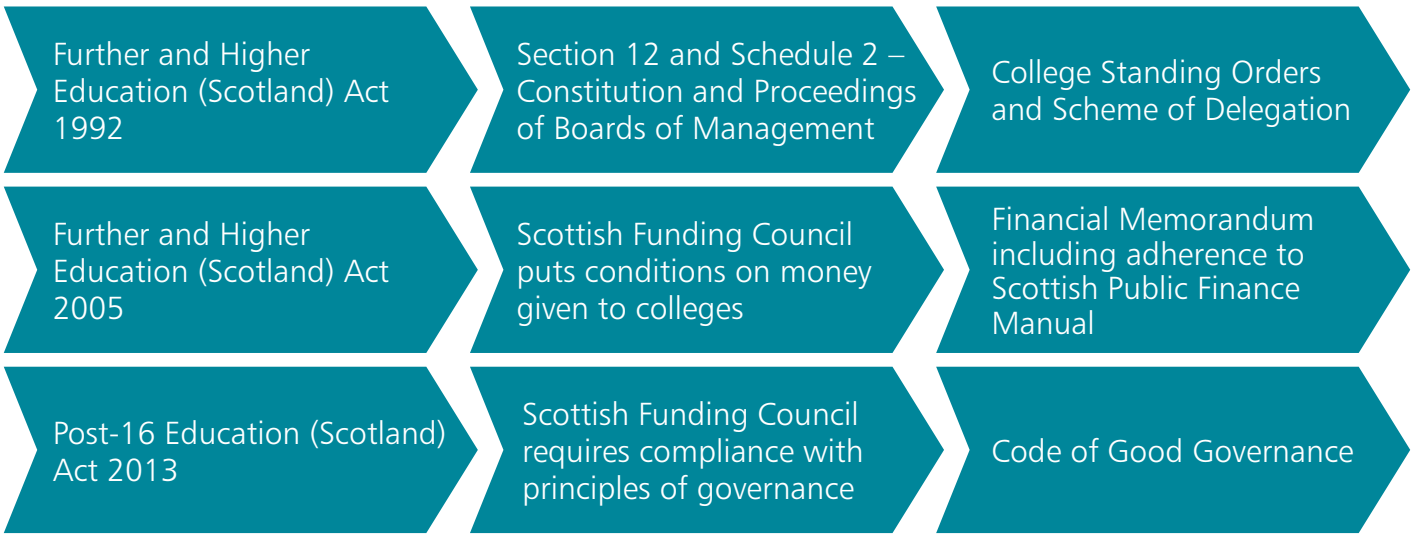
As the employer of the college's staff, the board also has a duty of care to its employees, abiding by its employment responsibilities and ensuring that the college has the right number of staff with the right skills to deliver the services you require.

If you are a member of the board of a regional college you have a number of additional legal responsibilities. These include ensuring your college does its best to understand and improve the economic and social well-being of your region and that it works with others to ensure that the education on offer is coherent and meets the skills needed in your area.

If you are a member of the board of an assigned college which is accountable to a Regional Strategic Body, your board is responsible for making sure that its plans have regard to the strategy developed by that body for your region.

Many colleges are also registered charities and if this applies to your college, as a member of its board, you are also a trustee of the charity. That brings with it a number of statutory responsibilities including the duty to act in the interests of the charity, subject to other legislation of course, and to ensure the college always operates in a way which is consistent with its purpose.

In addition to the diagram below, other examples of core legislation that affect colleges are Section 24 of the Further and Higher Education (Scotland) Act 1992 and Section 7(2) of the Further and Higher Education (Scotland) Act 2005 which govern situations of board failure and decisions on which bodies are funded by the SFC respectively.



The diagram above illustrates some examples of how legislation that governs the sector is translated into the college documents that you will come across.

In summary, most bodies in the college sector have been established by legislation and their key responsibilities can be tracked back to various Acts of Parliament. This is usually the basis on which the Scottish Funding Council or Scottish Government place requirements on the sector. Colleges must then turn these into day to day processes and procedures.

Detailed information on your responsibilities as a board member or charity trustee can be requested from your board secretary and more information can be found on the following weblinks:

http://www.sfc.ac.uk/
http://www.gov.scot/ - section on colleges
http://www.oscr.org.uk/charities/managing-your-charity/trustee-duties
http://www.legislation.gov.uk - Post 16 Education (Scotland) Act 2013
http://www.scottishcollegegovernance.ac.uk
http://www.scottishcollegegovernance.ac.uk - Code of Good Governance
http://www.saframework.co.uk/
UHI Governance Slides and Lanarkshire Order at:
http://www.collegedevelopmentnetwork.ac.uk/sec-board/secretary-to-the-board-dev-net

Who are you accountable to?

As a member of a college board it is your responsibility to ensure that you employ staff who are able to deliver on the functions of your college but you, together with your fellow board members, remain accountable for their delivery. In other words, the buck stops with you.

As an effective board member, you and your board colleagues must ensure that you understand who you are accountable to and take time to build and maintain relationships of respect and mutual understanding with them. In essence, you are in a position of trust, accountable for delivering a crucial service to those who are funding your college and who rely on it for education and training.

> “Take time to build and maintain relationships of respect and mutual understanding.

On occasion you may find that the requirements of those you are accountable to differ and it is hard to balance them. That challenge of ensuring proper balance, taking account of legal and financial responsibilities, is at the core of the job of being a board member.

Some of the key people or organisations that can hold you and your board to account are outlined in the diagram opposite.

Scottish Ministers

They are the primary funders of the college sector (via the Scottish Funding Council) and they are accountable to the Scottish Parliament for the delivery of education and training in Scotland. Scottish Ministers task the Scottish Funding Council with holding boards to account for delivery of their policies and associated legal requirements, including adherence to the Financial Memorandum and the Scottish Public Finance Manual. In addition, Ministers appoint the chairs of regional college boards and regional boards. They also approve the appointment of other members of those boards (except prescribed members, e.g. principal, staff and student members) and issue guidance on the appointments’ process. Ministers

Key accountability relationships



can, if necessary, remove board members if there is board failure.

Students

Anyone who attends your college as a student has a right to expect an appropriate quality of education or training in an environment which is safe and supportive. As it is hard for them to hold the board to account individually, you should make every effort to ensure that you listen to the views of students and keep their needs central to the work you do. The students' association is an important body for helping you with that task.

Scottish Funding Council

This is a public body set up by legislation and tasked by Scottish Ministers with overseeing the detailed relationship with the college and university sectors. This includes deciding on the funding given to individual regional colleges, Regional Strategic Bodies, and the few colleges funded outside the regional arrangements. The Scottish Funding Council also holds bodies in the college sector to account for their financial discipline and delivery of agreed outcomes, as well as the quality of education provided. These agreed outcomes are captured in an Outcome Agreement drawn up between the SFC (or Regional Strategic Body) and the college.

Regional Strategic Bodies

If your college is assigned, it is accountable to its Regional Strategic Body which has been set up by law to provide funding and ensure high quality and coherent further and higher education in the area. It is important that you and your board colleagues work in close partnership with the other colleges in your region and with the Regional Strategic Body.

Employees

The senior management team of the college will be responsible for day to day relations with staff but the board, as the employer, is accountable for ensuring the right policies are in place and implemented to fulfil its duty of care and wider responsibilities to its staff. This includes ensuring positive employee relations and trade union dialogue.

Employers/businesses

Any organisation that relies on the college to provide training and education for its staff will expect an appropriate quality of service. In addition colleges and Regional Strategic Bodies are expected to make a contribution to the wider skills requirements of their area by tailoring the curriculum, as far as appropriate, to the needs of local employers.

Regional partners and community

All publicly funded bodies in Scotland are expected to work with other partner bodies in order to make the most of their resources and to deliver real benefits for people and their communities. Colleges are expected to contribute to their local Community Planning Partnership and its Single Outcome Agreement and are expected to reflect its priorities in their own plans.

Scottish Parliamentary Committees

They have a duty to hold Scottish Ministers to account and, as part of that role, they may from time to time seek information and evidence from colleges. In addition, the Public Audit or the Education and Culture Committees of the Parliament will occasionally hold individual colleges to account if there is evidence of weak management or governance.

Your personal liability

As a board member you will not be held personally liable for any decisions taken by your board or college as long as any actions you take or decisions you make are done 'honestly and in good faith'. Your board secretary can give you more detailed guidance on this.

Accountability to other bodies

In addition to the people and organisations listed here, a college is required to operate within a range of other legal frameworks. These include the Office of the Scottish Charity Regulator, the Scottish Public Finance Manual's audit requirements, Freedom of Information legislation, the Ethical Standards Framework and, in some instances, company law. Ask your board secretary for information on bodies that hold your college to account. Further information on topics mentioned here is also available at the following weblinks:

http://www.oscr.org.uk/
http://www.audit-scotland.gov.uk/
http://www.gov.scot/ Scottish Public Finance Manual
http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx
http://www.scottish.parliament.uk/parliamentarybusiness/committees.aspx
http://www.gov.scot/Topics/Government/PublicServiceReform & Community Planning
http://beta.nusconnect.org.uk/nus-scotland/

What are your main duties?

Your overarching duty is to use your skills, knowledge and time to work as best you can with your chair, fellow board members and staff to ensure that your college fulfils its responsibilities. The power to make decisions and hold staff to account in order to deliver these responsibilities lies with the board as a whole and not any individual board member.

Basic duties of the board

Provide leadership, direction, and support to the organisation, setting its strategy and priorities.
Promote commitment to the values and ethos of the organisation including equality and diversity.
Ensure satisfactory delivery of the organisation's performance and financial objectives, high quality learning and outcomes, and a good learning experience.
Be accountable to and maintain the trust of key stakeholders.
Comply with relevant legal and financial requirements including the Scottish Public Finance Manual.
Ensure identification and control of the main risks to delivery of the organisation's responsibilities and business objectives.
Ensure staff have the appropriate skills, knowledge, culture and working environment.
Adhere to the sector's Code of Good Governance and the college's relevant Financial Memorandum.



As a non-executive body, the board's duty is to ensure the organisation delivers for its funders, students and region; the board does not undertake the day to day work but it ensures it has staff that can do this. The board's role is a strategic one which means it focuses on:

- Deciding what the organisation needs to achieve
- Monitoring delivery of those goals
- If the goals are not being achieved, understanding why and either ensuring the approach is adjusted or changing the goals.

Your board may have its own detailed role description and responsibilities but all boards fulfil the basic duties (see table left).

Your contribution to this collective effort will vary to some extent depending on your own skills and knowledge but all board members must fulfil the following basic requirements:

- Contribute to board discussions in a constructive and supportive manner, explaining your thinking and listening to others
- Scrutinise your organisation's performance and, when necessary, provide challenge to senior staff and fellow board members

- Give the required amount of time to the role, attending meetings unless previously agreed with the chair and be properly prepared for meetings
- Accept and share corporate collective responsibility once the board has made a decision on anything
- Devote time to understanding your organisation and its operational environment
- Take part in an annual board member appraisal process overseen by the chair, taking up opportunities for training to acquire and keep up to date your skills and knowledge
- Represent your board or organisation at college, regional or national events as required
- Build relationships of trust and mutual respect with other board members and senior staff
- Abide by any confidentiality requirements subject to Freedom of Information laws
- Uphold and promote the required standards of behaviour and values.

Staff and student board members will bring particularly useful knowledge and perspective to the board table and are full board members who have all the same rights and responsibilities as their board colleagues.

Financial stewardship

Pay particular attention to any novel or potentially contentious financial transactions such as the payment of severance or early retirement payments to staff. Additional information on what constitutes good practice when considering severance payments can be found at the following link:

http://www.audit-scotland.gov.uk/docs/central/2015/nr_150402_scotlands_colleges.pdf

Board member development framework

As a board member you have a duty to build your knowledge and skills and keep them up to date but you can expect to be supported. You are entitled to ask your chair, board secretary and senior staff to help you identify and build the knowledge and expertise required for the role. This might range from basic information about the role of a board member, information on the college itself, the views of its students and its staff, through to an appreciation of the wider external environment in which the college and its board need to operate.

Being on a college board is a complex job and the good board member never stops building their knowledge and expertise. For that reason the sector has a Development Framework to support board members with written material, newsletters, seminars, checklists, and workshops at college, regional and national level covering the four areas of required development: non-executive skills; organisational knowledge; team working and knowledge of the external environment.

Further information on the training and development support that is available to you can be provided by your chair and board secretary.

Four pillars of non-executive development



The sector's national membership bodies, Colleges Scotland and College Development Network, will also offer information and training. Please see:

http://www.collegesscotland.ac.uk/
http://www.collegedevelopmentnetwork.ac.uk/development-networks/cdn-home

How are you expected to behave?



When you accept the post of a board member or chair you take on a public role and you need to abide by the standards of behaviour expected of anyone in such a role. Your behaviour and how it is perceived by others will impact on the reputation of your board and organisation.

Code of conduct

All board members will be asked to sign your organisation's Board Member Model Code of Conduct. This is a legal requirement; the content of the Code is set down by Scottish Government and you need to make sure you read it and abide by it.

The Code of Conduct is based around Nine Principles of Public Life that apply to everyone who takes on a public role. These are outlined below.

While the chair, board secretary or senior staff should help you understand the Code and can offer advice, *the responsibility for adhering to it is yours alone*.

If anyone believes that you have breached this Code they can complain to the Commissioner for Ethical Standards who is entitled to investigate the circumstances. If s/he believes you have breached the Code s/he is required by law to refer the matter to the Standards Commission which is likely to hold a public hearing into the allegations. This can lead to suspension or even disqualification from the board if you are found to have breached the Code.

Your board secretary will give you more detailed guidance on the Code and you can find more information from the following links:

http://www.gov.scot/Model Code
http://www.standardscommissionscotland.org.uk/
http://www.ethicalstandards.org.uk/

NINE PRINCIPLES OF PUBLIC LIFE IN SCOTLAND

- Duty/public service
- Selflessness
- Integrity
- Objectivity
- Accountability and stewardship
- Openness
- Honesty
- Leadership
- Respect

Conflicts of interest

It is vital that board members are trusted to make decisions that are in the best interests of the college rather than being swayed by personal interests or loyalties. In order to maintain that trust you must register any personal interests that could be seen as conflicting with the interests of the college. Your board secretary will maintain this Register. In addition, if you are asked to take part in a board discussion or decision where you have a personal, professional or close family/friend interest which would or could be perceived by others to affect your judgement, you should declare that interest to the meeting and leave the room. The 'objective test' to use for judging if you have a conflict of interest is set down in the Code:

'...whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a member of a public body'.

Maintaining the trust of stakeholders is crucial and so remember that it is not just about behaving in accordance with the Nine Principles, you must be seen to do so too.

Conduct outside the boardroom

Upholding high standards of behaviour applies to any events or meetings you attend as a board member and even sometimes elsewhere if people know you are a board member. For example, make sure you maintain collective responsibility for board decisions, do not disclose confidential information and show respect for staff and fellow board members at all times.



Staff/board partnership

It is in the interests of both staff and board members to build a healthy relationship of mutual respect and understanding. Your job, along with your board colleagues, is to scrutinise and hold staff to account for delivery of the organisation's objectives but it is also to provide support, guidance and understanding.

Striking the right balance between these two aspects of the role requires judgement and wisdom. Board members who are too close to staff or who just assume that everything is fine may be failing in their responsibilities to funders or students. On the other hand, board members who are too confrontational or too quick to doubt staff will not gain the best from the partnership.

Here are a few tips to maintain a healthy professional partnership with staff:

- Take time to get to know staff as people, remembering that human beings take time to understand and trust each other.
- Maintain a professional relationship which is neither too close nor too distant.
- Remember that your job as a board member is to decide **what** the organisation needs to achieve; **how** it is delivered (the management and operational actions) are the responsibility of staff (although you will sometimes need to understand the how in order to decide on whether your goals are achievable).
- Make sure you and your board colleagues have a chance to discuss and contribute at an early stage to important matters for decision so that staff can take your ideas into account early enough when formulating recommendations for the board.
- Remember if you are unhappy with something staff are doing or a proposal they make, your first port of call is to check whether your fellow board members agree with you. Staff take instruction from the board as a whole, not individuals.
- A good board has a strong framework of performance management measures that track the things that board members care about and want achieved. Make sure your board is not simply measuring the things that are easy to quantify.



- Asking for assurance or evidence that the risks to your business objectives are properly controlled is not a signal that you distrust staff. All boards must have a framework or map of assurance information, often from independent sources, so that they get early warning of problems arising in their college.
- Often the most effective challenge is simply asking for more information or the evidence behind a recommendation or action proposed by staff; equally remember to explain yourself when you challenge something.
- Board members add most value to a board when they bring different experience, information or perspective. Remember to keep building your knowledge and broadening your perspective throughout your time on your board by taking advantage of networking and training opportunities.
- In addition to your relationship with senior staff, it is vital that you have mechanisms for keeping in touch with the opinions and experiences of staff throughout the college – not only the views passed on to you by senior staff.

Annual appraisals

When you are appointed to a board you become accountable for the proper use of millions of pounds of public money, the provision of good quality education and the employment of many staff. It is therefore unsurprising that the Code of Good Governance requires all boards to undertake a 'robust self-evaluation' of their performance each year, including the effectiveness of their board and committee chairs and individual members.

Those chairs and board members who have been appointed directly by Ministers will also be appraised annually by the Scottish Government. The conclusions of your board's own self-appraisal is likely to be one of the things that informs that process.

Your chair and board secretary will be able to give you more information on your appraisal process. Further information to help you fulfil your role as a board member can be found at the following weblinks:

https://www.gov.uk/government/publications/bribery-act-2010-guidance
https://www.gov.uk/equality-act-2010-guidance
http://www.legislation.gov.uk/ Public Interest Disclosure Act 1998
http://www.sparqs.ac.uk/students.php?page=72
http://www.gov.scot/ On Board publication

Who is there to help you?



Your first source of guidance and advice should be your **Board Chair**. Like you, they are accountable for the delivery of the organisation's duties but, in addition, they have responsibility for ensuring an effective and cohesive board. As part of those responsibilities you can expect them to help you by:

- Welcoming you to the board and making sure you receive adequate induction
- Providing feedback and advice on your contributions
- Ensuring you receive the support and training you require throughout your time on the board
- Encouraging you to make the most of your skills and experience in ways that contribute to board performance.

The **Secretary to the Board** is another key source of support and advice. Board secretaries have a duty to the board as a whole although on a day to day basis they generally report to the chair. They operate independently of senior staff of your college when undertaking this role. Their job is essentially to help the board fulfil its responsibilities and they will help you do this in a number of ways, usually including:

- Organising your induction programme
- Providing detailed information on your obligations and rights as a board member
- Helping you access the training and development opportunities that you require
- Advising you on the business processes used by your board and college.

The **College Principal** will be a fellow board member and is always your main source of information on the day to day business of your college. As the senior member of the executive staff and chief executive of the organisation they are accountable to the board for the delivery of its business objectives and they have responsibility for ensuring that the board receives the information and support it requires. As part of those duties they will help you in:

- Understanding the day to day business of the college, its staff and students
- Having opportunities to engage with staff and students and see the college in operation
- Overseeing the performance of the college
- Being alert to the risks, opportunities and constraints facing the college.

The **Senior Independent Board Member** on your board may also be able to assist you. This is an experienced fellow non-executive board member who will have been designated by you and your board colleagues and is expected, amongst other things, to act as an intermediary with the chair if it is ever required. If your board chooses to have a vice chair, they will sometimes be the same person.

The **Regional Strategic Body** (in multi-college regions) may also be able to offer you advice and information.

There are also a few key sources of advice and information available to you at a national level.

Colleges Scotland and **College Development Network (CDN)** are sector bodies set up by colleges in Scotland to respectively represent the



sector's interests and provide national training and development support to it. As a college board member you have access to the resources of both bodies including:

- Briefing notes and regular information on developments affecting the sector, nationally and internationally
- Seminars and conferences covering issues of interest to college staff and board members
- Training events, resources and good practice guides tailored for the needs of college board members.

NUS Scotland and **sparqs** (the publicly funded body responsible for supporting student engagement in colleges) can help you:

- Support the student members of your board
- Help other board members make the most of the contribution of student members
- Build a helpful partnership with your students' association.

The **Scottish Funding Council** is charged by Scottish Ministers with ensuring the effective and efficient performance of Scotland's college sector. It works closely with the senior staff of each college and Regional Strategic Body and its personnel meet board members from time to time. Its general oversight of the sector means that it can support board members in a number of ways, including:

- Publication on its website of a range of college performance information and good practice guidance which allows board members to compare their college with others
- Making available the annual Guidance Letters it receives from Scottish Ministers which provide the high level strategic context for colleges.

If, as a board member, you ever have serious concerns about the propriety, regularity or governance of your college, and these cannot be resolved satisfactorily with your board colleagues, the chair or senior independent board member, you should inform the Scottish Funding Council or, where relevant, your college's Regional Strategic Body.

A series of on-line resources providing **further sources of guidance** is being developed to help embed and operationalise the principles set out on the Code of Good Governance for Scotland's Colleges. This will be hosted on the CDN website.

Notes



GUIDANCE AND GOOD PRACTICE

for Charity Trustees

OSCR
Scottish Charity Regulator



June 2016
Scottish Charity Regulator

We have updated our guidance to reflect the practical experience of many Scottish charities. The law and charity trustees duties have not changed. What we are trying to do is set out in a more straightforward way what charity trustees must consider, so that they meet legal requirements, ensure that their charities are well-run, and avoid some of the common problems that can arise.

CHARITY TRUSTEE GUIDANCE

Charity Trustee Duties

OSCR
Scottish Charity Regulator

June 2016
Scottish Charity Regulator

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INTRODUCTION

SUMMARY

Charities make a big difference in all aspects of our society. Achieving this requires the hard work and commitment of thousands of charity trustees who give their time and energy to Scotland's charities.

Charity trustees are the people who have general control and management of the **charity** and are responsible for making sure that the charity works to achieve its **charity's purposes** (the reasons the charity exists).

The role of a charity trustee is extremely important and can be very rewarding. It is important for both you and your charity, that you know what your responsibilities are, and understand what you are expected to do. This guidance will help you do this.

What this guidance covers

The charity trustee duties are set out in The Charities and Trustee Investment (Scotland) Act 2005, referred to in this guidance as the **2005 Act**. We, the Scottish Charity Regulator, are responsible for regulating charities registered in Scotland and their charity trustees. This guidance explains what the 2005 Act says charity trustees must do or must not do.

The guidance does not cover all the laws that might be applicable to your charity. It covers the legal duties of charity trustees set out in the 2005 Act, with good practice recommendations and links to sources of advice.

As charities come in all different shapes and sizes, not everything in this guidance will apply to all charities registered in Scotland. In addition, many charities have to comply with other legislation and regulation, for example, charitable companies must also comply with company law.

Who is the guidance for?

This guidance is for:

- Anyone who is a trustee of a charity registered in Scotland.
- Anyone thinking of becoming a charity trustee.
- People working with, or advising, charity trustees.

How to use the guidance

In this guidance, we explore the **general duties** and **specific duties** of charity trustees in the 2005 Act. We give you examples of how these might work and share good practice from our experience as Regulator and from organisations in the charity sector.

Legal requirements are something that the law says you **must do** and are highlighted by the 'Legal Duty' icon:



LEGAL DUTY

Good practice is not required by law but is something you **could do** to help to make sure that your charity is doing its best to comply. What is good practice for your charity might depend on the size or type of charity you are. In this guidance, we try to give examples of good practice that will be applicable to many Scottish charities. Examples of good practice are highlighted with the 'Good Practice' icon:



GOOD PRACTICE

The **glossary** provides you with further information, definitions and descriptions of some key terms. We have highlighted these key terms in **bold purple type**. Clicking on these terms will take you straight to the glossary or the relevant section of the guidance.

The guidance is split into sections to help you find the information most relevant to you and your charity.

MORE DETAIL

Who are the charity trustees?

The people in charge of a charity and responsible for controlling its management and administration are its 'charity trustees'. You may call yourselves a committee, a board, Directors or something less formal but the 2005 Act says you are the charity's trustees and have legal responsibilities.

Charity trustees are the people who control and manage a charity. They are responsible for complying with the law.

There is no minimum age for charity trustees stated in the 2005 Act; however, we would expect charity trustees to be over the age of 16. If any charity trustees are under the age of 16, it would be best to get professional advice to determine if this is suitable and if there are any legal implications. Some model governing documents or specific legal forms (such as a company) state the minimum age of a charity trustee.

The 2005 Act states that charity trustees are the people who have "the general control and management" of a charity. However, there can be situations where people who are not formally appointed as charity trustees can exercise influence and even control over a charity. For example, an elected member or employee of a local authority attends meetings of the charity trustees. The 2005 Act makes the following two points clear:

1. Charity trustees are responsible for the charity and may not pass this responsibility onto anyone else as long as they remain a charity trustee.
2. Any person who, though not formally elected or appointed as a charity trustee, exercises some degree of control over a charity, may still be held legally liable as a charity trustee.

Who cannot be a charity trustee?

Some people are not allowed by law to be a charity trustee. Every charity trustee must make sure that he or she is not breaking the law by being a charity trustee.

Certain people are disqualified from acting as charity trustees:

- Someone with an unspent conviction for an offence involving dishonesty or an offence under the 2005 Act.
- Someone who is an undischarged bankrupt or has a Protected Trust Deed.
- Someone who has been removed under either Scottish or English Law or the courts from being a charity trustee.
- Someone who is disqualified from being a company director.

It is the responsibility of individuals to make sure they are not disqualified from being a charity trustee. Anyone who acts as a charity trustee whilst disqualified is guilty of an offence punishable by a fine or imprisonment, or both.

It is also the collective responsibility of all the charity trustees to make sure that none of them are disqualified. If you know that one of your fellow charity trustees is disqualified and you do not do anything about it, you could be in breach of your charity trustee duties.

If you are not sure if you can be a charity trustee, you can ask us.

Good practice is to:

- Get prospective charity trustees to sign a declaration before their election or appointment to confirm they are not disqualified from acting as a charity trustee.
- Consider whether any other checks need to be carried out. For example, a Disclosure Scotland check for charity trustees working with vulnerable beneficiaries.

In some cases a charity's governing document might say who can and cannot be a charity trustee, for example some charity trustees can only be chosen from the membership of the charity.

Waivers

A disqualified person can apply to us for a waiver to lift the disqualification. You can do this in relation to a specific charity, type of charity or for charities in general. We will take into account all the circumstances when deciding if we can grant a waiver of disqualification. If you want to apply for a waiver please contact us.

What does being a charity trustee mean?

Being a charity trustee means you are fully responsible for how your charity is run and what it does. It does not necessarily mean running the charity on a day-to-day basis and making operational decisions. Your charity might have volunteers or staff that do this.

All the charity trustees share responsibility

All of the group of charity trustees have charity trustee duties – no matter how small your charity is. A duty is something that you must do. The group shares the responsibility equally. No individual charity trustee, for example the Chair or Treasurer, has more responsibility than the other charity trustees do. We call this **collective responsibility**.

See the section on **charity trustee duties** for more details.

How many charity trustees should your charity have?

Your charity's governing document may set a minimum and/or maximum number of charity trustees needed and the minimum number required for a **quorum**. A **Scottish Charitable Incorporated Organisation** (**SCIO**) must have at least three charity trustees as stated in the SCIO Regulations. For other **legal forms** the law does not set a minimum number of charity trustees, but it is good practice to have at least three.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

Sources of help, advice and best practice:

- Local Third Sector Interfaces offer support to voluntary organisations.
- The Scottish Council for Voluntary Organisations (SCVO).
- You may also wish to consult a professional advisor. The Law Society of Scotland and the Institute of Chartered Accountants in Scotland may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The Association of Charity Independent Examiners can help you find a qualified Independent Examiner.
- HMRC will be able to help you with any questions you may have about tax.

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties: section 66 of the 2005 Act
- Disqualification from being a charity trustee and waivers: sections 69 and 70 of the 2005 Act
- SCIO provisions: the Scottish Charitable Incorporated Organisations General Regulations 2011

CHARITY TRUSTEE DUTIES

SUMMARY

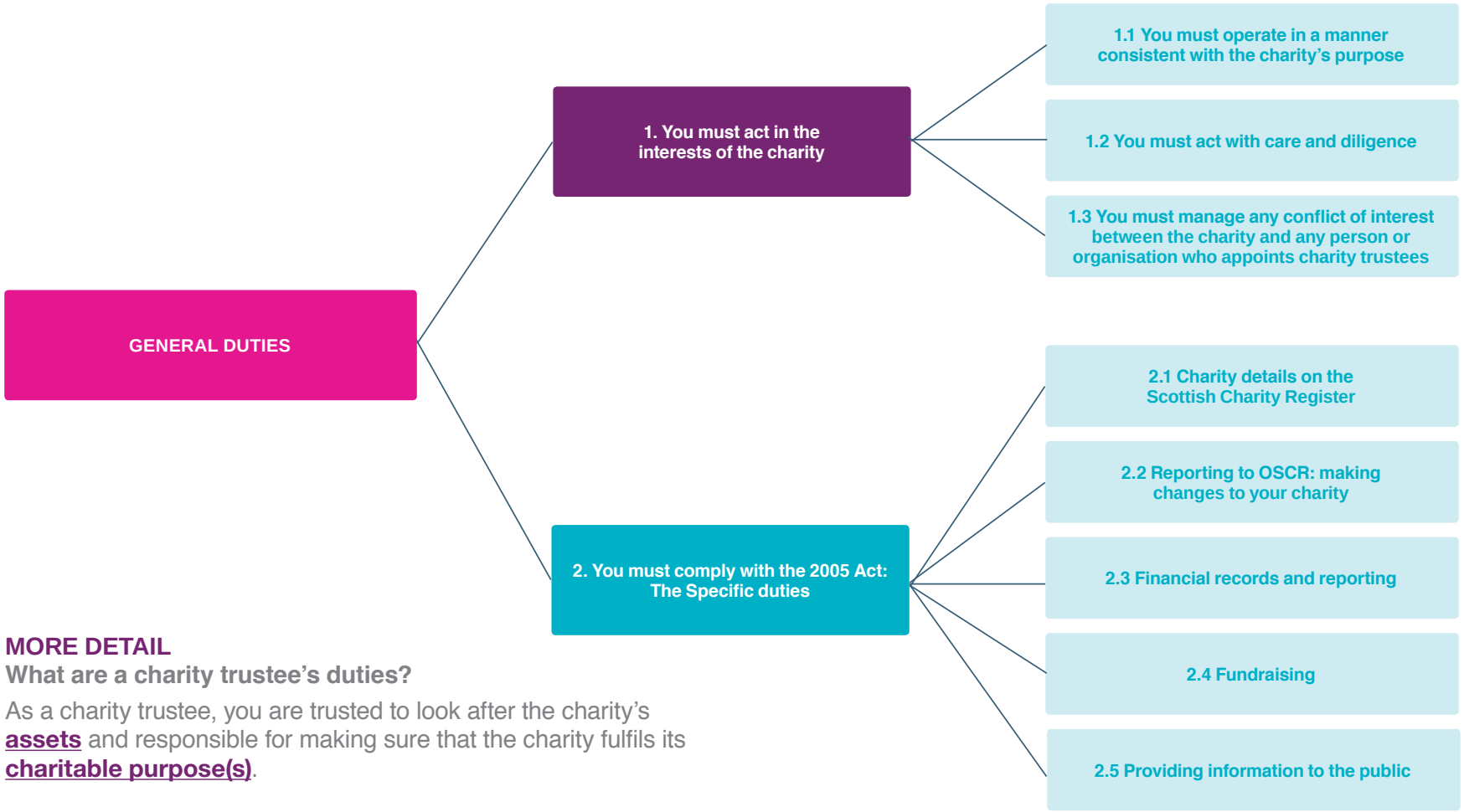
All charity trustees have legal duties and responsibilities under the 2005 Act. A duty is something that you must do, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the 2005 Act.

The general and specific duties apply equally to **all** charity trustees and to **all** charities registered in Scotland. All of the charity's trustees should work together to make sure that these duties are met.

We, the **Scottish Charity Regulator**, work with charity trustees to make sure these duties are understood and complied with. We also have powers to take action where we have concerns about particular charities and their trustees. See our Inquiry Policy for more details.

In this section we explain what the duties are, what the law says you must do and ways that you can meet the duties.

General duties for all trustees



MORE DETAIL

What are a charity trustee's duties?

As a charity trustee, you are trusted to look after the charity's **assets** and responsible for making sure that the charity fulfils its **charitable purpose(s)**.

The charity trustee duties under the **2005 Act** set out a broad framework that all charity trustees must work within.

1. YOU MUST ACT IN THE INTERESTS OF THE CHARITY



- You must do what is best for the charity and its **beneficiaries**, not what is best for you, your friends or family or your business interests.
- You must put the needs of the charity before the needs of any other organisation that you are involved with, either in a personal or professional capacity.

Where you are faced with a decision where one option would be in your interest and the other in the interest of the charity you must choose the option that is in the charity's interest. To do this properly, you must declare what your interests are, know when it would be better that you did not take part in certain decisions and take appropriate action.



Good practice

- The charity has an up to date list (**register of interests**) detailing where charity trustees work and any other organisations they are involved with.
- The charity has a conflict of interest policy that says what charity trustees should do if there is a conflict of interest and what happens if a charity trustee does something wrong. See the **conflict of interest section** for more details.
- There is a policy that makes it clear when a charity trustee, their family or the organisation they work for can be paid, for services provided to the charity. See the **remuneration (payment) section** for more details.
- The charity has the power in its **governing document** to remove charity trustees if they are in serious or persistent breach of the charity trustee duties, or a breach of the requirements of that governing document.

If you are at all unsure, you should declare a potential conflict and the other charity trustees can decide whether it poses a conflict.

1.1 You must seek in good faith to ensure the charity operates in a manner consistent with its purposes



Your charity's purposes are set out in your governing document (often called a constitution, trust deed or articles of association).

- A charity's purposes are what your charity has been set up to achieve and are the reason your charity exists.
- You must always act honestly and reasonably ("in good faith") when acting for the charity and make sure that the activities advance its charitable purposes.
- You must make sure that the charity's assets are used to advance its charitable purposes. This can be done directly by using an asset to undertake activities or indirectly by investing assets to generate funds for the charity.
- You should understand what the governing document says and means.
- You must make sure that the other charity trustees and people working at the charity follow the rules in the governing document.
- When the charity makes plans, the charity trustees must make sure that any decisions or actions fit with the purposes and powers set out in the governing document.

Good practice



- Every charity trustee has the most recent copy of the charity's **governing document**.
- Every charity trustee gets an induction into the charity and their role when they start.

See the **governing document and meetings section** for more details.



1.2 You must act with care and diligence

The role of a charity trustee will vary from charity to charity. Some charities have staff who are responsible for daily operations, with the charity trustees providing strategic oversight and governance. Other charities are run solely by charity trustees on a voluntary basis. Whatever your charity trustee role involves – hands on or strategic oversight – the decisions you make about the charity should show that you are acting with care and diligence that is reasonable to expect of a person who is managing the affairs of another person.

When you are dealing with the charity's affairs, you should do so as carefully as you would if you were looking after someone else's affairs, for example a relative or a friend.

For example:
You might decide to invest some of your own money on a high risk investment with potentially large returns. You would not be able to do that with the charity's money.

- As charity trustees, you must all work together to advance the charitable purposes, including making sure the charity is run properly, responsibly and lawfully.
- You have to protect your charity including its beneficiaries, assets and reputation. This means understanding and assessing potential risks to make sure decisions are as robust as possible.
- You should have a clear, up-to-date picture of how the charity is doing financially, and the charity should have procedures in place to reduce any risks. All the charity trustees should know what **assets** the charity has and understand any restrictions on how money can be spent. The charity must keep clear financial records and share them with all the charity trustees. See the **charity finances section** for more details.
- You can use the charity's money to get professional advice for the charity if needed.

For example:
If the charity was thinking about undertaking trading activities, it would be appropriate to seek professional advice around setting up a subsidiary company to carry out that trading.

Or

If the charity employs staff, some professional advice on HR matters might be needed.

As charity trustees:



- You must make sure that the charity has enough money to pay staff and other costs.
- You must make sure that any staff are treated properly and fairly.
- You must make sure that the charity's name and any logo are not used without the charity's permission.
- You are responsible for making sure your charity complies with any relevant laws. For example, health and safety, employment, data protection and equality laws.

Good practice



As charity trustees, you should:

- Review and update the charity's plans regularly.
- Agree financial budgets and monitor financial performance.
- Review the performance of the charity and, where necessary, agree steps to improve performance.
- Regularly compare what the charity proposes to do with the governing document to see if anything needs to be changed or updated. See our Making Changes to Your Charity guidance if the governing document needs to be amended.
- Make sure there are rules in place which set out what happens if the charity trustees cannot agree with each other. For example, set out in a **code of conduct**.
- Provide charity trustee induction packs and review the training needs of the charity trustees every year.
- Agree expectations of charity trustees' attendance at meetings and what to do if these are not met.
- Keep up to date with changes in the law that might affect your charity, and make changes when necessary.
- If your charity employs staff make sure there are rules in place to deal with any grievances raised by the charity's staff and/or volunteers. For example, an internal complaints procedure.
- Treat volunteers properly and fairly.
- Report any notifiable events to OSCR, and/or other relevant regulators.

You do not need to be a legal expert yourself but you should know the basics and the laws that apply to your charity's activities and where to get help if you need it. See the **Sources of help, advice and best practice** for details of organisations that can help.

1.3 You must manage any conflict of interest between the charity and any person or organisation who appoints trustees

LEGAL DUTY

As a charity trustee, you are required to act in the interests of the charity.

A conflict of interest which arises between a charity trustee and a person or organisation that appointed them is called an 'appointment conflict'. Where such a conflict arises, the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- Disclose the conflict to the charity and
- not participate in any discussion or decision on the matter.

For example:
A charity trustee appointed to the charity by a Local Authority would need to put the interests of the charity first, above those of the Local Authority.

Conflicts of interest can and do happen in all shapes and sizes of charity, so we have a separate section of the guidance for how to manage them. See the **conflict of interest section** for more details.

Charitable companies also need to be aware of what Company law says about conflicts of interest.

2. YOU MUST COMPLY WITH THE 2005 ACT

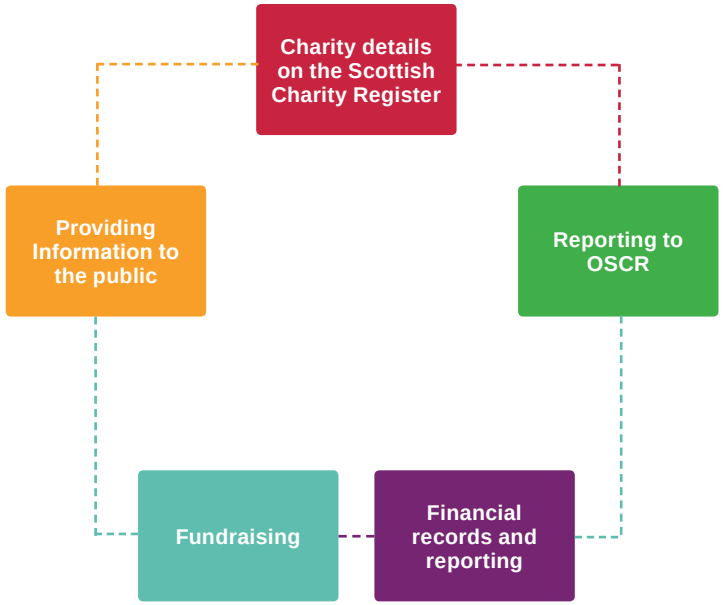
LEGAL DUTY

- You must understand the legal requirements of being a charity.
- You must comply with the specific duties of the 2005 Act.

See the **specific duties section** below for more information.

Specific duties for all charity trustees

There are **specific duties** in **the 2005 Act** that all charity trustees must meet. You might delegate the practical details of these duties to your charity's staff, volunteers or professional advisers (if you have them), but you, as charity trustees, are responsible for making sure the specific duties are met.



2.1 Charity details on the Scottish Charity Register



Your charity must give us the information we need to keep the **Scottish Charity Register** accurate and up to date.

This means making sure that we hold the latest information about your charity:

- The name of the charity.
- The principal office or the name and address of one of the charity trustees.
- The charity's purposes.

Your charity **must tell us** as soon as possible about any changes to the **principal contact** for the charity.



2.2 Reporting to OSCR: Making changes to your charity

If you want to make any changes to your charity, first check what the rules set out in your **governing document** say. If you do not follow these rules then any decisions you make could be invalid and we may refuse our consent to make the changes if it is required.

Under the 2005 Act you must seek our consent before making any of the changes listed below. You need to ask for our **consent** at least 6 weeks (42 days) before you plan to make the proposed change.

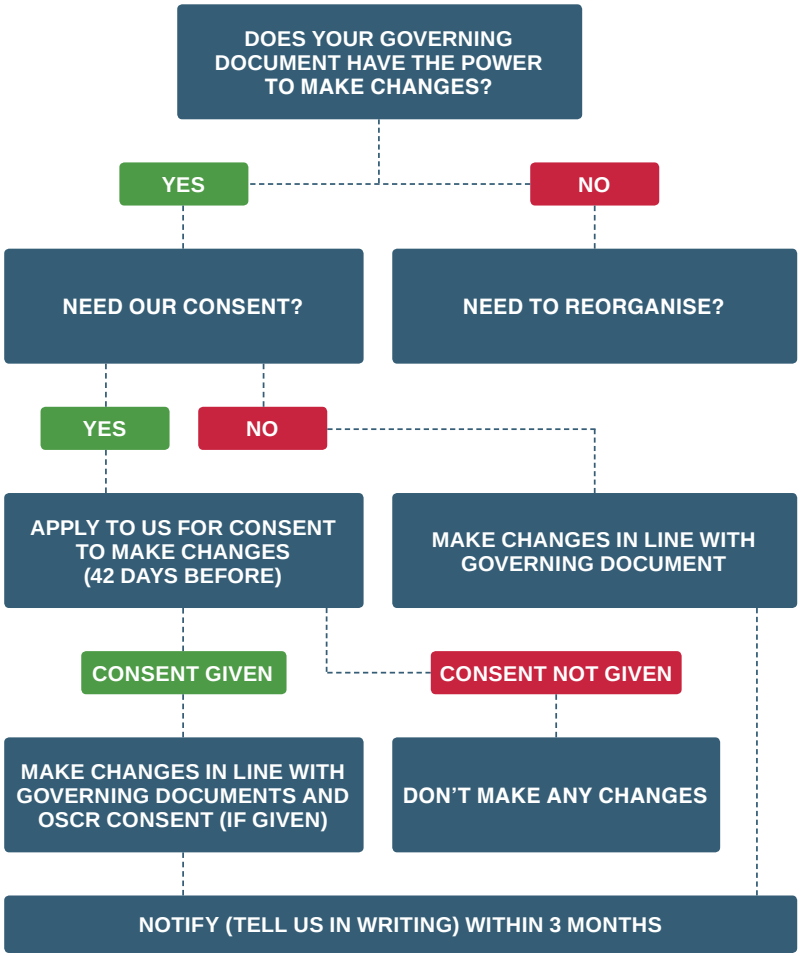
Changes that need our consent are:

- Changing the name of the charity.
- **Winding up or dissolving** the charity.
- Amending the **objects and purposes** of the charity.
- Amalgamating the charity with another body.
- Applying to the court to change purposes, amalgamate or wind-up.
- Changing your charity's **legal form**.

If we consent to the change you must notify us (tell us in writing) once you have made the change. Where a change to the governing document has been made you should send us the updated version.

If you have the power to make other changes to your governing document (that do not need our consent) you must tell us what the changes are and send an updated version of your governing document **within 3 months** of the changes being made.

See the flow chart below to decide if you can make changes and, if so, how. See our Making Changes to Your Charity page for more details.



2.3 Financial records and reporting

Every year, every charity must:

- Keep proper accounting records.
- Prepare a statement of account, including a report on its activities, at the end of each financial year.
- Have the statement of account independently examined or audited.
- Send a copy of the accounts, along with the **annual return**, to us, the Scottish Charity Regulator.

You must keep a copy of the accounting records for at least 6 years. Other laws or funding arrangements might require you to keep records for longer.

See our **charity finance section** and Charity Accounting page for more details.

2.4 Fundraising

As charity trustees you are responsible for taking control of how your charity raises funds.

You must make sure that anyone who professionally raises funds for the charity has an agreement that says how much they will get paid to do it.

See our Fundraising page for more details.

2.5 Providing information to the public



There is information that you must to give to the public:

1. You must state your charity's name and Scottish charity number (SC0[zero]xxxxx) on your charity's website home page and all external documents, like letters, emails, adverts, posters, invoices and other publications. See the **publicising that you are a charity section** for more details.
2. You must give a copy of your **governing document** and/or the latest examined or audited **accounts** to anyone that asks for them. The reason a person asks for a copy of these documents does not matter; provided it is a reasonable request, you must give them a copy.

Good practice is to publish your governing document and accounts on the charity's website, if you have one.

What is an unreasonable request?

What is reasonable or unreasonable will depend on the circumstances of each case. It is important to understand that it is the request that must be unreasonable not the reasons for the request or the identity of the requester.

The examples below are when a request might be unreasonable:

- A request for copies of accounts and/or governing document that are already publicly available, in which case you should tell the person where to get the information, for example on the charity's website.
- A request for documents that the person already has.
- A request for the documents within an unreasonable timescale, for example within 24 hours, or in an unreasonable format.

If you decide a request is unreasonable you should be able to justify your decision, bearing in mind that a concern could be raised with us about it. Where appropriate, you should work with the requester to fulfil their request.

Can you charge a fee for the request?

Yes, you can, but only for any administrative costs in producing and sending a copy of the document, for example, the cost of photocopying and postage. You cannot charge for the costs associated with preparing the accounts or staff time taken to copy and post the documents.

Many charities publish their governing document and annual accounts on their own websites. You can put a link to your accounts on your entry in the **Scottish Charity Register** by emailing us the link and your charity's details.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have a concern about your charity.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

These organisations can help with some or all of the duties.

- Local Third Sector Interfaces offer support to voluntary organisations.
- The Scottish Council for Voluntary Organisations (SCVO).
- You may also wish to consult a professional advisor. The Law Society of Scotland and the Institute of Chartered Accountants in Scotland may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The Association of Charity Independent Examiners can help you find a qualified Independent Examiner
- HMRC will be able to help you with any questions you may have about tax.
- Consent Flowchart pdf

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

Specific duties:

- Charity details: section 3 of the 2005 Act
  Reporting changes:
  - sections 10 – 12 (consent for change of name)
  - sections 16 – 17 (consent for changes including purposes)
  - sections 39 – 43D (reorganisation)
- Financial reporting: sections 44 – 45 of the 2005 Act and The Charities Accounts (Scotland) Regulations 2006 as amended
- Fundraising: sections 79 – 83 of the 2005 Act
- Charity trustee general duties: section 66 of the 2005 Act
- OSCR's powers and duties following inquiries: Sections 29 – 35 of the 2005 Act

GOVERNING DOCUMENTS AND MEETINGS

SUMMARY

Knowing what your governing document says and understanding what it means, having well-run charity meetings and keeping good records of the meetings are all important factors in making sure that you are carrying out your general charity trustee duties set out in the 2005 Act.

MORE DETAIL

Governing documents

A charity's governing document is the written statement that sets out its purpose, structure and describes how it will operate. The trustees must make sure that the charity complies with its governing document, which usually contains key information about:

- What the charity exists to do (its charitable purposes).
- What powers it has to further its charitable purposes.
- Who the trustees are, how many charity trustees there should be and how they are appointed and removed.
- Whether the charity has any members and if so who can be a member.
- Rules about charity trustees' and members' (if any) meetings, how they are arranged and conducted and how decisions are made and recorded, etc.
- How to change the governing document.
- How to close the charity down.

The name given to you charity's governing document will depend on its legal form.

The most common legal forms for charities are:

LEGAL FORM	TYPE OF CONSTITUTION OR GOVERNING DOCUMENT
Company	Articles of association
Unincorporated association	Constitution
Trust	Trust deed
Scottish Charitable Incorporated Organisation (SCIO)	SCIO constitution
Community Benefit Society	Rules

Some governing documents are made up of a combination of items, such as standing orders, rules or supplemental deeds. The key to any governing document and to the overall governance of the charity are the charity's purposes, which are the reason the charity exists.

LEGAL DUTY

Charity trustees must make sure that:

- The activities of the charity advance the **charitable purposes** set out in the governing document.
- The charity follows the rules of its governing document.
- The charity's **assets** are only used to advance the charitable purposes set out in the governing document.

Good practice



- Every charity trustee has an up-to-date copy of the governing document. You should know what it says and understand what it means.
- All new charity trustees get an induction pack which includes the governing document and up-to-date information about the activities of the charity.
- When planning what the charity will do, you make sure the plans fit with what the governing document says you can do.
- You read and review the governing document regularly to make sure it is still fit for purpose. You should do this at least once a year.

Can you change your governing document?



If you do want to make changes to your **governing document**, you need to follow any rules about changes set out in your document. This flows from the general principle that charities have to follow the specific terms of their governing document.

If you want to make any changes to your governing document see our Making Changes to Your Charity page. You must tell us of any changes that you make and in some cases ask for our **consent** first.

For example:
If you want to change the wording of charitable purposes in your governing document, you will need to get our consent first. This is because any changes to the charitable purposes could affect your ability to meet the charity test and to continue to be a charity.

Some charities do not have the power in their governing document to make changes. If you are not sure whether you have the power to make changes you should get professional advice.

If you do not have the power to make changes you can apply to us to reorganise your charity. See our Charity reorganisation page for more details.

Charity Trustee Meetings

Charity trustees have collective responsibility for running the charity. Meetings are often the best way to make decisions and make sure that you keep all of the charity trustees informed.

When and how meetings will be held will usually be set out in your governing document. You must follow the rules set out in your governing document about meetings. If you do not, any decisions you make could be invalid and you will not be acting in accordance with your charity trustee duties.

What should a governing document say about meetings?



If your governing document does not mention meetings or is not clear about how meetings should be run, then you may want to add some rules about:

- When you have meetings and how often you have them.
  - Plan your charity trustee meetings so you can meet at the right time to look at the **charity's accounts** before submitting them to OSCR.
- What type of meetings you have.
  - For example charity trustee meetings, annual general meetings (AGMs), membership meetings.
- Who is entitled to vote at meetings and how **proxies** can be appointed.
- Who can attend the meetings (just the charity trustees or members too?) and how many people have to be there to form a **quorum.**

NOTE: if you are a SCIO or a company and want to use telephone or video conferencing you must state this in your governing document.

A SCIO's governing document is a constitution.

A company's governing document is its Article of Association. For more information on the rules about meetings in company law, see the Companies House website.

- What you do if charity trustees have a **conflict of interest**.
- How you minute meetings and how long you keep records of the meetings.
  - It is a good idea to decide how long you will keep records of meetings and decisions, bearing in mind any other legal requirements you have to follow. For example, financial records must be kept for 6 years.
- What to do if a charity trustee misses too many meetings and/or does not follow the rules.
- What your governing document says about removing charity trustees.

What else do you need to think about for meetings?

- Make sure everyone knows about the meeting – when and where it is.
  - Make sure you know who should or can attend the meeting.
- Make sure everyone has the agenda and relevant papers – know what you are going to be talking about!
- Do not be afraid to ask questions if you do not understand or something is not clear – you all have responsibility, not just the chair or the treasurer.
- Follow the voting rules in your governing document – if you do not, any decisions you make could be invalid.
- Assign someone to prepare minutes of the meeting – note the decisions taken and the reasons for them.
- Make sure the minutes are agreed and approved at the next meeting.
- Have clear action points – know who is responsible for them and for following up on them.

See **Sources of help, advice and best practice** for agenda and minutes templates.

Quorum
This is the minimum number or proportion of people (members, charity trustees or their proxies) that can vote and must be present or represented at a meeting to make the proceedings and any decisions taken valid.

For example:
Your governing document says that 50% of trustees must be present at a meeting. If you have 10 trustees in total but only four are present at the meeting, then you will not have a quorum and the meeting will not be valid.

If you are having trouble always getting enough charity trustees to form a **quorum** then you may need to recruit more charity trustees or look at alternative ways of holding meetings such as telephone or video conferencing. You may need to amend your governing document to do so.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have a concern about your charity.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- Trustee Meetings: Agenda template
- Trustee Meetings: Minutes template
- SCVO model governing documents
- SCVO guide to Board meetings
- OSCR: Who's in charge

The Charity Commission for England and Wales:
- Charity trustee meetings: 15 questions you should ask
- Charities and meetings (CC48)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties and misconduct: section 66 of the 2005 Act.
- OSCR's powers and duties following inquiry: sections 29 to 35 of the 2005 Act.

CONFLICT OF INTEREST

SUMMARY

As a charity trustee, you must put the interests of the charity before your own interests or those of any other person or organisation including those responsible for your appointment. Where you cannot do that, there may be a conflict of interest.

A conflict of interest exists when your duty to act in the interests of the charity conflicts with:

- The interest of the person or organisation that appointed you as a charity trustee (an "appointment conflict"), or
- Conflicts with your own personal or business interest in relation to that matter (a "personal conflict").

Conflicts of interest can and do come up: it is how you manage them that is important

In this section we explain how you as a charity trustee can prepare for potential conflicts of interest, what you could do if a conflict arises, and highlight common examples of conflicts of interest.

MORE DETAIL

What is a conflict of interest?

A conflict of interest is any situation where there is a potential for a **charity trustee's** personal or business interests (or the interests of someone they are connected with) to be different from the interests of the **charity**. In this situation, it may sometimes be difficult for the charity trustee to make an impartial decision. However, with proper handling charity trustees can overcome these difficulties.

There are two main types of conflict of interest:

1. **Appointment conflict:** This is a conflict of interest which can arise between a charity trustee and the person or organisation which appointed them.



For example:
A charity trustee appointed by a local school, church or Local Authority and a decision is required on a matter which affects both the charity and the other organisation.

2. **Personal conflict:** When you might not be able to do what is best for the charity because it conflicts with your own personal or business interest in relation to that matter.

For example:
When a charity is considering a contract with a business and one of the charity trustees is also a director of that business.

In both cases, the **charity trustee duties** require you to act in the interests of the charity.

Where there is an 'appointment conflict' the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- disclose the conflict to the charity; and
- not participate in any discussion or decision making on the matter.

It is important that even where there appears to be a conflict of interest, whether it materialises or not, you take appropriate steps to manage the conflict and be seen to be acting in the best interests of the charity.

The term 'conflict of interest' can cover a range of situations and may also be called a 'conflict of roles' or 'conflict of duty'.

For example:
- a charity trustee could get direct financial benefit from a decision the charity has to make
- a charity trustee is discussing a contract or business arrangement with an organisation their family have links to
- a charity trustee is also an employee of a company that the charity is doing business with
- an employee, or potential employee, of the charity is connected to one of the charity trustees.
- being a trustee of two or more charities that are competing with each other for the same grant(s) or funding
- being a trustee of a charity that gives out grants and a trustee of another charity applying for one of these grants
- being a trustee of a charity that is part of a group structure and being on the board of the parent charity
- being a trustee of a charity where you are also a service user or customer
- a charity trustee applying for a job in the charity.

Examples of what is not a conflict of interest:
- being a charity trustee and donating funds to the charity
- being both a volunteer and a trustee of charity.

What should you do if there is a conflict of interest?

Having a conflict of interest does not necessarily mean that anyone has acted improperly. As charity trustees you all have a **collective responsibility** to manage conflicts of interest and to act clearly in the charity's best interests.

There are four key steps to dealing with conflict of interest.



1. Identify:

- Have a conflict of interest policy so that all the charity trustees (and potential charity trustees) understand what could be a conflict of interest.
- Know what the charity's **governing document** says about conflicts of interest.
- Set up a **register of interests** for all charity trustees and make sure it is kept up to date.
- Have conflict of interest as a regular agenda item at the beginning of the charity trustee meetings.
- Declare any potential conflict of interest as soon as you become aware of them.

2. Manage:

- Have clear procedures in place that state what should happen if there is a conflict of interest and how the charity trustees will deal with it. For example, the conflicted charity trustee might withdraw from the meeting or part of the meeting.
- If the charity has a **conflict of interest policy** make sure it is applied in all situations where there is a conflict or potential conflict. The policy should also distinguish between the two different types of conflict, 'appointment conflicts' and 'personal conflicts'.
- Decide if the person(s) with a conflict of interest should be involved in any discussions or decisions about the situation – if it is decided they should be involved be prepared to justify that decision.
- Where there is a conflict, make sure that decisions are taken in the charity's interests.
- Make sure that your charity can still carry on its business and still form a quorum even if a number of charity trustees have to withdraw.

3. Record:

- Keep a written record of the situation and what the charity did about it, including:
  - Recording who the conflict affected.
  - Recording when the conflict was identified and declared.
  - Recording what was discussed and decided.
  - Recording who withdrew from the decisions and how the remaining charity trustees made a decision in the best interests of the charity.
  - Maintaining the charity's register of interests.

4. Learn:

- Learn from the experience, make improvements to the charity's policy and procedures and where necessary seek professional advice.
- Where conflicts of interest arise frequently and a number of charity trustees must withdraw from discussion, the charity should consider whether the make up of the Board is preventing the effective management of the charity.
- Make sure the charity's governing document has the power to remove charity trustees who are in serious or persistent breach of **the 2005 Act.**

If members from a linked organisation dominate the make-up of your Board of charity trustees this can lead to a risk of recurrent conflict of interest. How you manage this risk is very important.

What should be included in a conflict of interest policy?

A conflict of interest policy should set out:

- What a conflict of interest is and the conflicts that are likely to be relevant to your charity.
- The distinction between a "personal" conflict and an "appointment" conflict.
- When and how the charity trustees should declare a potential conflict of interest.
- What the charity's governing document says (if anything) about conflicts of interest.
- When a conflicted charity trustee should withdraw from decision making and the procedures for making decisions in those circumstances.

SCIOs must have procedures for dealing with any conflict of interest within their SCIO constitution.

See the **sources of help, advice and best practice** section for links to example conflict of interest policies.

When should a charity trustee withdraw from a meeting?

When a charity trustee is aware of a conflict of interest and they feel unable to put the interests of the charity first, they must withdraw from the discussion or decision concerned.

It may also be appropriate for charity trustees to withdraw from discussions in other circumstances of conflict of interest. Where they do not, they should be able to demonstrate that they have acted in the interests of the charity.

The charity trustees should make sure there is a record of who took part in the discussions and decisions. Where there is a conflict and the conflicted charity trustee still takes part, how this is in the best interests of the charity needs to be explained.

For example:
A Board made up mainly of service users is asked to vote on an increase to the fees that service users pay to the charity. It is not practical for all the service user trustees to withdraw as there wouldn't be enough trustees to form a quorum and make a valid decision.

The trustees need to put their own interests to one side and choose what is best for the charity. A clear record should be taken of the decision and why it was made.

However, if there is only one service user on the Board then it might be felt that they should withdraw, which would be easier for the person concerned and does not affect the quorum.

What should you do if another charity trustee has a conflict of interest?



All charity trustees must act in line with the duty to **protect the interests of the charity**. This means that you and the other charity trustees must take collective responsibility to make sure that a breach of charity trustee duties is corrected and not repeated.

If you know another charity trustee is conflicted, and it is not declared, it is your duty to speak up.

If there is serious or persistent breach of duty by an individual, the other charity trustees should look at whether the governing document has the power to remove the charity trustee.

What happens if a conflict of interest is not managed properly?

As charity trustees you must try to make sure that any breach of duty regarding conflict of interest is corrected and not repeated. Where there is a serious or persistent breach the charity trustee should be removed, providing the governing document allows. If the other charity trustees fail to do so, this could be considered **mismanagement or misconduct** in the administration of the charity.

As regulator, we are required to identify and investigate any apparent misconduct and, where appropriate can take protective action. See our Inquiry Policy for more details. Our response will be proportionate; where a charity trustee has acted honestly and reasonably.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have a concern about your charity.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- OSCR: Who's in charge?
- SCVO: how to avoid conflicts of interest

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

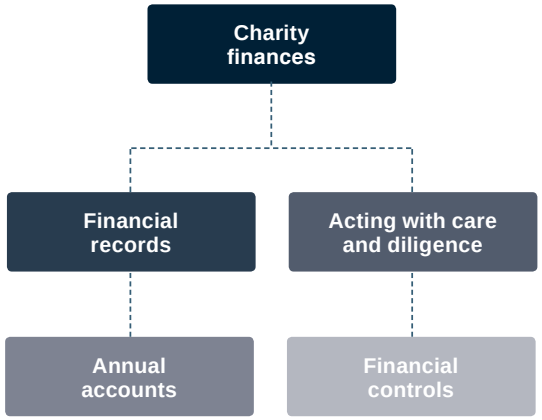
- Charity trustee general duties and misconduct: section 66 of the 2005 Act.
- SCIO conflict of interest provision in constitution: The Scottish Charitable Incorporated Organisations General Regulations 2011.

CHARITY FINANCES

SUMMARY

In this section, we explain the legal requirements and good practice for protecting your charity's finances. The section splits into two areas of charity finance:

1. **Financial Records:** Charities have specific duties under the **2005 Act** to maintain financial records, prepare annual **accounts** and submit these accounts to us. It is the responsibility of all the charity trustees to make sure that these requirements are met.
2. **Financial Controls:** The 2005 Act requires you, as charity trustees, to act with **care and dilligence** when managing the affairs of the charity. This means that you must make sure you have suitable controls over financial procedures to protect the **assets** of the charity.



MORE DETAIL

LEGAL DUTY

Financial records and accounts

The **2005 Act** requires that as charity trustees, you must:

- keep proper accounting records
- prepare a statement of accounts, including a report on the charity's activities, each financial year
- have the accounts independently examined or audited
- send a copy of the accounts to us
- keep the accounting records for 6 years.

Anyone who has given time or money to a charity will have an interest in seeing its resources used properly. A well prepared and informative set of accounts will give members, funders, donors and anyone else with an interest in your charity a good picture of the activities and how well you are using the resources.

What are proper accounting records?

Proper accounting records must detail day by day the money received and spent by the charity, the assets and liabilities of the charity and show the financial position of the charity at any time.

How you keep the records will depend on the size and complexity of your charity. For small charities, a manual record or simple spreadsheet may be enough. Larger charities may need specialist accounting software.

However you keep the records they should be easy to follow and kept up to date so that the financial position of the charity is clear at all times.

What do I need to include in the accounts?



What you need to put in the accounts is set out in the Charities Accounts (Scotland) Regulations 2006 (as amended). These Regulations detail the different types of accounts that can be prepared and what you must include in them.

The Regulations also contain specific rules for reporting on the activities of the charity, as well as the financial information. This activities report is called the **Trustees' Annual Report**.

For more details, please see our guide to the accounts Regulations.

External scrutiny of the accounts



All sets of charity accounts must be scrutinised by someone outside of the charity. This means that an independent person checks that the information in the accounts is a fair reflection of the charity's financial position.

The type of scrutiny required is dependent on the charity's turnover, **governing document** and the requirements of any funders.

For more details, please see our Independent Examination: Guidance for Charities and Independent Examiners.



What financial information do you need to submit?

Every year you need to send us:

1. the **Annual Return**
2. **statement of accounts**
3. **trustees' annual report** and
4. **external scrutiny report**

We use the annual return to gather information about your charity. Depending on the income of your charity, we may ask more questions about the charity's finances and how it operates.

Note: Charitable Companies, Charities registered in England and Wales and Registered Social Landlords.

You will also need to follow the accounting requirements of the other regulators. See our accounts guidance for more information.

Financial controls

As a charity trustee, you have a duty under the 2005 Act to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

This means that you must act with a higher level of care than you do with your own finances and affairs. You must make sure that you protect the charity's resources and that you do not put the assets of the charity at risk. One way of doing this is to make sure that there are proper **financial controls** in place.

What do we mean by financial controls?

Good financial controls are tools for making sure that you manage the charity effectively and meet your legal duty to act with care and diligence.

Financial controls are the systems you have in place to make sure that you protect the **assets** of the charity. The controls aim to identify and manage the risks of theft or fraud, loss and **conflicts of interest**.

- **Reviewing accounts**

A major part of financial control is to review the accounts. A useful way to do this is to compare the amounts spent on individual expense categories since they were last reviewed with what was expected to be spent in that period. Ideally, a budget will be prepared and approved by the charity trustee board before the beginning of the financial year. Then the actual results can be compared to the expected or budgeted results, making it easier to investigate any differences or 'variances'.

In a small organisation it may be appropriate just to compare the expenditure of one period with that of the corresponding previous period, for example the month before.

- **Controls offer protection**

It is important to remember that being a charity trustee is a significant responsibility. Where controls are correctly set up and used they will both protect the assets of the charity and you as a charity trustee.

What areas do you need to consider?

- **Collective responsibility**

All of the charity trustees have responsibility for the financial records, not just the treasurer. As charity trustees, it is important that you all have a basic understanding of the finances of your charity and can quickly identify if there are any problems.

The financial information should be discussed at meetings to make sure that everyone knows the charity's financial situation. For example, finance should be a recurring item on the agenda of every board meeting. It is good practice that someone other than the treasurer also has an understanding of how the charity's financial records are kept.

- **Finance Committee**

Some organisations find it helpful to set up a finance sub-committee of charity trustees and advisors with financial or accounting knowledge. They have additional meetings to spend extra time on detailed finance matters, like budget preparation, and then report back to the charity trustee board. Having a committee does not absolve the other charity trustees of their collective responsibility but can be helpful in clarifying matters that are submitted to the full charity trustee board.

Separation of duties

Where possible, you should separate out the administrative tasks so that no one individual has sole responsibility for the financial transactions of your charity. We call this '**separation of duties**'.

For example, when your charity makes a purchase the same individual (whether it is a charity trustee, employee or volunteer) should not be responsible for arranging the purchase, authorising the payment and making the payment. In very small charities, it can be difficult to have a separation of duties. You should make sure that checks are regularly carried out on financial records and transactions to compensate for this.



Written procedures

Your financial procedures should be documented. This will help where charity trustees change regularly and if something unexpected happens such as a treasurer being taken ill.

You should review your procedures annually to make sure they are still fit for purpose, being followed correctly and understood.

Controls over cash

Where possible, it is best to avoid the use of cash, as it is harder to maintain a trail of cash and much easier for theft or fraud to happen. You should encourage donations to be made by bank transfer, cheques or online and you should make payments in this way wherever possible.

If you do receive cash donations, two people should count these and then make sure the money is banked as soon as possible. You should issue receipts for the donations and not make any payments out of this cash before taking it to the bank.

You should keep petty cash to a minimum. Receipts should be required for all items of petty cash. Access to the petty cash box should be restricted. It should be held in a secure place, counted and agreed. A cash book should be kept to record what goes into the petty cash and what is paid out of it. Each time there is money added to or taken out of the petty cash it should be recorded in the cash book with supporting documentation, such as a copy of a donation receipt or expenditure receipt. The amount in the petty cash box should be regularly counted and compared to the balance in the cashbook to make sure that all money is properly recorded and accounted for.

Banking

Banking is an important part of the financial controls. When considering your charity's banking arrangements, you should think about the full range of services that you need and look for a bank that can provide them.

Banks will ask for details of all signatories and usually all the charity trustees, so be prepared to have this information available. You should be aware of the terms and conditions of your banking arrangements and advise the bank immediately of any changes that may affect these for example, a change of signatories. Bank statements should be agreed to the accounting records regularly, at least monthly, and someone other than the person who is otherwise involved in the banking process should review these reconciliations.

Bank reconciliations should be reviewed at trustee meetings. In smaller charities, bank statements and transactions may be checked at trustee meetings.

- **Cheque payments**

Cheques should have a minimum of two signatories to make sure that it is not just one person who can make payments. You should have systems in place to check invoices and authorise payments before they are made.

You should not sign cheques where the amount and the recipient are not already filled in (blank cheques). You should ensure that the details on the cheque stub match the corresponding cheque. If this is not done the cheques may not be accounted for correctly and might result in lost or stolen money.

- **Automated payments**

Automated payments from the bank account such as Direct Debits and Standing Orders should be subject to the same controls as other payments. A review of all such automated expenditure should take place regularly.

Internet banking and online payments: it can be more difficult to develop tight financial controls for bank transfers as access may be restricted to a single log in. You should consider making a rule that two people have to be present when large transactions are being processed.

- Some banks allow charities to provide more than one person to authorise payments (dual authority). You should ask your charity's bank for details of their dual authority options so that you can consider what is right for your charity.
- **Credit cards:** credit cards are often required to pay for travel or purchase items online. There should be internal control procedures to cover this including credit limits, authorisation procedures and review and authorisation of credit card statements.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have a concern about your charity.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- Guides to Independent Examination
- A Guide to Charity Accounts
- The Charity Commission for England and Wales have produced detailed guidance on internal financial controls that are applicable to Scottish charities.
- Banking for charities

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Financial reporting: sections 44 – 45 of the 2005 Act and The Charities Accounts (Scotland) Regulations 2006 as amended

REMUNERATION (PAYING CHARITY TRUSTEES AND CONNECTED PERSONS)

SUMMARY

The **2005 Act** sets out when charity trustees (and people who are connected to them) can receive payment from the charity for services provided to it. A charity must not pay charity trustees, and people who are connected to them, unless the charity can satisfy the conditions set out in the 2005 Act.

This section explains what those conditions are and gives examples of when it is and is not appropriate to pay **charity trustees** and **people connected** with them.

The rules on paying charity trustees do not apply to reclaiming expenses, like train fares to get to a charity trustee meeting.

MORE DETAIL

What is remuneration?

Remuneration in the **2005 Act** means any payment received for services provided to the charity either as a charity trustee or under a contract of employment with the charity, and includes **people connected** with charity trustees. It is any such payment from the charity's funds. Payment may be received in the form of a salary, payment for services or in the form of other benefits such as a company car, medical plan or pension plan.

For example:
Out of pocket expenses paid to charity trustees, for instance travel expenses to attend meetings, are not considered remuneration, although receipts for expenses are still required.

In this guidance, we refer to **remuneration** as 'payment' or 'paying charity trustees'.

What are the rules on paying charity trustees?



The **2005 Act** states that **you must not pay** a **charity trustee**, for services provided to the charity, either as a charity trustee or under contract, **unless** you meet **all** of these conditions:

- there is no restriction to the payment in the charity's **governing document**

- less than half the total number of charity trustees are getting paid (directly or indirectly) from the charity
- there is a written agreement between the charity and the charity trustee
- the written agreement sets out the maximum amount to be paid, and
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the charity trustee for that maximum amount.

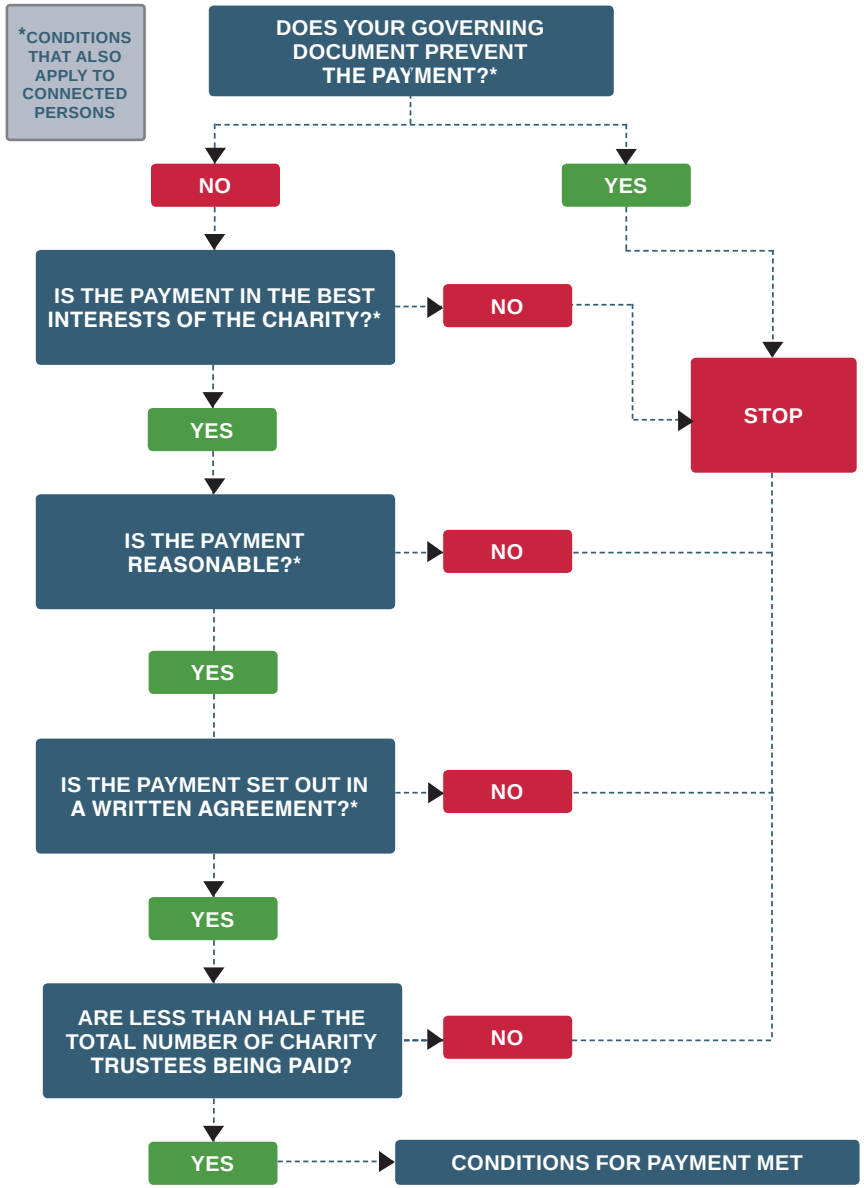
If your governing document says that the charity trustees cannot be paid, then even if the other rules from the 2005 Act are met, you will not be able to pay any of the charity trustees.

Examples of when it might be reasonable to pay a charity trustee, provided the conditions above are met:

- When a local tradesman is a charity trustee and provides services to the charity at a competitive rate.
- When employees of the charity are also charity trustees because of their position: for example, as chief executive or because they are elected as a staff representative.

An indirect payment to a charity trustee is where two or more charity trustees are connected and one of them is being paid.

See the flowchart opposite to see if a payment meets the conditions.



What are the rules for paying a connected person?



The **2005 Act** states that **you must not pay** a person connected to a charity trustee for services provided to the charity, **unless** you meet **all** of these conditions:

- there is no restriction on the payment within the charity's governing document
- the payment is reasonable
- there is a written agreement between the charity and the connected person
- the written agreement sets out the maximum amount to be paid
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the connected person for that amount.

What happens if you want to pay charity trustees and/or connected persons for services provided to the charity?

In order to pay a charity trustee or connected person, provided the exemptions do not apply, the conditions detailed above must be met. If a decision is taken to pay a charity trustee or connected person, you should keep a record of the charity trustees considerations and must enter into a written agreement with them setting out the maximum amount to be paid.

What is a reasonable amount?

What is reasonable will depend on the circumstances. The important thing is that whatever the decision is, the interests of the charity come first and you can demonstrate that.

The process for deciding the level of payment must be open and transparent and **must not** involve the charity trustee who is to receive payment or is connected to the person who will.

You could compare payment amounts with similar roles at other charities or the wider market place.

If the payment appears to be excessive, there may have been a breach of charity trustee duties, which would be **misconduct**.

Good practice



- Have a payment policy that makes sure any payments to charity trustees and/or connected people complies with the conditions set out in the 2005 Act
- establish a register of charity trustees' interests
- obtain at least two separate quotes for services
- clearly minute the decision that paying a particular charity trustee or a person connected to them for services is in the charity's interest.

If you are not sure if a charity trustee, or connected person, can be paid for services you should get professional advice.

What else do you need to consider about payments?

If you are thinking about employing a charity trustee or connected person, you must make sure that:

- there is a genuine need for a paid position or for the services to be provided
- as charity trustees, you assess any potential risks, manage any conflicts of interest and are open and transparent about the decision
- any charity trustee who has a **conflict of interest** is not involved in the decision
- no one individual takes a decision about employment on their own

- any payments to charity trustees are declared in the **annual accounts**.

We have particular concerns where the charity trustees of a charity are the people benefiting from it as private individuals, or where those benefiting most are people connected with the charity trustees such as family members or companies in which the charity trustees have an interest.

Where there is such **private benefit** we may need to consider whether it causes the charity to fail the **charity test**. This is the legal test as to whether or not your organisation can be, or remain, a charity.

What is an honorarium?

An honorarium is generally a small amount of money paid to someone for a service; unlike a fee or salary, an honorarium is not contractual but is a gift.

We would not expect honoraria payments to be paid on a regular basis as a matter of course. As charity trustees, you should review the situation every year and only award a payment if there are exceptional reasons for doing so. We would expect you to clearly explain and record your decision.

In order to make payment of honoraria to a charity trustee or a connected person the remuneration conditions detailed above would have to be met.

Charities registered in England and Wales and Registered Social Landlords

If you are also registered with the Charity Commission for England and Wales you will also need to follow their rules on payments to charity trustees.

If you are a cross-border charity and you are paying charity trustees in line with the law of England and Wales you will need to take into account the rules under the 2005 Act and whether those rules allow the payment in question.

Registered Social Landlords must follow the rules set out by the Scottish Housing Regulator about payments to charity trustees.

Trustee indemnity insurance

You are allowed to use your charity's funds to provide your charity trustees with indemnity insurance.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have a concern about your charity.

EXCEPTIONS

These rules for paying charity trustees and connected persons do not apply if:

- there is a provision authorising payment of the charity trustees (and/or connected persons) in the charity's **governing document** and this was in force on or before the 15 November 2004
- there is legislation or an order made by the Court of Session that allows charity trustees (or connected persons) to receive payment.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- Meeting the Charity Test – Private Benefit section
- Payment Flowchart pdf

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Remuneration: sections 67 and 68 of the 2005 Act
- Trustee indemnity insurance: section 127 of the Public Services Reform (Scotland) Act 2010

PUBLICISING THAT YOU ARE A CHARITY

SUMMARY

Making sure that people know you are a charity is one of the **specific charity trustee duties** set out in the **2005 Act**. You must provide certain **charity details** in certain **external documents** (hard copy and electronic). What you need to tell people and how you need to do this are set out in specific Regulations. This section sums up what you need to do, and gives suggestions about how best to do it.

MORE DETAIL

All charities registered in Scotland must publicise the fact that they are a charity. **Charity trustees** must make sure that certain **charity details** are on all of the charity's **external documents** listed below.

These rules also apply to any third parties who publish documents on behalf of your charity, for example legal advisors, accountants, or organisations working on your behalf.

LEGAL DUTY

What do you need to tell people?
You need display your **charity's details**. This means:

- your charity's name, as entered in the **Scottish Charity Register**
- any other name your charity is known as (the 'known as' name)
- your **Scottish Charity Number** (SC0[zero]xxxxx)
- the fact that you are a charity, if this is not already clear from your name.

It is good practice to state that the charity is regulated by OSCR.

GOOD PRACTICE

For example:
'Monkstown After School Club (known as Monkey Club) is a Scottish Charity, SC098765, regulated by the Scottish Charity Regulator (OSCR)'.

If you are a **Scottish Charitable Incorporated Organisation (SCIO)**, you need to tell people:

- the SCIO's name as entered in the Scottish Charity Register
- if the name does not include the terms 'Scottish Charitable Incorporated Organisation' or 'SCIO', the fact that it is a SCIO.

As a SCIO, you do not have to include your Scottish Charity Number but we strongly recommend that you do.

For example:
'Monkstown After School Club (known as Monkey Club) is a Scottish Charitable Incorporated Organisation (SCIO) regulated by the Scottish Charity Regulator (OSCR), Scottish Charity number: SC098765'.

Which external documents need to have these details?



You must put the charity's details on:

1. all your external letters and emails
2. your website's home page
3. all your adverts, notices and official publications
4. documents that ask for donations for your charity
5. bills your charity issues
6. direct debit an d standing order mandates
7. all invoices and receipts
8. annual accounts
9. educational, promotional or campaign materials
10. legal conveyance documents about land rights (buying, selling or transferring land)
11. contracts.

In addition to above requirements, it is good practice to put charity details on:



- all your website pages
- your charity's social media accounts
- campaigns or adverts that are online, on the radio or television
- business cards
- signs and displays.

Add the 'charity registration' logo to your website to help you show the public that you're entered in the Scottish Charity Register.

Why do you need to tell people that you are a charity?

It is important that the people you come into contact with, the public, funders, contractors and other organisations, know and can check that you are a genuine **charity**.

It also gives people confidence in supporting your charity and knowing that we regulate you.



When do you have to put your charity's details on documents?

If you are a SCIO, you must have the details on your **external documents** as soon as possible after your charity is registered. For all other charities, you must put the charity details on your external documents as soon as possible and no later than **6 months** of becoming a charity.

What happens if you do not put the charity details on documents?

The rules about having these details on the documents are set out in regulations. All charity trustees have responsibility for making sure that their charity complies with these regulations. A breach of the regulations is a breach of your **general duties** and is **misconduct**.

If you are a SCIO it is an offence to issue or sign any of the **external documents** which do not include the charity's details, or to authorise such actions.

Charitable companies

Charities whose **legal form** is a company must comply with both company law and charity law. Charitable companies must include **charity details** set out above and the information required by company law, for example the company number.

Find out more about company law requirements at the Companies House website.

What happens if you fail in your duties?
If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have a concern about your charity.

EXAMPLES

For case studies and advice please see our Good Governance pages.

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- Publicising Charitable Status
- The Charities References in Documents (Scotland) Regulations 2007 and The Charities references in Documents (Scotland) Amendment Regulations 2008: these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.
- SCIO's: A Guide

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- The Charities References in Documents (Scotland) Regulations 2007 and The Charities references in Documents (Scotland) Amendment Regulations 2008: these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.

GLOSSARY OF TERMS

This glossary provides you with further information, definitions and descriptions of some key terms. Where appropriate, it links to the relevant sections of law that underpin the terms.

TERMS	EXPLANATION
2005 Act	The Charities and Trustee Investment (Scotland) Act 2005: the primary piece of charity law in Scotland.
Accounts	Accounts represent the organisations finances for a particular period (usually a year). They show how much money was received and how much was spent, broken down into different categories. Charities must prepare accounts each year and must send a copy of to us (the Scottish Charity Regulator) each year. For more information see Charity Accounting.
Annual return	The online form charities complete each year to provide us with information about the charity (in particular for the Scottish Charity Register, and including information about the charity's finances). This can be completed in OSCR online.

TERMS	EXPLANATION
Assets	This means everything a charity owns; property, money, equipment, including heritable property (such as land and buildings and rights attached to it).
Beneficiaries	These are the people your charity is set up to help, those who benefit from what you do.
Care and diligence	This means a very high level of care and thoroughness. This is set out in Section 66 of the 2005 Act.

TERMS	EXPLANATION
Charitable Purposes	A charity's purposes are usually set out in the objects, aims or purposes section of its governing document. The purposes say what your organisation has been set up to achieve, and should reflect its broad aims rather than the day-to-day activities. Each purpose your charity has must fit within at least one of the 16 charitable purposes set out in section 7(2) of the 2005 Act, that is: (a) the prevention or relief of poverty, (b) the advancement of education, (c) the advancement of religion, (d) the advancement of health, (e) the saving of lives, (f) the advancement of citizenship or community development, (g) the advancement of the arts, heritage, culture or science, (h) the advancement of public participation in sport, (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended, (j) the advancement of human rights, conflict resolution or reconciliation, (k) the promotion of religious or racial harmony, (l) the promotion of equality and diversity, (m) the advancement of environmental protection or improvement, (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage, (o) the advancement of animal welfare, (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.
Charity	An organisation is a charity in Scotland when it is entered on the Scottish Charity Register.

TERMS	EXPLANATION
Charity Test	This is the test set out under the Charities and Trustee Investment (Scotland) Act 2005, which determines whether an organisation can be a charity. The charity test has two main elements: 1. an organisation has to show that it has only charitable purposes and 2. that it provides public benefit in achieving those purposes. This is set out in sections 7 and 8 of the 2005 Act.
Charity Trustee	'Charity trustees' are defined in section 106 of the 2005 Act as people having the general control and management of the administration of a charity. Charity trustees can also sometimes be known as committee members, directors or board members.
Collective responsibility	Charity trustees are not only responsible for their own actions, they are also responsible for the actions and decisions taken by the charity trustees when acting together.

TERMS	EXPLANATION
Connected person	The term connected person includes: ■ spouses, civil partners and cohabitees of a charity trustee ■ child, stepchild, parent, grandchild, grandparent, brother or sister of a charity trustee (and a spouse of any such person) ■ an institution controlled by a charity trustee or a person connected with them or two or more trustees/connected persons when taken together ■ a body corporate or company in which the charity trustee or a person connected with them has a substantial interest, or ■ a Scottish partnership (business) in which the charity trustee or, a person connected with them is a partner.
Conflict of interest (policy)	A conflict of interest may arise in a situation where a charity trustee may obtain personal benefit from a particular decision in relation to the charity. A policy setting out what a conflict of interest is and how you will manage situations where a conflict arises is strongly recommended. See the Conflict of interest **sources of help, advice and best practice** section for links to example policies.

TERMS	EXPLANATION
Consent	Section 16 of the 2005 Act says that you must seek OSCR's consent before making any of the changes listed below. You need to ask for our consent at least 6 weeks (42 days) before you plan to implement the proposed change. Changes that need our consent are: ■ changing the name of the charity ■ winding up the charity ■ amending the objects or purposes of the charity ■ amalgamating the charity with another body ■ changing the charity's legal form ■ applying to the court to change purposes, amalgamate or wind-up. For more information, see Making Changes to Your Charity.
Disbenefit	This is the opposite of benefit and is equivalent to detriment or harm. This is set out in section 8 (2) (ii) of the 2005 Act.

TERMS	EXPLANATION
External scrutiny report	Your charity's accounts must be externally scrutinised. That is, someone who is independent of your charity must review the accounts and produce a report, attached to the accounts, that highlights any issues to the reader.
Governing Document	A governing document (or constitution) is the document (or set of documents) that sets up an organisation and says what its purposes are. It will usually deal with other matters, including who will manage and control the organisation, what its powers are, what it can do with the organisation's money and other assets, and membership of the organisation. For more information, see our FAQs. This is defined in section 106 of the 2005 Act.

TERMS	EXPLANATION
Legal Form	Charities can take a number of legal forms. The legal form is the structure or entity, which then becomes a charity. For example: ■ Unincorporated associations ■ Companies ■ Scottish Charitable Incorporated Organisations (SCIO) ■ Trusts ■ Community Benefit Society ■ Statutory corporation established by an Act of Parliament or Royal Charter ■ Educational endowment
Ministerial direction or control	This is where a governing document gives Scottish or UK Ministers the power to direct or otherwise control an organisation's activities. This is set out in **section** 7 (4) (b) of the 2005 Act.

TERMS	EXPLANATION
Misconduct	Misconduct (which includes mismanagement) means any action by charity trustees which may result in a significant loss or harm to the charity (and this includes failing to act). It arises where the general duties are not met and/or where charity trustees fail to comply with any direction, requirement, notice or duty imposed under the 2005 Act (section 66(2) of the 2005 Act).
Principal contact	The person who will act as the main point of contact for the charity. This can be updated in OSCR online.
Private Benefit	This is where benefit from the charities activities is provided to members of the organisation or other individuals not as a member of the public. This is set out in Section 8 (2) (a) (i) of the 2005 Act.
Property	By 'property' we mean all property and assets (money and other assets) belonging to a charity, including heritable property (such as land and buildings and rights attached to it).

TERMS	EXPLANATION
Protect the interests of the charity	Trustees should put the interests of their charity before their own interests, or those of any other person or organisation. They must actively work towards the achievement of the charity's purposes. This is set out in Section 66 of the 2005 Act.
Proxy	Someone who is authorised to act as a substitute for another.
Public Benefit	This is the way a charity makes a positive difference to the public through the activities it carries out when advancing its charitable purposes. This is set out in Section 8 of the 2005 Act.
Quorum	The minimum number of people necessary to make decisions and conduct the charity's business. A quorum can refer to: ■ the number of charity trustees required for board meetings, or ■ the number of the charity's members required for membership meetings, for example Annual General Meetings (AGMs). This number is often set out in the charity's governing document.
Register of interests	A record of the personal, business and financial interests of a charity trustee that may potentially lead to a conflict of interest.

TERMS	EXPLANATION
Remuneration	Remuneration in the 2005 Act means any payment or benefit in kind. Sections 67 and 68 of the 2005 Act state that a charity trustee must not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) from a charity's funds unless certain conditions are met. For more information, see Trustee Remuneration guide.
SCIO	The Scottish Charitable Incorporated Organisation is a legal form unique to Scottish charities and is able to enter into contracts, employ staff, incur debts, own property, sue and be sued. For more information see SCIO guidance.
Scottish Charity number	This is the unique number given to all Scottish charities, beginning with SC0 (zero) followed by five numbers.
Scottish Charity Register	This means the register of all Scottish charities kept by OSCR. For more information, see the Scottish Charity Register.

TERMS	EXPLANATION
Scottish Charity Regulator	The independent regulator and registrar for over 23,500 Scottish charities, established by the 2005 Act. For more information, see About OSCR.
Trustees Annual Report	The Trustees Annual Report is a part of the annual Accounts and contains information about the charity and its activities and achievements in that year.
Undue Restriction	This is a restriction on who can access the benefit provided by a charity: it will be undue if excessive or unnecessary. It includes fees and charges. This is set out in Section 8 (2) (b) of the 2005 Act.
Wind up	To wind up or dissolve a charity means that the charity ceases to exist. Before winding up a charity must get OSCR's consent. This is set out in Section 16 of the 2005 Act. For more information, see Making Changes to Your Charity.

OSCR Contact details:

The Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

E: info@oscr.org.uk
P: 01382 220446
W: www.oscr.org.uk

APS Scotland
421952 5/16



Scotland's Colleges

STUC

Staff Governance Standard

Staff Governance Standard

Throughout the following document it is acknowledged by Scotland's Colleges and STUC that staff governance issues cover all staff and recognised trades unions.

Staff Governance is defined as a system of corporate accountability for the fair and effective management of all staff. Implicit in the Standard is that all legal obligations are met and that all policies and agreements are implemented.

The Standard focuses on how staff in Scotland's colleges are managed and feel they are managed. It recognises the pivotal role of staff in providing education and support services within Scotland's colleges. The Standard assists colleges to demonstrate that they are exemplary employers, and have systems in place to identify areas that require improvement and to develop action plans to address the issues.

A Staff Governance Standard is a strategic framework of minimum standards, continuous improvement, and ongoing consultation and negotiation between the College Board, management, staff, recognised trades unions.

It is expected that all colleges implement a broad range of up to date staffing policies negotiated/ consulted, as appropriate, with recognised Trade Unions which reflect current good practice and which provide a positive platform and framework for the effective management, engagement and governance of all staff.

In addition to this, the Standard, in accordance with the Information and Consultation Regulations (ICE), entitles all staff to be:

1. well informed
2. appropriately trained
3. involved in decisions which affect them
4. treated fairly and consistently
5. provided with a safe working environment.

There will also be processes for reviewing and evaluating all of the above areas.
Staff should be:

1. well informed through:

    - receiving regular information about their college, and having opportunities to contribute ideas. Recognised trade unions, should also be part of a meaningful consultation/ negotiation system on organisational issues as appropriate at all levels.

2. appropriately trained and developed through:

    - a minimum entitlement of 6 days pro rata CPD to all staff, to be delivered and supported in a manner which is meaningful to all staff and ensures that CPD activity adds value to an individual, team and college level.
    - the wide promotion of training and development opportunities.
    - meaningful and appropriate encouragement, opportunity and support for staff to use their skills effectively.
    - the support of Union Workplace Representatives, Health & Safety Representatives and Union Learning Representatives, who are given reasonable time off for their respective duties.

3. involved in decisions which affect them through:

- working in partnership to enable the involvement of all staff, through recognised trades unions.
- working together by developing an appropriate framework within colleges with recognised Trade Unions to enable effective involvement in strategic college issues. This framework will also provide for the opportunity to review and evaluate Staff Governance on an on-going basis.

4. treated fairly and consistently through:

- the implementation of up to date staffing policies, after negotiation/consultation as appropriate with the recognised trade unions, which promote good practice and which are communicated to all staff (including through recognised trades unions). These policies should include appropriate arrangements to ensure dignity at work, eliminate discrimination and positively promote equality.

5. provided with a safe working environment through ensuring:

- effective Health & Safety arrangements are in place, which promote good practice and working with recognised union Health & Safety representatives.

In recommending this Staff Governance Standard, Scotland's Colleges and STUC acknowledge that good practice in staff governance should apply to all staff. As a minimum standard; appropriate negotiation/consultation and communication arrangements should be in place through agreed recognition arrangements with sector trade unions and through other arrangements in accordance with the Information and Consultation of Employees Regulations (2005).

Scotland's Colleges

STUC

Scotland's Colleges

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Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Section A: Leadership and Strategy		
Conduct in Public Life		
A.1 Every college and regional strategic body must be governed by an effective board that is collectively responsible for setting, demonstrating and upholding the values and ethos of the organisation.		
A.2 Every board member must ensure that they are familiar with and their actions comply with the provisions of their board's Code of Conduct.		
A.3 The nine key principles underpinning public life in Scotland, which incorporate the seven Nolan principles, must be the basis for board decisions and behaviour. These key Principles, which apply individually and collectively, are: Duty/Public Service; Selflessness; Integrity; Objectivity; Accountability & Stewardship; Openness; Honesty; Leadership; and Respect.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Vision and Strategy		
A.4 The board is responsible for determining ~~the college's~~ their institution's vision, strategic direction, educational character, values and ethos. ~~For an assigned college, the Board must have regard to the strategy determined by the Regional Strategic Body~~. Regional strategic bodies must also determine the regional strategy for colleges assigned to them. The board of an assigned college must have regard to the strategy determined by the regional strategic body. Board members have a collective leadership role in fostering an environment that enables the ~~college~~ body to fulfil its mission and meet Scottish Government priorities, for the benefit of students and the community it serves.		
A.5 The board must develop and articulate a clear vision for the region or college. This should be a formally agreed statement of the college's aims and desired outcomes which should be used as the basis for its ~~the college's~~ overall strategy and planning processes.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
A.6 The board provides overall strategic leadership of the region or college. The board is responsible for formulating and agreeing strategy by identifying strategic priorities and providing direction within a structured planning framework.		
Code of Good Governance for Scotland's Colleges Principle	**Requirement met?**	**Comments**
~~A.7 The board must ensure that a comprehensive performance measurement system is in place which identifies key performance indicators. It must ensure that it scrutinises performance measures and reports these on their website in a manner that is both timely and accessible to stakeholders. This will allow the board to determine whether or not the vision and mission of the region or the college are being fulfilled and that the interests of stakeholders are being met.~~		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~A.8~~ A.7 The board (except in the case of assigned college boards) is responsible for overseeing the negotiation of its outcome agreement with SFC, to meet the needs of the college or region and make best use of available funding, consistent with national strategy. The board must ensure effective engagement with all relevant stakeholders in the development of its outcome agreement and monitor performance in achieving the agreed outcomes.		
~~A.9~~ A.8 The roles and responsibilities of the boards of assigned colleges should be undertaken in the context of the roles and responsibilities of their regional strategic body. Assigned college boards must contribute constructively to the development of the outcome agreement led in its region by the regional strategic body and support the regional strategic body to monitor performance in achieving the agreed outcomes.		
Performance		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
A.9 The board must ensure that a comprehensive performance measurement system is in place which is clearly linked to the regional strategic framework and identifies key performance indicators. It must ensure that it scrutinises performance measures and reports these on their website in a manner that is both timely and accessible to stakeholders. This will allow the board to determine whether or not the vision and mission of the region or the college are being fulfilled and that the interests of stakeholders are being met.		
Corporate Social Responsibility		
A.10 The board must demonstrate high levels of corporate social responsibility by ensuring the college behaves ethically and contributes to economic development while seeking to improve the quality of life the local community, society at large and its workforce.		
A.11 The board must exercise its functions with a view to improving economic and social wellbeing in the locality of the college or region. It ~~should~~ must have regard to social and economic needs and social inclusion.		
A.12 The board must provide leadership in equality and diversity.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
A.13 The board must seek to reflect in its membership, the make-up of the community through offering maximum opportunity of membership to a range of potential members and removing potential barriers to membership, in partnership with its regional strategic body, as appropriate.		

Code of Good Governance – Checklist Against Code – October 2022

~~A.14 The board must appoint one of the non-executive members to be the senior independent member to provide a sounding board for the chair and to serve as an intermediary for the principal, other board members and the board secretary when necessary (see Annex 1 for the definition of 'non-executive'). The senior independent member should also be available where contact through the normal channels of chair, principal or secretary has failed to resolve an issue or for which such contact is inappropriate.~~		
Section B: Quality of the Student Experience		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Student Engagement		
B.1 The board must have close regard to the voice of its students and the quality of the student experience should be central to all board decisions.		
B.2 The board must lead by example in relation to openness, by ensuring that there is meaningful on-going engagement and dialogue with students, the students' association and as appropriate staff and trades unions in relation to the quality of the student experience. Consultation is essential where significant changes are being proposed.		
B. 3 The board must consider the outcome of student surveys and other student engagements, and monitor action plans that could impact on the quality of the student experience.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
B.4 The college board must have regard to the *Framework for the Development of Strong and Effective College Students' Associations in Scotland.* It must put in place robust partnership procedures (e.g. partnership agreement) to work together to achieve change and which are supported by regular and open communications.		
B.5 The college board must encourage a strong and autonomous students' association and ensure that the students' association is adequately resourced.		
B.6 The college board must ensure that the students' association operates in a fair and democratic manner and fulfils its responsibilities.		
B.7 The college board ~~must~~ should review the written constitution of its students' association at least every five years.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Relevant and High Quality Learning		
B.8 The board must seek to secure coherent provision for students, having regard to other provision in the region or college's locality. The board must be aware of external local, national and international bodies and their impact on the quality of the student experience, including community planning partners, employers, skills development and enterprise agencies and employer bodies. The board must seek to foster good relationships and ensure that the body works in partnership with external bodies to enhance the student experience, including employability and the relevance of learning to industry needs.		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Quality Monitoring and Oversight		
B. 9 The board must ensure appropriate mechanisms are in place for the effective oversight of the quality and inclusivity of the learning experience in the college or region. The board must ensure that the college works in partnership with sector quality agencies and other appropriate bodies to support and promote quality enhancement and high-quality services for students.		
Section C: Accountability		
Accountability and Delegation		
C.1 The board is primarily accountable to its main funder, either SFC or its regional strategic body. Through the chain of funding, the body is ultimately responsible to the Scottish Ministers who are accountable to the Scottish Parliament.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.2 The board must ensure delivery of its outcome agreement or in the case of an assigned college, its agreed contribution to the region's outcome agreement.		
C.3 The board must ensure it fulfils its statutory duties and other obligations on it, and that the terms and conditions of its grant are being met.		
C.4 Scottish Ministers have powers to remove by order any or all board members of an incorporated college (except the principal) or a regional board for serious or repeated breaches of a term and condition of grant.		
C.5 The board also has a wider accountability to a range of stakeholders including students (both current and prospective), its staff, the wider public, employers and the community it serves, for the provision high quality education that improves people's life chances and social and economic well-being.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.6 Incorporated colleges and regional boards must maintain and publicly disclose a current register of interests for all board members. Board members have a personal responsibility to ensure any changes to their register of interests are notified timeously to the governance professional and to ~~should~~ declare any conflicts of interest in the business of the meeting prior to the commencement of each meeting of the board and its committees and withdraw from meetings as appropriate. See section D.6 for the 'objective test' for judging if there is a conflict of interest.		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.7 The board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely, and that appropriate and effective systems of financial and operational control, quality, management of staff, risk assessment and management are established, monitored, continuously improved and appropriately impact assessed. This includes: a) the prompt production, dissemination and online publication of board/committee agendas, minutes and papers to the public b) every board meeting and every committee meeting having a well-structured agenda circulated timeously in advance c) the retention of all key documentation which help justify the decisions made by the board and its committees. d) setting quorum for board and committee meetings in line with good practice and preferably at 50% or higher are non-executive members. A board should satisfy itself that adequate arrangements are in place to ensure that decisions it has delegated to a committee are taken with a non-executive majority. When determining a quorum, the chair of the board may be considered to be a non-executive member. (See Annex 1 for the definition of non-executive).		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.8 The board may delegate responsibilities to committees for the effective conduct of board business. As a minimum the committees required are Audit, Remuneration, Finance and Nominations/Appointments. Delegation of responsibilities from and matters reserved to the board and its committees must be set out in a scheme of delegation including the functions delegated by the board to the chair, committees, the principal and the governance professional ~~board secretary~~ (and any other members of staff). Incorporated college boards and regional boards have no powers to delegate functions to an individual board member (except the chair who has no authority to act out with their delegated powers).		
C. 9 The board must ensure every board committee has a specified member of the management team to provide objective, specialist advice to support it to discharge its remit, including by explaining in an accessible way the matters under discussion and the possible implications of different options.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.10 The board must consider and have in place procedures to ensure effective working relationships and constructive dialogue amongst the board as a whole and ensure there are effective reporting and two way communications between committees and the board. The board must ensure that discussions and decisions of every committee are accurately recorded and reported to the board, no later than the next meeting of the board.		
Risk Management		
C.11 The board of a college or a regional body is responsible for the overall management of risk and opportunity. It must set the risk appetite of the body and ensure there is an appropriate balance between risk and opportunity and that this is communicated via the principal to the body's management team.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.12 The board must ensure that sound risk management and internal control systems are in place and maintained. It must ensure there is a formal on-going process for identifying, reporting, evaluating and managing the body's significant risks and review the effectiveness of risk management, business continuity planning and internal control systems.		
Audit Committee		
C.13 The Audit Committee must support the board and the principal by reviewing the comprehensiveness, reliability and integrity of assurances including the body's governance, risk management and internal control framework. The Scottish Government Audit and Assurance Committee Handbook promotes the development of an assurance framework to aid the Committee in fulfilling this role. See Audit and Assurance committee handbook		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.14 The scope of the Audit Committee's work must be defined in its terms of reference and encompass all ~~of~~ the assurance needs of the board and the principal. The Audit Committee must have particular engagement with internal and external audit, and must work with management and auditors to resolve any issues in relation to financial reporting.		
C.15 The Audit Committee must promptly pursue recommendations arising from audit reports and must monitor their implementation.		
C.16 The membership of the Audit Committee cannot include the board chair or the principal and, in line with the Audit and Assurance Committee Handbook, 'executive members of the organisation should not be appointed to the Audit and Assurance Committee', and the majority of members must be non-executive. The role of the college executive is to attend meetings at the invitation of the committee chair and to provide information for particular agenda items.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.17 The Audit Committee terms of reference must provide for the committee to sit privately without any non-members present for all or part of a meeting if they so decide. The Audit Committee members should meet with the internal and external auditors without the executive team present at least annually.		
C.18 At least one member of the Audit Committee should have recent relevant financial or audit experience.		
Remuneration Committee		
C.19 It essential that members of the Remuneration Committee understand their role and responsibilities. Members must undertake the online training module for Remuneration Committees provided by College Development Network within one month of appointment.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.20 The board must have a formal procedure in place for setting the remuneration of the principal by a designated committee of non-executive members. The board may wish to supplement this by taking evidence from a range of sources. In particular, staff and students should have a role in gathering and submitting evidence in relation to the college principal to the relevant committee.		
C.21 The board chair cannot be the chair of the Remuneration Committee (but they can be a member of it).		
Financial and Institutional Sustainability		
C.22 The board is responsible for ensuring the financial and institutional sustainability of the body. The board must ensure compliance with its Financial Memorandum (either with SFC or the regional strategic body, depending on which is funding it), including in relation to incorporated colleges and regional boards, relevant aspects of the Scottish Public Finance Manual.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.23 The board must ensure that: funds are used as economically, efficiently and effectively as possible, effective monitoring arrangements are in place and college staff report relevant financial matters to it.		
C.24 For colleges that are charitable organisations, board members are also charity trustees. The board of a college that is a charity must ensure its members are aware of their responsibilities under charity legislation and for complying with relevant provisions as set out by the Office of the Scottish Charity Regulator. See *OSCR Guidance and Good Practice for Charity Trustees*		
Staff Governance		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
C.25 The college board as the employer, is responsible for promoting positive employee relations and for ensuring effective partnership between recognised trade unions and management.		
C.26 The board must have a system of corporate accountability in place for the fair and effective management of all staff, to ensure all legal obligations are met and all policies and agreements are implemented and identify areas that require improvement and to develop action plans to address them.		
C.27 The board must comply with the nationally agreed college sector *Staff Governance Standard.*		
C.28 The college board must comply with collective agreements placed on it through national collective bargaining for colleges.		
Section D: Effectiveness		
The Board Chair		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
D.1 The chair is responsible for leadership of the board and ensuring its effectiveness in all aspects of its role. The chair is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, particularly strategic issues. The chair must promote a culture of openness and debate by encouraging the effective contribution of all board members, fostering constructive challenge and support to the principal, executive team and fellow board members, effective team-working, positive relations between board members. The chair must engage with the principal and the ~~board secretary~~ governance professional in a manner which is both constructive and effective.		
D.2 The Board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the ~~college~~ body to enable them to discharge their respective duties and responsibilities effectively.		
Senior Independent Member		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
D.3 The board must appoint one of the non-executive members to be the senior independent member to provide a sounding board for the chair and to serve as an intermediary for the principal, other board members and the governance professional when necessary (see Annex 1 for the definition of 'non-executive'). The senior independent member should also be available where contact through the normal channels of chair, principal or governance professional has failed to resolve an issue or for which such contact is inappropriate. The senior independent member is also responsible for holding annual meetings with Board members, without the Chair, to appraise the Chair's performance and provide the Chair with relevant feedback. Further information on the role of the senior independent member can be found in *The Guide for Board Members in the College Sector*		
Board Members		

Glasgow Kelvin College

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Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.3~~ D.4 Each board member is collectively responsible and accountable for all board decisions. Board members must make decisions in the best interests of the college and/or region as a whole rather than selectively or in the interests of a particular group.		
~~D.4~~ D.5 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.		
~~D.5~~ D.6 Where the college is a charity, all board members, as charity trustees, including staff and student board members, have legal duties and responsibilities under the Charities Act 2005. This includes registering any personal interests that could be seen as conflicting with the interests of the body. The 'objective test' for judging if there is a conflict of interest is: *"… whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your decision making in your role as a member of a public body".*		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Principal and Chief Executive		
~~D.6~~ D.7 The college board must appoint the principal as chief executive of the college, securing approval for the appointment and terms and conditions of the appointment from the regional strategic body if necessary. ~~and must put in place suitable arrangements for monitoring their performance.~~		
~~D.7~~ D.8 The college board must ensure there is an open and transparent recruitment process for the appointment ~~of the principal and obtain approval from the Regional Strategic Body for the appointment and their terms and conditions, where required~~. Students and staff ~~should~~ must have an opportunity to contribute to the recruitment process.		
~~D.8~~ D.9 The college board must delegate~~s~~ to the principal, as chief executive, authority for the academic, corporate, financial, estate and human resource management of the college, and ~~should~~ must ensure the establishment of such management functions as should be undertaken by and under the authority of the principal.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.9~~ D.10 The college board must ensure a clear process is in place to set and agree personal performance measures for the principal. This process should seek the views of students and staff. The chair, on behalf of the board, should monitor, review and record the principal's performance, at least annually, against the agreed performance measures.		
~~D.10~~ D.11 The principal, as a board member, shares responsibility for good governance with the chair and all other members of the board, supported by the ~~board secretary~~ governance professional. The principal also enables good governance through supporting effective communication and interaction between the body and the rest of the college including staff and students.		

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Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.11~~ D.12 The board provides strategic direction for the region and/or college, and the chair provides leadership to the board. The principal provides leadership to the staff of the body.		
~~D.12~~ D.13 The board must provide a constructive challenge to the principal and executive team and hold them to account.		
~~**Board Secretary**~~ **Governance Professional**		
~~D.13~~ D.14 The board ~~as a whole~~ must appoint a ~~board secretary~~ governance professional who is responsible to it and reports directly to the chair in their ~~board secretary~~ governance professional capacity. The ~~board secretary~~ governance professional may be a member of the senior management team in their ~~board secretary~~ governance professional capacity, but they cannot hold any other senior management team position at the same time. The appointment and removal of the ~~board secretary~~ governance professional is a decision of the board. ~~as a whole~~.		

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~~D.14~~ D.15 All board members must have access to the ~~board secretary~~ governance professional who has an important governance role in advising the board, the committees and individual board members and supporting good governance. The distinctive governance professional role includes: • facilitating good governance and advising board members on: o the proper exercising of their powers, including in relation to relevant legislation o the board's compliance with its Financial Memorandum, the Code of Good Governance, its Standing Orders and Scheme of Delegation o their behaviour and conduct in relation to the board's code of conduct • providing clear advice to the chair and the board/committees on any concerns the governance professional may have that board members have not been given: o sufficient information o information in an appropriate form o sufficient time to monitor, scrutinise or make informed and rigorous decisions in an open and transparent way. • attending and providing support to every board meeting and every meeting of every board committee. Where the governance professional is unable to attend,		

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Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
while the governance professional retains overall responsibility, proper arrangements must be made to cover the role with a person who is fully able to discharge the role effectively. • having an unambiguous right to speak at board and committee meetings to convey any concerns they may have about governance. This extends to someone substituting for the governance professional. • reporting any unresolved concerns about the governance of the body to the relevant funding body (i.e., SFC or the regional strategic body).		
~~D.15~~ D.16 The board must ensure the ~~board secretary~~ governance professional has suitable skills, knowledge and behaviours to carry out their role effectively, receives appropriate induction, and if new to the role, is mentored by a more experienced ~~board secretary~~ governance professional for at least their first year and has adequate time and resources available to undertake their role effectively.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.16~~ D.17 The board must ensure arrangements are in place to deal with a ~~board secretary's~~ governance professional's potential or real conflicts of interest.		
Board Member Appointment, Induction and Training		
~~D.17~~ D.18 For boards with responsibility for board appointments, the board must ensure a formal and open procedure is in place for recruiting and selecting new non-executive board members. Boards must have regard to ~~all relevant~~ current Ministerial Guidance on board appointments.		
~~D.18~~ D.19 The board is responsible for ensuring appropriate arrangements are in place for the conduct of student elections and nominations, and elections of staff members to the board.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.19~~ D.20 The chair must ensure that new board members receive a formal induction on joining the board, tailored in accordance with their individual and collective needs. The ~~board secretary~~ governance professional should support the chair in the provision of relevant induction for new board members.		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.20~~ D.21 The board must ensure all board members undertake appropriate training and development in respect of their governance role. The ~~board secretary~~ governance professional should support the chair in the provision of relevant training and development opportunities for board members, which should be tailored to meet board members skills and needs. The ~~board secretary~~ governance professional must keep records of the development activity of board members, including the chair.		
~~D.21~~ D.22 The board must ensure that new committee members receive a committee induction and have their specific training needs assessed and met.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
Board Evaluation		
~~D.22~~ D.23 Extension of the term of office of board appointments requires evidence and the Board must ensure appropriate mechanisms are in place to support this.		
~~D.23~~ D.24 The board must keep its effectiveness under annual review and have in place a robust self-evaluation process. There should also be an externally facilitated evaluation of its effectiveness ~~at least~~ every three to five years. The board should determine the timing for this externally facilitated review as part of the annual effectiveness review. The board must send its self-evaluation (including an externally facilitated evaluation) and board development plan (including progress on previous year's plan) to its funding body and publish them online.		
~~D.24~~ D.25 The board must agree a process for evaluating the effectiveness of the board chair and the committee chairs. The evaluation of the board chair should normally be led by the ~~vice-chair/~~senior independent member.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~D.25~~ D.26 The board must ensure all board members are subject to appraisal of their performance, conducted at least annually, normally by the chair of the board.		
~~D.26~~ D.27 The performance of regional college chairs will also be evaluated by the Scottish Government, as regional college chairs are appointed by the Scottish Ministers and are personally accountable to them.		
~~D.27~~ D.28 The performance of assigned, incorporated college chairs will also be evaluated by the regional strategic body, as they are appointed by the regional strategic body and are personally accountable to them.		
Section E: Relationships and Collaboration		
Partnership working		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
E.1 The board must work in partnership to secure the coherent provision of high quality fundable further and higher education in their localities.		
E.2 The board 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.		
E.3 Boards must ensure effective partnership working with local and national bodies including businesses, public and third sector organisations to develop commonly agreed priorities following the principles of effective collaborative working.		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
E.4 The board must encourage and support effective partnership working and collaboration within and across regions to address local needs and meet national priorities and specialisms.		
~~ADDITIONAL AND SUPPLEMENTARY INFORMATION (Not part of the 2016 Code – but detailed for added compliance)~~ ~~Openness and Transparency~~		
~~E.5 The work of the board and its committees should be communicated appropriately to internal and external stakeholders to support effective and transparent governance.~~		

Glasgow Kelvin College

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~E.6 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.~~		
~~**Staff and Students**~~		
~~E.7 The board must encourage a strong and independent students' association and should ensure that the students' association is adequately resourced.~~		
~~E.8 The board must ensure that the students' association operates in a fair and democratic manner and fulfils its responsibilities. The students' association must have a written constitution, which should be subject to the approval and review by the board at intervals of not more than five years.~~		

Code of Good Governance – Checklist Against Code – October 2022

Code of Good Governance for Scotland's Colleges Principle	Requirement met?	Comments
~~E.9 The board and the students' association must establish clear guidelines on relationships and effective communication.~~		
~~E.10 The board should ensure that it is aware of the employees' and recognised trades unions views on relevant issues. The board should see staff surveys and monitor any resulting action plans. The principal is delegated to operationalise the outcome of board decisions, values and ethos to all staff.~~		
~~E.11 The principal, on behalf of the board, must ensure that appropriate governance standards are embedded throughout the college~~	✓	The Principal and the Senior Management Team act as role models to embed the principles of public life (Nolan principles). Values and Ethos documents and management structures have been put in place. There is also a Dignity and Respect Policy.

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Annex 1
References and Definitions

• "**college**" means a college funded by either SFC or a regional strategic body.

• "**incorporated college**" means a college with a board of management under part 1 of the Further and Higher Education (Scotland) Act 1992.

• "**assigned** college" means a college assigned to a regional strategic body.

• "**regional board**" means a regional strategic body that has no other functions. There is one regional board – Glasgow Colleges' Regional Board.

• "**board**" means the governing body of the college or to the regional strategic body.

• "**body**" means the organisation in question, i.e., a college or regional strategic body.

• "**principal**" includes where appropriate in the context, the chief officer or equivalent person of a regional strategic body.

• '**non-executive**' means a member who is not the chair of the board and who does not otherwise hold a specific position on the board i.e., is not a student member or a staff member; and in the case of a college board, is not the principal; and in the case of a regional board is not the chair of an assigned college.

• The reference to a non-executive majority under C.7(d) reflects the underlying governance principle of ensuring an appropriate degree of independence and objectivity in all board decision-making. A board quorum should always require a non-executive majority. When determining a quorum, the chair of the board may be considered to be a non-executive member.

• In the context of the regional strategic body in the Highlands and Islands, the board means the Court of the University of the Highlands and Islands (UHI).

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• New College Lanarkshire is the designated regional college and regional strategic body with South Lanarkshire College as an assigned college.

• Glasgow Colleges' Regional Board: this is the only part of Scotland with a regional strategic body which has been established as an organisation with only this role.

TURCAN CONNELL

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Rathbones

CHARITY TRUSTEE TRAINING
10th November 2022

TURCAN CONNELL

CHARITY TRUSTEE DUTIES

Rose Younger, Solicitor

WHAT IS A CHARITY TRUSTEE?

A Charity Trustee is someone who …

*"has the general **control** and **management** of the administration of a charity"*

*"is **responsible** for making sure that the charity works to achieve its charitable purposes"*

*"has **oversight & overview** of the charity"*

DUTIES OF CHARITY TRUSTEES

- OSCR ‘Guidance and Good Practice for Charity Trustees’
- Statutory duties
  - Charities and Trustee Investment (Scotland) Act 2005
  - Companies Act 2006
- Common law duties
- Codes of Conduct
  - The Scottish Governance Code for the Third Sector

STATUTORY DUTIES

Charities and Trustee Investment (Scotland) Act 2005

Section 66 “A charity trustee must…

. . .act in the interests of the charity…

…seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes…

…act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person…

STATUTORY DUTIES (2)

- …“in circumstances capable of giving rise to a conflict of interest … put the interest of the charity before those of the other person”
- Disclose interests/Register of Interests
- Refrain from “deliberation or decision making”

STATUTORY DUTIES (3)

- "The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act."
- Misconduct/Maladministration
- Acting while disqualified = criminal offence
- Fine, imprisonment or both

COMMON LAW DUTIES

- Act in the best interests of the charity
- Carry out the terms of the charity (its purposes)
- Control the charity's property
- Devote time to the charity's affairs
- Keep accounts
- Duty to invest
- Not to delegate
- Deal with conflicts of interest
- Duty to take advice
- Duty to observe the general law

Companies Act Duties – Companies Act 2006

- Act within powers
- Promote the success of the company
- Exercise independent judgement
- Exercise reasonable care, skill and diligence
- Avoid conflicts of interest
- Not to accept benefits from third parties
- Declare interests

Duty to Promote the Success of the Company

S.172, Companies Act 2006

A director of a company must… have regard to;

a) the likely consequences of any decision in the long term,
b) the interests of the company's employees,
c) the need to foster the company's business relationships with suppliers, customers and others,
d) the impact of the company's operations on the community and the environment,
e) the desirability of the company maintaining a reputation for high standards of business conduct,

STANDARD OF CARE (1)

Company Law: s174 of the Companies Act 2006

The standard of care, skill and diligence that would be exercised by a reasonably diligent person with:

1. The general knowledge and skill that may reasonably be expected of a person carrying out the functions carried out by that director in relation to the company, and
2. The general knowledge, skill and experience that he actually has.

STANDARD OF CARE (2)

Charity Law: s66 of the Charities and Trustee Investment (Scotland) Act 2005

"a charity trustee must…act in the interests of the charity and must in particular, act with the care and diligence that it is **reasonable to expect of a person who is managing the affairs of another person**".

TURCAN CONNELL

LEGAL AND GOVERNANCE UPDATE

Gavin McEwan, Partner & Head of Charities

POST-COVID GOVERNANCE

- Emergency provisions supporting online meetings have ended
- Online meetings are still the way to go for many boards and committees, but are they valid?
- Review of your constitution is a good idea to ensure you have all the powers you need
- A wider review may well be sensible in the interests of generally keeping your constitution up to date

FUNDRAISING GUIDANCE UPDATED

- Chartered Institute of Fundraising's new guidance: *Trustees and Fundraising in Scotland – A Practical Handbook*
- What is the role of trustees in fundraising?
- How is fundraising regulated and what are the rules and regulations that your charity is bound by?
- Difficult areas: gift acceptance and refusal; managing volunteers; planning strategies; setting priorities and policies

CHARITY REGULATORS – USE OF POWERS

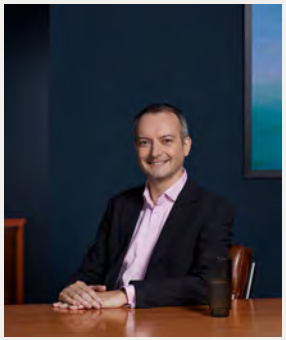
- Latest inquiries and directions show that OSCR and the Charity Commission are very alert to possible misconduct and misuse of assets
- The Teddy Bear Foundation: OSCR direction to charity's bank amidst concerns about financial controls
- Dudgeon Park Community Centre: OSCR direction not to transfer assets to local football club amidst concerns about public benefit
- Darul-Uloom School London: Charity Commission disqualified two trustees in light of safeguarding and financial issues

CHARITY LAW REFORM

- Scottish Government consultations on charity law reform started in 2019
- Proposals include a public register of charity trustees, expanded powers for OSCR, and greater visibility of charity accounts
- Openness and transparency in the sector are to be welcomed, but charities should consider whether there are practical impacts and prepare for them
- Possible progress in the current Parliament

TURCAN CONNELL

BIOGRAPHIES



GAVIN MCEWAN

PARTNER, HEAD OF CHARITIES

gavin.mcewan@turcanconnell.com

Gavin is an accredited specialist in charity law and he advises charities and philanthropists on all aspects of charity law and regulation including governance, risk, fundraising law and the structuring of charitable giving. He frequently support charities through inquiries by the Scottish Charity Regulator and advise on the reorganisation of endowments and restricted funds.



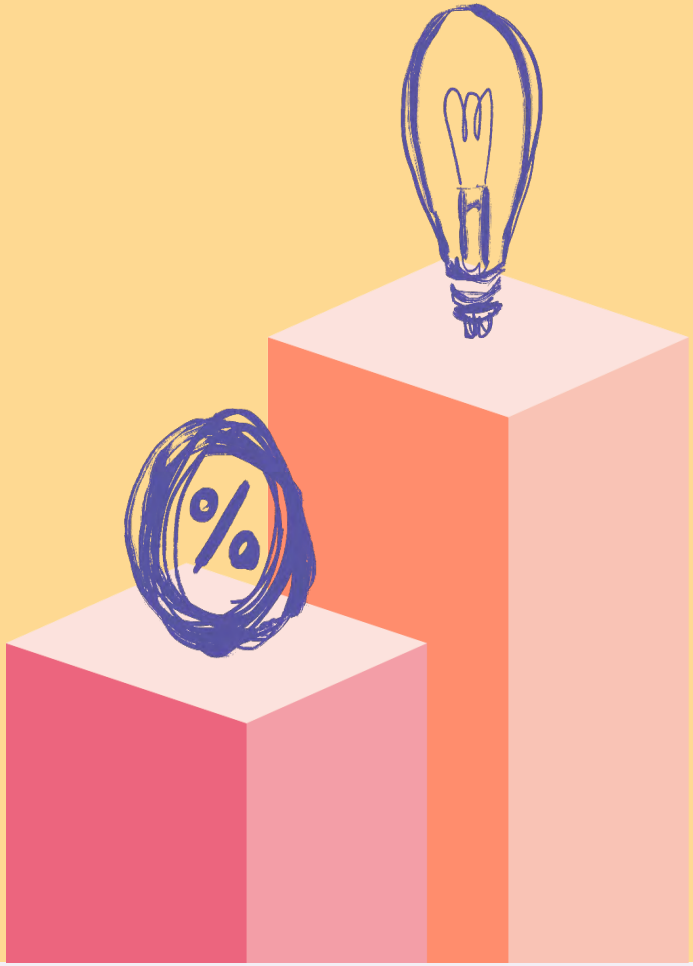
ROSE YOUNGER

SOLICITOR

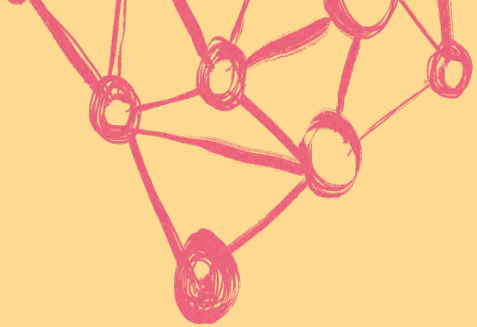
rose.younger@turcanconnell.com

Rose specialises in Scottish Charity Law and is a member of the Charity Law Association. Her principle areas of expertise include charity incorporation, constitution reviews, winding up, trust and charity administration and general governance matters including trustees' duties and trustee training.

Charity Trustee Training



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Agenda

Questions to consider

1. People
2. Governance
3. Resources
4. Data and cyber Security
5. Internal Controls

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People

- How are they feeling?
- How well are they supported?
- How are they working (remote / hybrid / office)? How will they continue to work?
- How experienced are they in their roles (ie did they onboard remotely or pre-pandemic) ?
- How well are they trained?

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(More) People

- Where are your pressure points?
- Do you have the right staff to deliver on your main objectives / strategy?
- Where are your succession risks – the key people in your organisation that know everything?
- Can succession provide opportunity?
- Has the Chair had a discussion with the CEO about their ambitions as well as their concerns?

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Governance

- Crisis management – how did the governance arrangements stand up?
- Governance self assessment – how well does the board perform?
- Skills matrix – do you know what you need to enable your objectives to be achieved (board & committee level)
- Reporting on governance and what you have to actively manage and improve on this
- Do you understand the responsibilities in your organisation in terms of scrutiny requirements?

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Resources

- Going concern – is it a concern?
- Nature of financing – annual funding / grants / service level provision / donations / legacies
- Are you diversified enough? Or too diversified?
- Restricted funds / endowment funds / designated funds / unrestricted funds / free reserves
- How much cash do you need? Are you funded in advance or in arrears?
- What have you learned from the last 2 years?

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Resources - reserves

- Reserves – consideration of policy?
- It's not really about the policy, its understanding why? Were you involved in setting it?
- Volatility of income sources v nature of expenditure – there is no one answer to the right level
- Do you have more reserves now? If so, do you have clarity on service demand / cost pressures, and so how and when you intend to use some of the "extra" reserves?
- Did your reserves (policy) stand up to the experience of the last 2 years?

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Data and cyber security

- What sensitive data do you hold?
- Do you know why you hold data?
- How would you respond to a data request?
- Managing cyber risk: technical v human factor
- Business continuity – what would happen?

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Internal control

- Impact of remote / hybrid working on internal control systems
- Digital processes – how does it work?
- Where your finances and controls are paper/office based, can they be reviewed and modernised?
- The importance of accurate and timely management information

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Any Questions?

(or any answers ☺)

Keith Macpherson

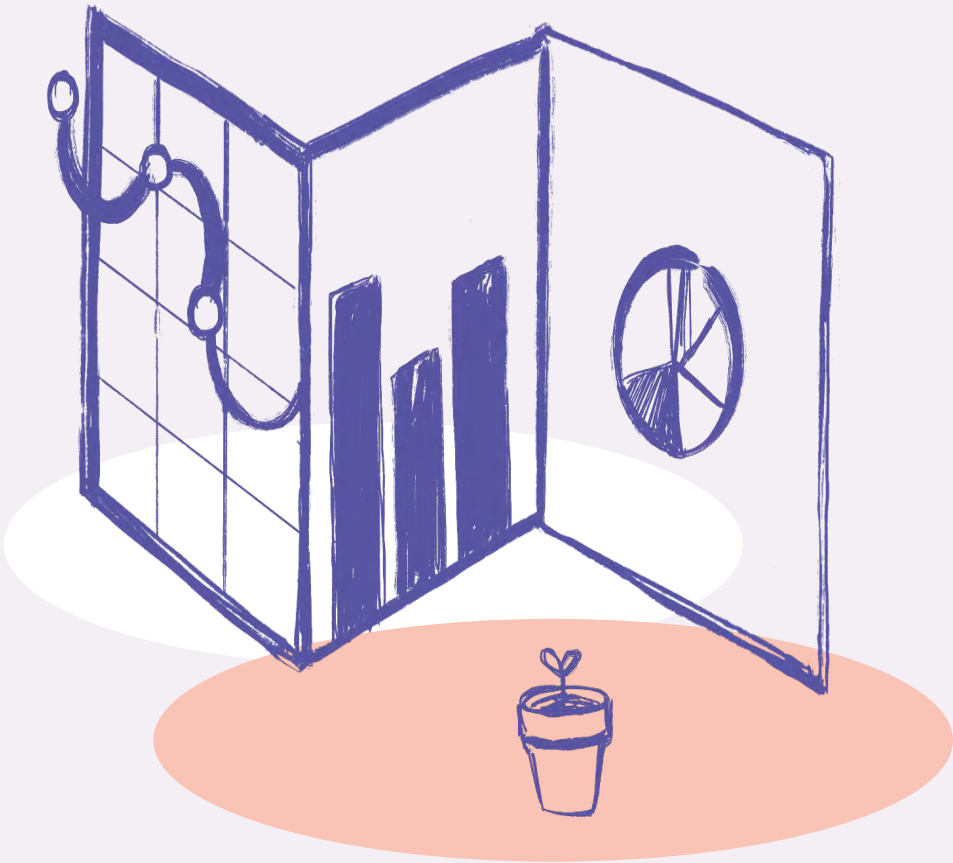
Partner

Keith.Macpherson@hlca.co.uk

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Partner

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Rathbones
Look forward

How to select an investment manager

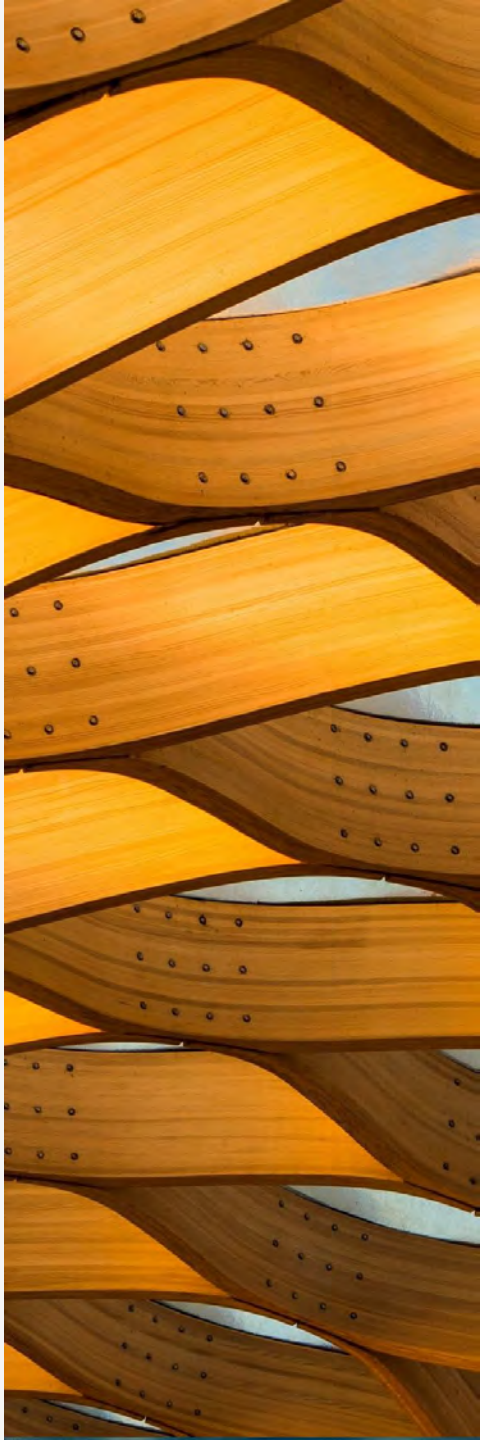
Presented by

Fiona Gillespie, Head of Charities, Scotland

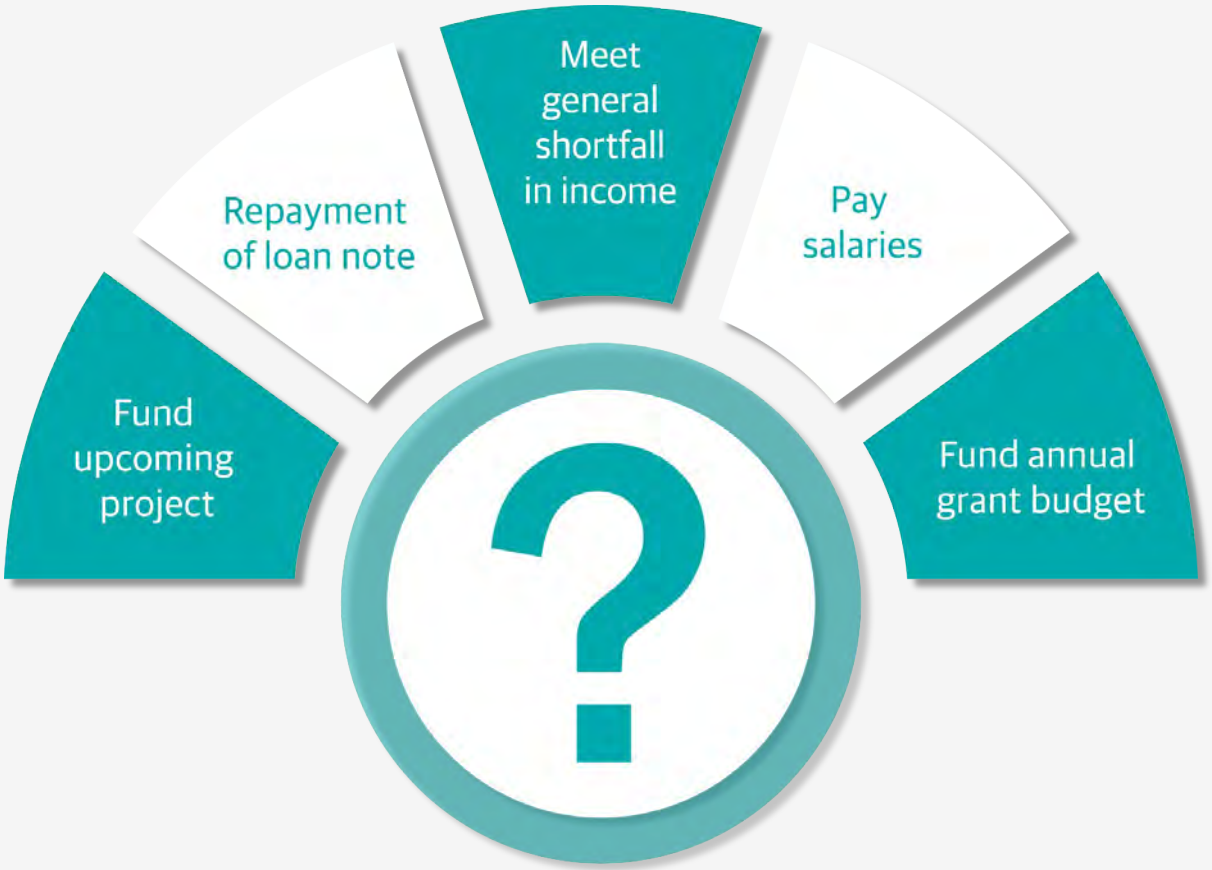


Agenda

- Defining your objectives
- Identify investment managers
- Creating your request for proposal
- Creating a shortlist
- Questions to ask at the pitch
- Conclusions



Step 1: clarify your objectives



Your time horizon

- generally, volatility is smoothed over time
- the longer you can remain invested, the more risk your portfolio can generally withstand



Suggested minimum length of time to invest in equity markets: 5 years

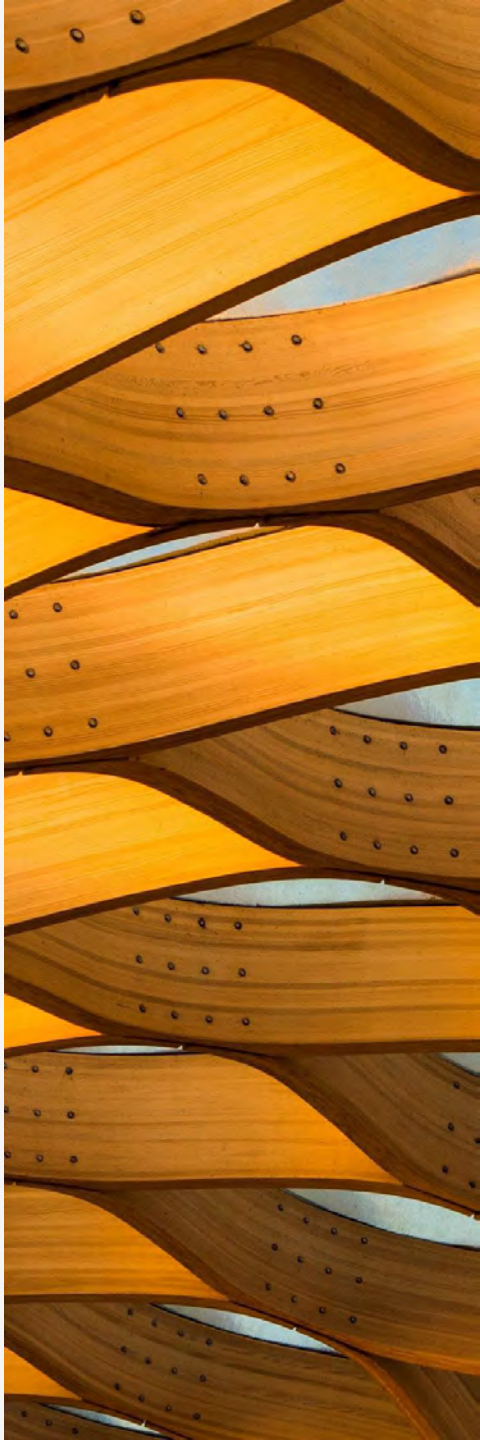
Your financial requirements

Is the focus:

— capital growth?

— income generation?

— a combination of the two?



Risk

What you need to consider:

- do you rely on the portfolio (income / capital)?
- time horizon
- level and frequency of withdrawals

→ Capacity for loss

- willingness to tolerate losses
- attitude to fluctuations in value

→ Appetite for risk

The value of investments and income arising from them may fall as well as rise and you might get back less than you originally invested.

Exclusions and restrictions

Basic duty of trustees is to seek the "best financial return within the level of risk considered by the charity to be appropriate"



Bishop of Oxford case (1992) outlined three situations when investments can justifiably be excluded. More clarity was added this year with the Butler-Sloss case.

The overriding principles are, if the investment:

— directly conflicts with the aims of the charity

— would result in a loss of beneficiaries or donors

— being excluded would result in little financial detriment

Trustees must be careful not to make judgement on moral grounds alone.

Your approach to responsible investing

Screening

— positive screen

— negative screen

— combination

Best-of-sector investment

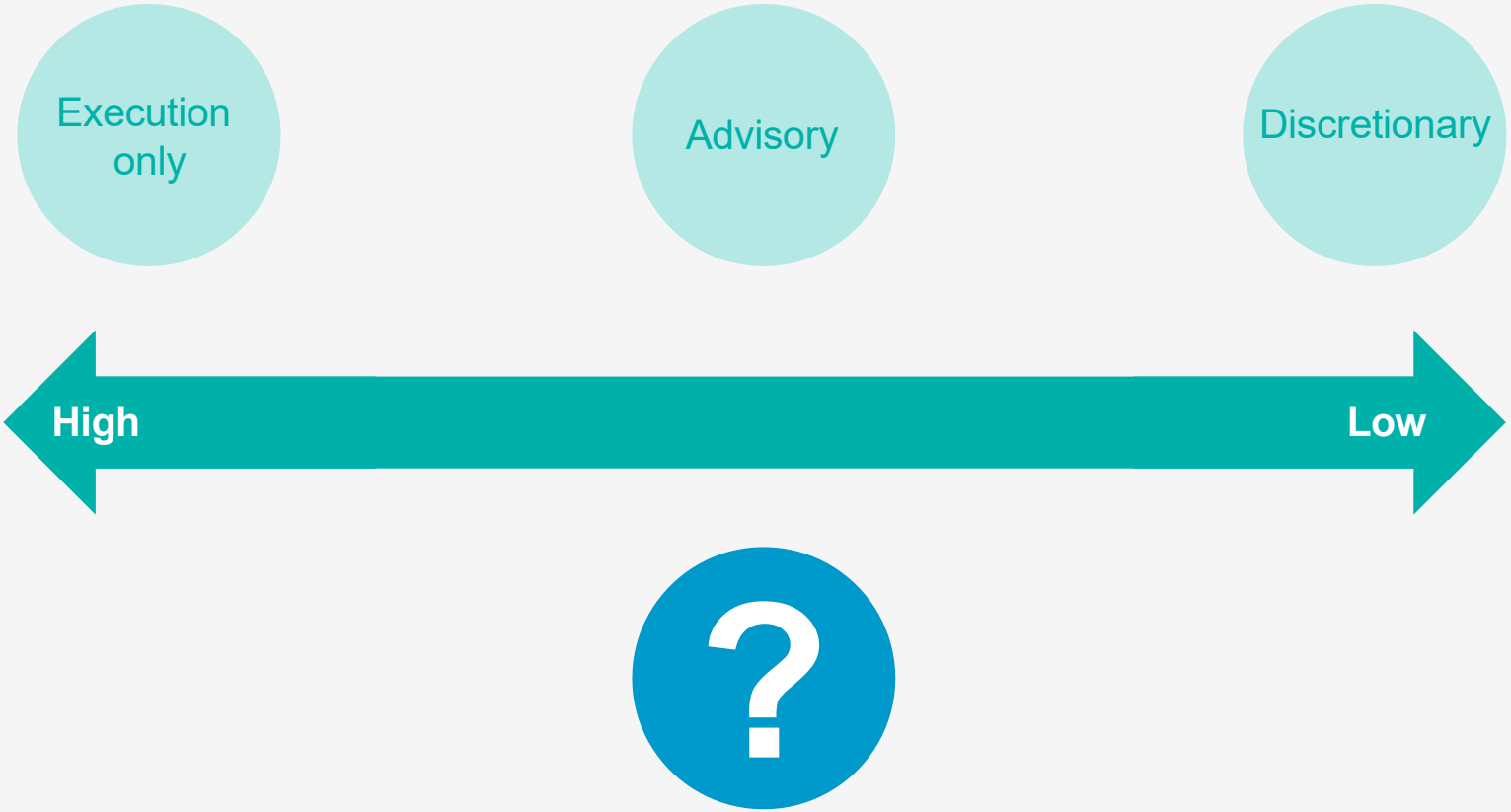
Thematic investing

What is ESG investing?

- **E** Environmental
- **S** Social
- **G** Governance

Discuss ethical investing with potential investment managers before deciding whether it's realistic and right for your entity

Your level of involvement



Step 2: identify investment managers







Create your longlist ➔ Now you need a request for proposal (RFP)

Step 3: creating your "Request for Proposal" (RFP)

About the firm



Location

FCA FINANCIAL CONDUCT AUTHORITY

BANK OF ENGLAND PRUDENTIAL REGULATION AUTHORITY

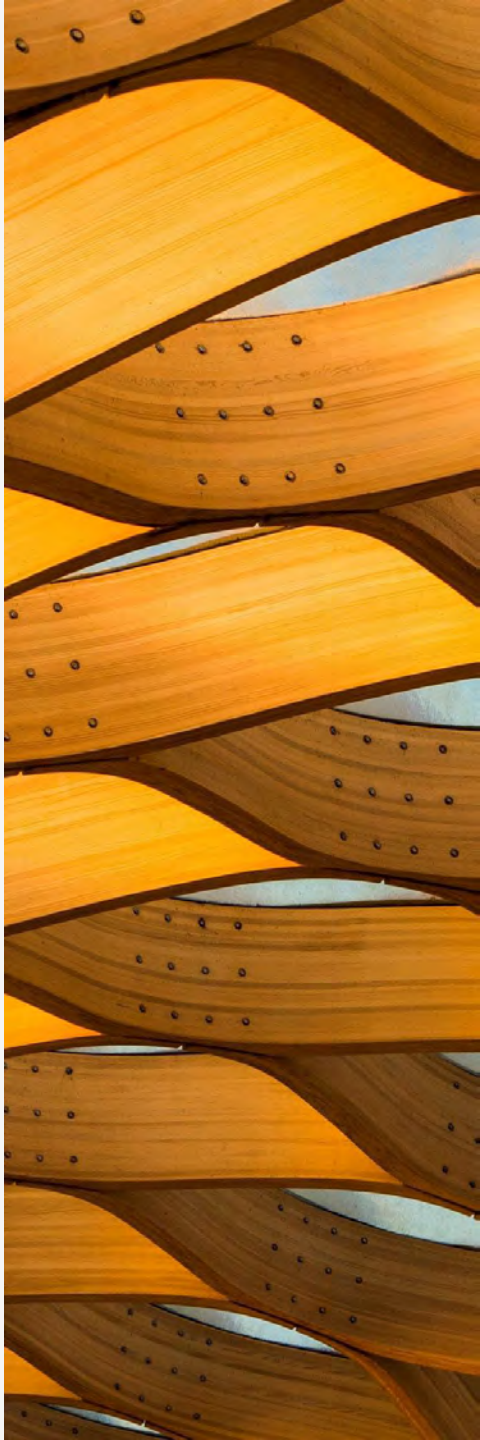
Regulator

Established 1908

Heritage

Investment Process

- Over arching investment philosophy: the first building block of investing
- investment resource
- integrating ESG
- who are the decision makers
- Building appropriate portfolios
- Internal controls



Pooled or segregated?

Off the shelf
- pooled solution

or

Bespoke
- Segregated
- Direct holdings
- Collectives

Ask for an example portfolio

Performance

Things to consider when comparing firms:

- Benchmarks
- Time Period
- Treatment of fees
- Sample Set
- Audited ?

Make sure you compare apples with apples and keep in context – past performance versus future performance

Fees – do quoted fees capture ALL costs ?



Reporting



— quarterly portfolio valuations / annual tax pack

— bespoke reporting, what do you want to see ?

— digital offering

— helpful content for your stakeholders

— Do decision makers attend meetings ?

Team



— Charity specialists

— Company and personal commitment to the sector ?

— Experience and skill

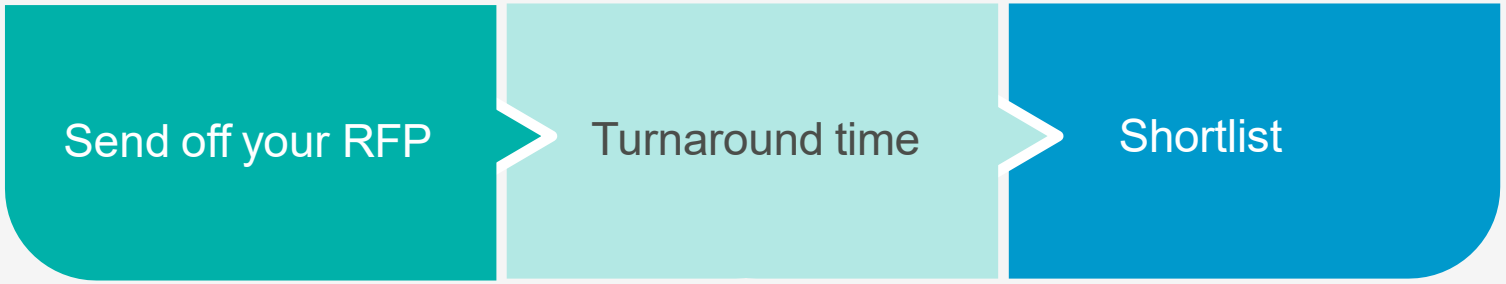
— Who has ultimate accountability ?

— Is you manager accessible ?

— Dedicated administrative contact

— Wider support for Trustees and charity executives

Step 4: create a shortlist



Step 5: pitch time!

Logistics

— where?

— who?

— when?

— how long for presenting vs. questions?

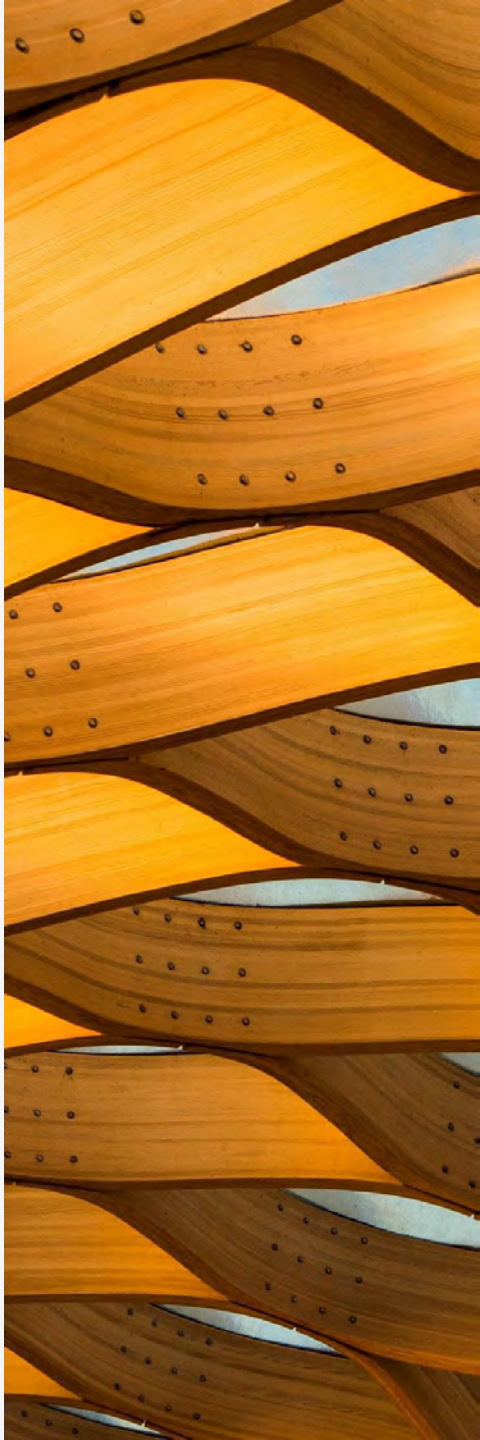
— debrief

Decision process

— Deal with conflicts of interest

— Scoring

— Vote – majority, full agreement, veto



Points to consider and probe

Considerations

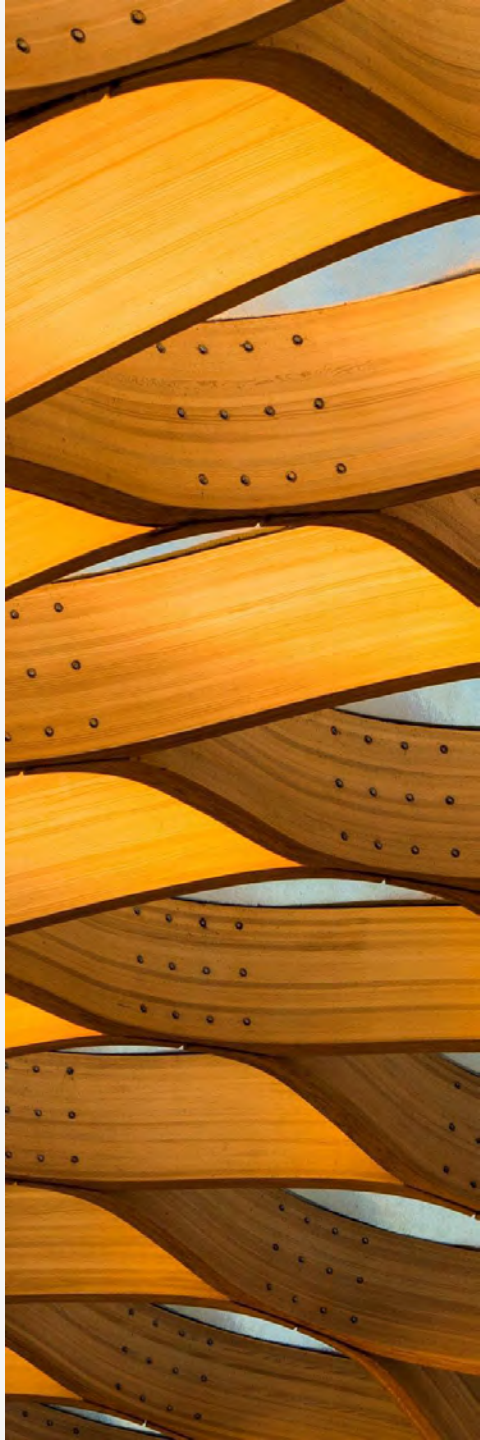
- Investment process
- ESG approach
- Example investments
- Additional services
- Chemistry with the team
- Current views



The value of investments and income arising from them may fall as well as rise and you might get back less than you originally invested. Past performance should not be seen as an indication of future performance.

Conclusion

- balance qualitative and quantitative factors
- make sure you can see yourself working with your chosen manager for the **long term**
- tendering can be a long process, so it is worth doing properly
- good luck!




Q&A
To register for upcoming events, read our latest insights, and watch our investment training webinars on demand, visit rathbones.com/charities
Follow us on LinkedIn at Rathbones charity investment management

Biographies



Fiona Gillespie

Head of Charities, Scotland

Fiona joined Rathbones in October 2019 following her previous role as a senior investment manager at Anderson Strathern Asset Management. Previous to that, Fiona spent 24 years at Edinburgh Fund Managers and then Aberdeen Asset Management following their acquisition, where she had principal responsibility for managing multi asset mandates for Charity clients.

Fiona is an Associate of the Society of Investment Professionals, and Member of the Chartered Institute of Securities and Investment.

She sits as a Trustee of Medical Research Scotland, Trustee of the Stafford Trust and Treasurer/Trustee of the Scottish Council for Voluntary Organisations (SCVO). Fiona is also a member of the Future Asset Steering Committee. Until recently, Fiona was also non-executive director of Children's Hospices Across Scotland (CHAS) for over 6 years, stepping down in June of 2020.

✉ **fiona.gillespie@rathbones.com**

Important information

The value of investments and the income from them may go down as well as up and you may not get back your original investment.

Past performance should not be seen as an indication of future performance. Changes in rates of exchange between currencies may cause the value of investments to decrease or increase.

Information valid at date of presentation.

Tax regimes, bases and reliefs may change in the future.

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